I. INTRODUCTION

When I began researching female genital mutilation (hereinafter “FGM”), I was adamant about change for those who are forced to submit to FGM, those who allow the practice to be performed on themselves or, a fortiori, to perform it themselves on their own children and other family members. But after research (and a great deal of effort expanding my “Western” mind), I realized that staunch criticism would only prove futile in a quest to make life easier on women in African nations; it will ostracize them from the West and even, in some cases, their own people. By criticizing, we drive African women further into a practice that is unhealthy and suppressing. For fear of western imperialism, many Africans have clung to practices—good or bad—for a source of identity, repelling imperialism and intrusion.¹ I struggle to refrain from describing FGM only as inhumane and backward, for I now realize that many women use FGM to maintain the “humanity” of the culture in which it is

¹ See Hope Lewis, Between Irua and Female Genital Mutilation: Feminist Human Rights Discourse and the Cultural Divide, 8 HARV. HUM. RTS. J. 1, 31 (1995); DECEMBER GREEN, GENDER VIOLENCE IN AFRICA: AFRICAN WOMEN’S RESPONSES 15 (Palgrave Macmillan 1999).
practiced, looking forward to the time when the girl reaches adulthood, marriage, or childbirth.\(^2\)

Oddly enough, however, these "virtues" do not redeem FGM, nor should they facilitate its perpetuation. FGM was begun as a practice to subjugate the physically weaker, to hold back the natural sexual desires of naturally sexual creatures, and to eliminate men's fears and ignorance about the female form.\(^3\)

Instead of disrespecting the culture, however, and trying to swiftly eradicate FGM, this article will illustrate how important it is to propose reform in the context of political, social, and cultural contexts, not purely legal ones. This article will also strive to prove that empowering the women of these nations will lead to their strong voices, and how mutual respect should come from fostering communication and engagement with one another. After these avenues have been extensively explored, it will then be important to seek legal reform, leading to the development of international norms, and thus enforcement against FGM on an individual and international level.

Part II will introduce FGM on the African front, discussing its role in African women's lives. Part III will discuss FGM on the minds and legal pads of America in a reactionary context. Part IV will illustrate how the two cultures clash or connect via traditional international instruments and to determine whether these instruments shed light on FGM as a human rights concern. Part V will point out the irony of international instruments, how each nation could address or circumvent FGM on the international stage and why each nation might desire to do so. Part VI will expand that international discourse with ways of discussing FGM—economics and health. Part VII will touch on international principles that prick deeply into FGM issues. Part VIII will visit the discourses of cultural relativism and universalism and where each sits at the FGM roundtable. This article will end with a vision of how we should approach FGM, sensitizing ourselves to culture and pushing forward with the eradication of a deleterious practice. It is important to remember that we are not so distant that the realm of choice in Africa does not affect us, nor that a meaningful evaluation of FGM in the United States cannot prove fruitful.\(^4\)

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II. FGM ON THE AFRICAN FRONT

Female genital mutilation is the cutting and sometimes removing of a female’s genitalia. There are four types of FGM:

1) Sunnah (Type I);
2) Excision (Type II);
3) Infibulation (Type III); and,
4) Pharaonic (Type IV).

The Sunnah circumcision involves the partial or complete removal of the clitoris and is the least severe form of FGM. Excision, or clitoridectomy, is the excision of the clitoris and part of the labia minora. Infibulation involves the removal of the clitoris, labia minora, and parts of the labia majora; the anterior two thirds of the labia majora are sutured together leaving a posterior opening. The most severe of the circumcisions is the Pharaonic infibulation where the cutting is the same as type III, only the opening is very tiny so that the urethra and the vagina are covered; only urine and menstrual blood may pass. African nations favor more invasive, mutilating surgeries.

Female genital mutilation (FGM) occurs in approximately twenty-six African nations whose situs creates a belt from the horn of Africa through the Sahel and into West Africa. There are many justifications for this practice. Some tribes claim FGM maintains hygiene, cleanliness, femininity, and purity, all of which are necessary for marriageability, especially a high bride price. Other tribes call upon tradition for support, claiming that FGM has always been practiced and the people have simply not been given a good reason to end it. Many other nations embrace gender-biased roles and put forth the husband’s pleasure and his control of the wife’s sex drive to justify FGM. Finally, it is

5. See Layli Miller Bashir, Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law, 4 AM. U. J. GENDER & L. 415, 420-421 (1996); see also Dillon, supra note 2, at 292.
6. See Dillon, supra note 2, at 292. The four different types of circumcision are sometimes referred to by different names such as ritual, Sunnah, clitoridectomy, and complete infibulation. Id.
7. Bashir, supra note 5, at 420.
8. Id.
9. Id. at 421.
10. Id.
11. See Melissa A. Morgan, Female Genital Mutilation: An Issue on the Doorstep of the American Medical Community, 18 J. LEGAL MED. 93, 97 (1997).
12. See Morgan, supra note 11, at 94; see also GREEN, supra note 1, at 50.
14. Id.
15. See Morgan, supra note 11, at 95-96.
surprising how many women explain that FGM represents their coming of age and their status in the community; they view FGM as a “crucial socialization process.” Although there is a wide array of reasons for FGM, each one boils down to how African men view women. FGM becomes the determinative factor as to how she will be treated as well as what will be expected of her as an adult.

Ultimately, “FGM was designed to subjugate women by controlling their sexuality and by preserving patriarchal attitudes with respect to marital and sexual relations.” In this respect, FGM separates the women from the men on many levels—physically, mentally, and emotionally.

Physically, there is a gender-biased view that women should be sexually controlled, and only to the benefit of the man. “Throughout history, patriarchal societies have sought to control women’s sexuality and reproduction by one means or another.” Circumcision has long been the medium through which this control is maintained, justified by the belief that women are unable to control their own sexuality. Sexually, it is her physical duty to subject her own physical desires to that of the man’s. Besides sexual control, FGM reaps grave consequences on female health. Eighty percent of all women who undergo the procedure report complications. Fifteen to thirty percent of all girls who are cut die from bleeding or infection.

Mentally, the woman is forced to understand her denigrated role in society, being defined not by her worth as an individual human being, but by her genitalia. “A little girl child learns that her genitalia are a source of preoccupation to her family, a thing of shame that has to be cleansed and purified.” FGM effectively limits her ability to participate in life as a fully functioning human being. “The sex-role socialization resulting from these forces helps create and maintain ideological control. Women are socialized into submissiveness, socialized to be victims.”

Emotionally, there are two levels. At first, the girl is made to look forward to FGM as a way to enter society as a strong, healthy, and marriageable young

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16. See Green, supra note 1, at 47.
17. See Morgan, supra note 11, at 97; see also Dillon, supra note 2, at 295; see also id. at 49-50.
18. Dimauro, supra note 3, at 334.
19. See Morgan, supra note 11, at 95-96; see also Green, supra note 1, at 20.
21. Id.
22. Bashir, supra note 5, at 422.
23. Id. at 422.
24. Violence Against Women, supra note 20, at 98.
25. See also Green, supra note 1, at 52.
26. Id. at 27.
adult. But in reality, this girl is subjected to excessive pain. And later, this procedure is one that lasts not only for the few minutes it takes to cut her genitals, but a lifetime of hurt and anxiety whenever she approaches urination, sex, and childbirth. Thus, she experiences anxiety and confusion both before and after the procedure. For these reasons, the entire FGM process is believed to be "psychologically traumatic."

Interestingly, in the African nations where FGM is not practiced, the rate of wife abuse is exceedingly high and is expected to substitute FGM as a form of control and hierarchy over women. "Both wife beating and FGM exemplify how the family controls female 'purity' by imposing ideals of female behavior. Honor and shame are at work in different ways to serve these ends." Thus, gender violence secures social control. "FGM is adaptive to social coherence and economic viability by entrenching male control over women's sexuality and thus their reproductive, and productive, capacities."

Africa has responded to these unique circumstances of women through various legal and social routes. The Inter African Committee Against Traditional Practices Affecting Health of Women and Children (hereinafter "IAC") was formed in 1984. The IAC established national and regional anti-FGM networks throughout Africa. These networks connected African women through the use of posters, flyers, and community gatherings enabling African women to reflect on the realities of FGM—the health risks and its true role in

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27. See Dillon, supra note 2, at 296; see also id. at 46.
28. Indeed, there are many reports of women waking an hour earlier than the rest of the tribe just to urinate because the opening is left too small to let more than drips exit the body. See GREEN, supra note 1, at 47 (citing M. A. Abdalla et al., Selective Spectrophotometric Determination of Cephalosporins by Alkaline Degradation to Hydrogen Sulphide and Formation of Methylene Blue, 107 THE ANALYST, Feb. 1982, at 213).
29. Many women are cut open by their husbands on their wedding nights. One woman reported her struggle to get away from her new husband and in the process she was severely cut all over her lower extremities. Many women fear sex because the vaginal opening is too small for penal insertion. See GREEN, supra note 1, at 47. "Successful infibulation makes intercourse impossible." See Dillon, supra note 2, at 293.
30. Many pregnant women purposefully limit food intake to produce a small baby. See GREEN, supra note 1, at 48.
32. See GREEN, supra note 1, at 241.
33. Id. at 20.
34. Id.
35. Id. (citing MUSLIM WOMEN'S CHOICES: RELIGIOUS BELIEF AND SOCIAL REALITY, (Camillia Fawzi El-Sohl & Judy Mabro, eds., Berg Publishers 1994)).
37. Id.
their tribes. A U.N. resolution adopted the aims and purpose of the IAC in an effort to illustrate international support and awareness of the problems of FGM.

The UN Regional Committee for Africa provides similar networking as they distribute informational posters to African clinics that perform FGM. Likewise, the National Committee on Traditional Practices in Nigeria, established in 1985, facilitates workshops, seminars, and media campaigns to sensitize the public, leaders, and practitioners in an effort to eradicate FGM.

In addition, many NGOs and USAID research is welcomed in Kenya, Mali, Guinea, Ethiopia, and Tanzania. Likewise, Burkina Faso and Gambia have government campaigns against FGM. In Ghana, the National Council on Women and Development (hereinafter “NCWD”) commenced seminars for practitioners, physicians, nurses, and the public. They also provide practitioners with alternative sources of income to deter their own pecuniary desires to perpetuate FGM. After many of these efforts in assisting governments and communities to deal with FGM via national legislation and educational programs for women, the Sabiny community in Captura, eastern Uganda, launched a project dedicated to the eradication of FGM.

The African Charter on Human and Peoples’ Rights (hereinafter “African Charter”) calls for nondiscrimination against women and children in Articles 5, 16, and 18. These Articles prohibit “torture, cruel, inhuman or degrading . . . treatment,” call for the “best attainable state of physical and mental health,” and proclaim to eliminate discrimination against women. However, Article 29 stresses the importance of strengthening culture. Since many individuals view FGM as a cultural prerequisite, this Charter may hinder the eradication of FGM. These Articles are a paradox for FGM fighters and the women who endure the practice.

On an international level, the Nairobi World Conference in 1985 was the first world conference in which violence against women was addressed in a
human rights context. This Conference brought awareness not only to the world, but also to individual women who never saw their circumstances as constituting human rights violations. Their sexual desires, bodily autonomy, and individuality were brought to the forefront of the FGM eradication efforts and, more importantly, was brought to the forefront of African women's minds. The Conference called for women to recognize their individual rights to reproductive freedom and bodily autonomy, which is also emphasized in the Universal Declaration of Human Rights. Just as importantly, this Conference called for preventive measures via education and assistance to victims.

In addition, many African nations ratified the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter "CEDAW"). This Convention establishes provisional support for eradication, but does not specifically ban FGM. Unfortunately, CEDAW contains the largest number of reservations of all the human rights treaties and conventions, which makes this convention difficult to enforce on the international level. However, the fact that many African nations are signatories to CEDAW illustrates their awareness to the unique discrimination that women face.

III. FGM ON THE AMERICAN DOCKET

An ocean away, the United States became a reactionary party in the fight against FGM. Many African women and children were rushing to United States borders for asylum from this cultural practice; women and children represented approximately eighty percent of the refugee population. Ultimately, United States judges were forced to address FGM in the context of international human rights issues and recognize the unique situations of women across the globe.

In the case of In re Lydia Omowunmi Oluloro, a Nigerian woman feared that cultural practices were a threat to her two young daughters. She was

50. Id. at 14.
52. Id.
53. Id.
55. See Liu, supra note 40, at 88-89.
56. See Matter of Oluloro, No. A72 147 491 (oral decision at 20) (U.S. Dep't of Justice, Immigra-
granted a suspension of deportation as the judge condemned the practice as harmful.\textsuperscript{57} He also said that she demonstrated extreme hardship by showing the possibility of FGM being performed on her daughters.\textsuperscript{58}

More recently, two United States judges issued strikingly different rulings on female claimants' requests for political asylum.\textsuperscript{59} The two cases involved African women, both from Sierra Leone, who were abducted, gagged and bound, and then had their genitalia partly cut away with a knife.\textsuperscript{60} An Arlington, Virginia judge declared that the woman before him suffered "an atrocious form of persecution" and granted her asylum.\textsuperscript{61} Meanwhile, a Baltimore, Maryland judge denied the other woman's request, suggesting that she could choose to support the practice to maintain tribal unity.\textsuperscript{62} This disparity demonstrates that there is no set formula in applying asylum guidelines; the requirements for proving persecution remain strict.\textsuperscript{63} A woman still must show that she has a well-founded fear of persecution based on being a member of a social group.\textsuperscript{64} While not every woman who makes a gender-based claim will qualify as a refugee, these recent cases show some sensitivity of immigration judges and officials to women's sexual persecution.\textsuperscript{65}

Likewise, in the case of \textit{In Re Fauziya Kasinga}, FGM was considered a satisfactory ground for asylum under section 208 of the Immigration and Nationality Act.\textsuperscript{66} The court declined, however, "to speculate on, or establish rules for, cases that [were] not before [them]."\textsuperscript{67} This declination suggests that although FGM is becoming a sensitive issue for American jurisprudence, it is not yet a brightline qualification for asylum.

The American Medical Association (hereinafter "AMA") also responded to FGM tensions, which were becoming a prominent medical concern.\textsuperscript{68} While many African women who had undergone FGM were entering the United...
States, their subsequent pregnancies were of grave concern. Neither doctors nor nurses were sensitized to the African woman's plight, nor were they medically trained to deal with the ensuing complications from FGM. In turn, the AMA called upon the American medical community for assistance in controlling, if not eradicating, FGM.

Likewise, the World Health Organization (hereinafter "WHO") declared that the practice of FGM by immigrants was a public health issue in Europe, Canada, Australia, and the United States. In addition, the WHO stated that by practicing FGM, those physicians taint the profession by the harm women incur from the procedure, a paradox to the oath all doctors must take before practicing medicine. The Hastings Report agreed and stated that "bodily mutilation violates professional integrity because it contravenes the goals of medicine... and it harms patients without any compensating medical benefits," fraudulently misrepresenting the medical practice.

As a legislative response, Congresswoman Patricia Schroeder proposed the Federal Prohibition of Female Genital Mutilation Act (hereinafter "Schroeder Bill") in 1995. This bill would have outlawed FGM on girls under eighteen, imposing criminal action against violators. Once the girl reached the age of eighteen, she could opt to undergo the procedure. This option, however, required her informed consent to the procedure; she had to be fully informed of its health effects and understand what the procedure would entail. The Schroeder Bill also demanded public education and made exceptions to its criminality only in medical emergencies.

Although the Schroeder Bill was ultimately rejected, the United States House of Representatives passed a Resolution in response. This House Resolution urged then-President Clinton to encourage other countries to impose laws and enforce them against FGM. It also called for education on the practice.

In 1996, a Department of Defense Omnibus Appropriations Bill was passed with a rider criminalizing the practice of FGM. That same year, the FGM Act

69. Id.
70. Id.
71. See Bashir, supra note 5, at 417.
72. See Annas, supra note 58, at 347.
73. Morgan, supra note 11, at 99-100.
74. See Annas, supra note 58, at 344.
75. See Morgan, supra note 11, at 110.
76. Id.
77. Id.
78. See Annas, supra note 58, at 344-345; see also id. at 110.
79. See Morgan, supra note 11, at 110.
80. Id.
of 1996 was passed, using conditioned aid to prompt education on FGM. The United States would pressure targeted nations to implement educational programs on FGM. The logic behind this Act was based on the fact that targeted nations were in need of international financial support. If they did not implement such programs, the nation would receive no aid. The 1996 administration sought a change in the public’s attitude toward FGM. This change would result from educational programs, ultimately leading to an end of the practice through community support of anti-FGM laws.

The problems behind these legislative efforts arose as a rebellion to western “imperialism.” African woman rebelled against the West, feeling as though Western women did not understand their culture and were trying to suppress African rituals, just as imperialism and colonialism had done in the past. As a result, African women began clinging to familiar senses of family and culture for protection and self-justification. In the end, the good faith efforts and progress of the West were substantially hindered.

IV. CLASH OR CONNECTION VIA INTERNATIONAL INSTRUMENTS

Despite these obstacles, there are ways to reconnect the West with African nations so that the fight against FGM is not a futile one, but staged on an international platform. Some traditional international instruments could be an adequate arsenal to fight the FGM war. These tools might also bring awareness to the African woman herself, an awareness of her rights as a human being. Many of these instruments illustrate the concern for the African woman’s plight. They exalt her autonomy, prohibit the discrimination she faces on a daily basis, and illustrate a genuine desire to improve her conditions. These concerns are not only for the best interest of women, but are also in the best interest of humanity as a network of equal people.

Many instruments denounce FGM as a violation against women and thus a human rights violation:

1) World Conference on Human Rights (Vienna, Austria 1993);
2) Global Commission on Women’s Health;
3) Geneva Convention;

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81. See Liu, supra note 40, at 94.
82. Id.
83. Id.
84. Id. at 94.
85. Id.
86. See GREEN, supra note 1, at 16.
87. Id. at 44.
88. Id. at 44.
4) CEDAW; and,
5) The World Health Organization.

There are also many international agreements that appeal to the health issues of women such that the health risks that FGM poses might be sufficiently addressed. In 1993, the World Health Assembly (hereinafter "WHA") passed a resolution to affirm that national policies and programs in all member states are geared toward the elimination of FGM. The Global Commission on Women's Health, vested under the auspices of the WHO, confirmed an international commitment of the U.N. to end FGM.

V. THE IRONY OF INTERNATIONAL INSTRUMENTS

There are many other international tools that might address FGM, but there are hurdles to overcome within the context of each one. For example, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter "Torture Convention") might cover FGM as a human rights violation and include enforcement provisions for the practice of FGM. In order for this to occur, however, FGM must fit the confines of the Convention's terminology. The Torture Convention defines torture in the following manner:

1) The intention to inflict suffering;
2) A secondary intention that infliction of suffering will fulfill a purpose;
3) A public official or one in official capacity to be involved in inflicting, instigating, consenting, or acquiescing to the torture; and,
4) If such actions are inflicted for any reason based on discrimination of any kind it is torture.

FGM fits each one of these elements.

First, FGM is performed in many cases with the intent that suffering will occur, whether it is for physical, mental, or emotional reasons. Second, this suffering is intended to fulfill the ultimate purpose of subjecting the female to the male's pleasure, his control, and his overall social power. Skipping to the fourth element, FGM is performed in a gender-biased manner; it subjects women to a unique sexual discrimination.

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89. See Sussman, supra note 36, at 204.
90. Id.
91. Draft Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, art. 1, 23 I.L.M. 1027.
The third prong, however, is tricky, for it requires state action. Because some signatories to the agreements against FGM are the very African nations who practice it, these states may seem exempt from state action requirements of the Torture Convention. At first glance, the state is not involved in torture. If anything, the state denounces it. However, in almost every African nation that has signed anti-FGM instruments, there is no enforcement against violators. The small degree of enforcement that did exist was either suspended or ultimately revoked. However, “when persecution is inflicted by a culture, rather than the government, and where the government is either unable or unwilling to stop the persecution, the persecution is [ultimately] attributable to the government.” Therefore, because the states are not enforcing the agreements they signed to end gender discrimination they are “actors,” regardless of the paper rights they granted women. The third prong of the Torture Convention is thus satisfied.

Even so, there is another weapon that could be used to symbolize that signatures alone are not enough for the state to rely upon. The U.N. Charter signifies that citizens’ rights are of international concern and are no longer subject to a state’s sovereignty; women are no longer subjected to a culture’s violent veil, but can be protected via legal instruments. “Though the sovereignty of a nation must be recognized and respected, it is not absolute. A state’s internal affairs may be interfered with by external concerns. A state whose national will conflicts with recognized principles of customary international law may be subject to external intervention.”

The Women’s Convention (a.k.a. CEDAW) is another instrument whose interpretational hurdles must be overcome. The Women’s Convention focuses on traditional practices that violate women and their human rights. There are several articles that are relevant to the eradication of FGM: Article 2 and Article 5. Article 2 of the Women’s Convention explicitly states that its signatories “agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women.” To meet this end, the Women’s Convention lists mediums such as legislation, regulations, customs, and practices through which discrimination against women are often perpetuated.

92. See Dillon, supra note 2, at 320, 324.
93. Id.
94. Bashir, supra note 5, at 445.
95. See Sussman, supra note 36, at 199; U.N. CHARTER art. 1 & arts. 39-42.
96. Liu, supra note 40, at 80-81.
97. Id.
98. Id.
99. Id.
to be addressed and resolved. Article 5 of the Women's Convention requires signatories

"to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."\(^{101}\)

Unfortunately, there are two issues that must be overcome. One such issue is that the Women's Convention does not specifically mention FGM. This means that its inclusiveness is dependent upon interpretation, just as with the Torture Convention. There is support for the eradication of FGM, but no specific ban. Another such hurdle is this Convention's substantial number of reservations. The Women's Convention contains the largest number of reservations of all the human rights treaties and conventions.\(^{102}\) With such reservations, it is difficult to establish an international norm and thus difficult to enforce the treaty against those who violate its provisions; there will be a substantial number of exceptions for those who saturated the treaty with their reservations. It is interesting, however, that although there are as many as 88 substantive reservations to the provisions of the Convention, none were made by African nations.\(^{103}\) Thus, African signatories will be expected to fulfill their obligations of this treaty under the basic principle of pacta sunt servanda.\(^{104}\)

Other international instruments support a woman's equality with man. Two such instruments are the Universal Declaration of Human Rights (hereinafter "UDHR") and the U.N. Convention Relating to the Status of Refugees.\(^{105}\) The UDHR contains many antidiscrimination provisions and emphasizes the idea that FGM denies the woman her right to control her body and sexuality.\(^{106}\) The other tool, the U.N. Convention Relating to the Status of Refugees, affords a broad interpretation of women's rights so as to provide women the same protections as men. For example, sexual violence and gender-bias are gradually becoming recognized as unique situations of women in asylum law. Such progress could evolve into an international norm that FGM

\textsuperscript{100} Id. at 83; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 2, 19 I.L.M. 33.

\textsuperscript{101} Liu, supra note 40, at 83; Convention on the Elimination of All Forms of Discrimination Against Women, supra note 100, at art. 5.

\textsuperscript{102} See Chessler, supra note 51, at 567.

\textsuperscript{103} Liu, supra note 40, at 83.

\textsuperscript{104} Id. at 83; Pacta sunt servanda discussed in detail on page 21.

\textsuperscript{105} Id. at 76.

violates international law due to its fundamentally discriminating and degrading nature, thereby enforceable via just cogens.

Similarly, the Convention on the Rights of the Child affords the girl child many of the same rights that males have always enjoyed.\textsuperscript{107} For instance, Article 19 proscribes child abuse and prescribes the need for child protection.\textsuperscript{108} Article 24 addresses the child's right to enjoy the highest attainable standard of health and to abolish traditional practices that are adverse to this objective.\textsuperscript{109} Further, Article 37 demands that no child be subjected to inhumane or degrading treatment.\textsuperscript{110} Because of the trauma to the girl child from anxiety, pain, and bodily mutilation, it seems certain that FGM should be classified as inhumane and degrading. Finally, Article 16 addresses the child's right to privacy, which is supported by the provisions of the Beijing Platform for Action.\textsuperscript{111} Although the Beijing Platform addressed parental rights, these rights were in conjunction with the girl child's right to bodily integrity, right to access information, and the right to privacy.\textsuperscript{112} The Convention on the Rights of the Child contains only codified prohibitions of FGM in international human rights law, but it is still a step in the right direction.

The irony of traditional international instruments, however, exists in the ways nation states can circumvent or directly address FGM using the same provisions depending upon interpretation of the practice and the people. For this reason, it is necessary to develop a way of interpreting and enforcing the existing international arsenal against FGM so that states will not ignore their responsibilities. There are two possible approaches that are most viable in third world countries—economics and health.\textsuperscript{113}

VI. DISCUSSING FGM

The economics of FGM are astounding. Women rely on their husbands as a source of survival. In many instances, the woman's only source of income is through her husband.\textsuperscript{114} Because of this dependency, women will strive to be marriageable (i.e., cut) so as not to be left to fend for herself, struggling to survive without finances. A woman also costs her father or husband a large sum

\textsuperscript{107.} See Chessler, supra note 51, at 568.
\textsuperscript{108.} Id. at 568; Convention on the Rights of the Child, Nov. 20, 1989, art. 19, 28 I.L.M. 1448.
\textsuperscript{111.} See Gaer, supra note 49, at 62; Convention on the Rights of the Child, supra note 108, at art. 16.
\textsuperscript{112.} See Gaer, supra note 49, at 62.
\textsuperscript{113.} See Dimauro, supra note 3, at 343.
of money when she incurs health costs from clinical visits or hospitalization (where available) if complications arise from the procedure. Furthermore, many women or girl children die due to the inadequate medical attention during the procedure and the tribe suffers; there are two less hands to help with chores and the widowed mother now has one less prospect for someone to care for her in old age.

As inhumane and cold as this economic approach seems, it may be an effective one. The logic is that if men are already unconcerned for women’s health and happiness as they perpetuate FGM, then they will not be moved by heart-rending stories of female trauma. It is important to address the economics of FGM or all else will fall on deaf ears. The issues that lead to a weak economy are what will draw African men’s attention. If FGM tends to destroy their hope for development, these communities may be more likely to put an end to FGM.

Health is also an important issue. “The most popular medium for combating FGM as a human rights violation is through the right to health.” This medium helps to involve African women in understanding how FGM affects them physically. When women begin to see how FGM affects their health, they take great caution in considering whether or not to undergo the procedure. There are two different times in which this is true. One example is when the girl child grows older and she notices how difficult basic human functions are; urination, sex, and childbirth become great obstacles rather than normal or pleasurable. The adult female is sometimes angry that she was not explained the details of the procedure or made to understand what effects it would have once she aged. The other example occurs when many women and even young girls have been educated on the procedure—education via posters, seminars, or media. After many nonprofit organizations entered nations in Africa to distribute posters to clinics or set up FGM networks, women were outraged and mortified to finally understand the toll it takes on their bodies. Women are also outraged at realizing the lack of control they had over their bodies and in the decision to undergo such a life altering procedure.

Some arguments are made in Egypt to advance FGM, which claim that the legalization of FGM serves to provide a healthier and less hazardous procedure for women. This argument is likened to the legalization of abortion in the United States, where the legalization of abortion retracted the procedure from being performed underground, allowing safer, more skilled practitioners to

115. Dimauro, supra note 3, at 343.
116. See GREEN, supra note 1, at 45-47.
117. Id.
118. Id.
119. See Dillon, supra note 2, at 316.
perform the procedure. I believe, however, there are several counterarguments to this position.

One argument against the legalization of FGM is that the government’s condonation of this process serves as an approval mechanism to perpetrate the idea that women are the weaker sex and need to somehow be sexually controlled and physically manipulated. In addition, such state approval might interfere in a woman’s (potentially) independent decision to undergo the procedure. This interference could happen in two ways:

1) we would be dancing on a slippery slope if the government legalizes FGM because, if the consensus is in favor of such practices already, we might not be able to prevent the government from taking not the additional step of mandating FGM and taking discretion away from the women entirely; and,

2) a woman may think that such state interest weighs in favor of her acquiescing to the procedure, for if the country’s leaders legalize FGM then there must be some merit to it.

Another counterargument could proceed as follows: Granted, legalization would no longer force FGM underground, but who is to say that the government would be willing to provide safe, clean facilities as were provided for abortion services in the United States? In addition, many poor families perform FGM on their daughters; it is unlikely that these families will have the resources to take advantage of safe facilities even if they were to exist.

Furthermore, legalization, along the lines of that of abortion, is not an answer to all the health risks posed by FGM. Unlike abortion, FGM is a health risk that lasts indefinitely for the life of the female. She will never be able to have sex, urinate, or bear children naturally again. Although abortion poses risks, such as hemorrhaging, sterility, and infection, its effects are limited, few, and far between. For this reason, the parallel between abortion and FGM must be drawn asunder. Additionally, even if we were to discuss the historical developments of the two procedures, FGM by far outweighs abortion in its discriminatory, cruel, and ignorant grip on female sexuality. Legalization of abortion gave women the right to choose how they wanted their lives to take course, and to decide for themselves what was best for each woman—a positive approach to the individual woman’s life. Abortion does not subject women to men’s ignorant and disdainful portrait of a woman’s body and sexuality, as does FGM. Further, legalization of abortion did not implicitly condone those negative ideas either, whereas the legalization of FGM may do just

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120. Id. at 297.
121. Id. at 293; see also GREEN, supra note 1, at 48.
that—condone those views which women need to steer clear in order to may choices that positively affect their lives.

It is important to note, as well, that legalization of FGM does not necessarily mean that women will be provided with the appropriate education on the procedure. Indeed, just the opposite may occur; the fact of its legalization will probably be pushed upon women more than its hazards to health. This will happen, again, because the state’s condonation serves as some merit, or rubber stamp, that might negate the need or desire for education on FGM’s horrifying effects.

VII. INTERNATIONAL PRINCIPLES

It is also necessary to understand how each nation state should enforce international documents in order not only to uphold the rule of law as a fundamental principal, but also to eviscerate a practice that needlessly harms, and sometimes kills, a substantial number of African women. There are several principals one might use to enforce the agreements that so many African nations have signed. These are international law standards such as due diligence and jus cogens; there is also the basic principle of pacta sunt servanda.

The international standard of due diligence could be used to enforce the agreement if the written laws of the state do not address the agreed issues sufficiently. For instance, Nigeria has many laws on the books prohibiting FGM, which is in accordance with their agreements to many international instruments denouncing FGM. However, many Nigerians still practice FGM and the laws are not being enforced; Nigeria’s written laws are thus insufficient. Due diligence would then demand a community responsibility to uphold the international agreement and enforce the state’s written laws.

The problem with due diligence, however, is prosecutorial corruption. Due diligence demands more from each state than just the laws on their books, it demands a cultural and individual responsibility as well. However, because FGM is so embedded in the culture, this responsibility is easily brushed from African shoulders. Indeed, as “traditional patrimonial communities assign women a subordinate role, women feel incapable of opposing social, religious, and cultural dictates, even when these mandates adversely affect them.” Therefore, due diligence may be a difficult route to follow. A possible solution to this corruption, however, is to circumvent government and culture by two approaches—economics and health. This way, you reach the issues that the people feel are most afflicting their lives. If the people feel that those issues are

123. See Bashir, supra note 5, at 445.
124. Id.
125. Dimauro, supra note 3, at 334.
necessary for survival and development, the traditions that hinder that progress may very well be put on hold or eliminated.

Another international standard that can be used to enforce international anti-FGM agreements is jus cogens. Jus cogens is based on the idea that international law is normative.\(^ {126} \) There are certain fundamental ideas, which, if abrogated, are violative of international law.\(^ {127} \) "A state is in violation of international law if it practices, encourages, or condones torture, ... which is considered a norm of jus cogens."\(^ {128} \) The failure of nations to stop the practice of FGM, either by consent or acquiescence to custom, constitutes a violation of the customary law forbidding torture.\(^ {129} \) The countries that permit the practice have failed to keep their obligations to condemn such torturous acts. Similarly, "other countries that may face importation of the practice by immigrants will be in violation if they do not act in conformity with their international obligation to condemn [FGM]."\(^ {130} \) For example, torture and genocide are unanimously referred to as violative of international law because of their fundamentally oppressive, depraved, and degenerative natures. Thus, I suggest that because so many agreements and their signatories denounce FGM, the practice should become another fundamental wrong, violative of international law, and be considered a crime against humanity so as to enforce under the doctrine of jus cogens.

Another way in which FGM could be established as a norm (to be enforced via jus cogens) is through asylum law. As discussed earlier, many judges across the world are taking into consideration the unique situations of women. Women are facing issues like sexual violence and gender-bias, which are far different than those of men. Once courts address these issues as satisfying the requirements for asylum, international courts should also recognize these particular women's issues as norms against which international enforcement should dedicate its efforts. Just like the appeal of the Beijing Platform for Action, countries should be called upon to take gender-bias and sexual violence into consideration when asylum issues arise.\(^ {131} \)

In addition, it is important to note the basic principle of pacta sunt servanda. This principle establishes the maxim that signatories to international agreements, including those that denounce FGM and avow ways to eradicate it, should uphold such agreements. Upholding those vows means more than just

\(^ {126} \) See Liu, supra note 40, at 80-81.
\(^ {127} \) Id.
\(^ {128} \) Id.
\(^ {129} \) Id.
\(^ {130} \) Id. at 81. For this reason, the Schroeder Bill was introduced, although ultimately rejected. See Annas, supra note 58, at 344.
\(^ {131} \) See Gaer, supra note 49, at 62.
“paper rights”132 to women, but reflects an affirmative stance against FGM via education, assistance, legislation, and enforcement.

However, difficulties arise when signatories include reservations to the agreement. It becomes difficult to enforce many of these instruments due to the substantial number of reservations of the states. For example, CEDAW, which would probably be one of the most effective tools to deter and eradicate FGM, is often not enforced because of state reservations. Nor are reservations helpful to establish international norms because each signatory is basically writing their own interpretations of an international issue or law.

VIII. DISCOURSE DICHOTOMY

We take risks, however, when deciding how each state should interpret and enforce the principles of international law. There are two basic schools of thought, which are used to attack or defend international interpretations: cultural relativism and universalism. Cultural relativists claim that human rights vary from culture to culture; human rights violations in one context may not be a violation in another context.133 A relativist’s justification is culture.134 Universalists, on the other hand, claim that there is a universal norm of human rights.135 The universalist’s strategy is to create new international laws to give women a voice in society.136 There are, however, problems with espousing one approach over the other when analyzing international norms and human rights.

First, we are not so distant that the realm of our choices does not effect one another.137 An “either/or” approach to these ideas ignores international interaction and mobility. If cultures and communities interact with one another (via trade, immigration, travel, etc.), then it is absurd to claim that each society’s standards are right by their own rights and cannot be extended beyond those boundaries.138 We already see the implications of this thought via immigration and health. This means that state views cannot be treated relativistically; we must confront one another with a respect for culture, but realizing human rights and effectively addressing them. The range of moral judgments and cultural beliefs are not restricted by their cultural bounds.139

134. Id.
135. Id. at 113.
136. Id. at 114.
137. See Waldron, supra note 4, at 133.
138. Id.
139. Id.
Second, the "either/or" approach ignores the potential for change through law. Culture does not have to deny women freedom from oppression. Culture may be reformed gradually and reinterpreted to provide women within these cultures the protection that western women have achieved after years of struggle and determination. Also, laws offer opportunity for women to organize and work within their cultures to achieve greater human rights for themselves.

Mary Wollstonecraft once said, "We ought not to be too anxious in respecting the opinions of others." This succinctly sums up the way in which these two schools of thought could be amalgamated. When approaching culture, it is surely necessary to respect its people and offer some deference, but automatic validity and acceptance should not be the standard. When human rights are at the forefront, the individual's "culture" should be a global one. Her worth and her rights should be evaluated on an international level and not at a level of state sovereignty or cultural bounds. Her autonomy and her well-being should be the focal point in order to benefit humanity, not to benefit the men who suppress her.

IX. THE VISION

In conclusion, there ought not to be such a thing as "paper rights." Such rights do not empower the woman; they do not educate her on her autonomy, her voice, or her strength in sexuality and womanhood. African women need to be empowered in their own communities and by their own cultures. But this can only be done by engaging African women in their own discourse to reflect upon their personal realities. Like a nexus of the relativist and the universalist, African women should address FGM in their own personal ways, but in the context of human rights. The survival and liberation of African women is dependent upon their own activism.

Furthermore, we must propose reform in political, social, and cultural contexts, not solely legal. We must weave the nexus of relativism and universalism into traditional legal instruments to create norms. This structure will, in turn, increase enforcement of existing laws and women's rights. In the end, we are considering FGM a human rights violation. To reach that end, though, we must realize that there are effective mediums other than just legal ones. Educate and empower. This way, an understanding might develop within

140. See Mountis, supra note 133, at 116.
141. Id. at 116.
142. Id. at 113 (citing Mary Wollstonecraft, quoted in Miriam Gurko, The Ladies of Seneca Falls: The Birth of the Woman's Rights Movement 15 (MacMillan Publ'n Co. 1974)).
143. Hernandez-Truyol, supra note 132, at 629.
144. See Lewis, supra note 1, at 26.
the culture, within the community, and thus within each African nation, that FGM really is a human rights violation and those aforementioned instruments and international standards can be effectively enforced and respected.