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## Repair Versus Rejuvenation: The Condition of Vaginas as a Proxy for the Societal Status of Women

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Patricia A. Broussard\*

*I have just returned from hell. I am trying for the life of me to figure out how to communicate what I have seen and heard in the Democratic Republic of the Congo. How do I convey these stories of atrocities without your shutting down, quickly turning the page or feeling too disturbed?*

Eve Ensler<sup>1</sup>

### I. INTRODUCTION

The harsh reality of life is that, in some parts of the world, there are “wars against women”<sup>2</sup> that provide the hellish environments of which Eve Ensler speaks. More precisely, these wars are actually wars within wars, or as *60 Minutes* refers to them, “hidden wars.”<sup>3</sup> Recent conflicts in Darfur (Sudan), Rwanda, and the Democratic Republic of Congo have been deemed civil wars, and the world appears to view them as just that. But, as Anderson Cooper reported when returning from the Democratic Republic of Congo, “[T]he most frequent targets of this hidden war are women. It is, in fact, a war against women, and the weapon used to destroy them, their families and whole communities, is rape.”<sup>4</sup>

Rape has been used in armed conflict to both morally defeat the enemy and for ethnic cleansing.<sup>5</sup> However, in recent conflicts, rape has taken on an entirely new dimension and has become even more horrific than once thought possible. The atrocities that girls and women have been forced to endure during the act of rape have not only rendered many of them unable to have full control over their most personal bodily functions but also have

left them with little or no bodily integrity.<sup>6</sup> A large number of women have received serious injuries to their vaginas and reproductive organs, resulting in both extreme physical and psychological pain.<sup>7</sup> This fact has prompted some doctors to dedicate their entire medical practices to repairing destroyed vaginas in an attempt to give these girls and women some of their dignity back and a chance at normalcy. The idea that a woman would need to have her vagina repaired not because of a medical condition, accident, or birth defect, but because it was intentionally destroyed is astounding. Would the world be outraged if hundreds of thousands of penises were in need of repair?

In addition to the destruction of vaginas by rape, the practice of female genital mutilation is on the move to become not only a part of Western lexicon, but a “ritual” that is now performed in the West.<sup>8</sup> Notwithstanding the rhetoric of proponents<sup>9</sup> of this practice, female genital mutilation continues to be a major destroyer of vaginas.<sup>10</sup>

Meanwhile, in the West, the hottest new surgery is vaginal rejuvenation. A woman who has been “stretched” by childbirth or desires a more attractive vagina is now able to have her vagina restored to its youthful vim and vigor for several thousand dollars. An article entitled “More Women Seek Vaginal Plastic Surgery” quoted a woman named Crystal as saying, “[N]ow I love the way I look; nice and neat and new. My vagina looks perfect.”<sup>11</sup>

What is the relationship between rape, female genital mutilation, and vaginal rejuvenation? This paper answers that question by discussing how the state of the vagina, the most accepted symbol of femaleness, can be viewed as a proxy for the status of women worldwide. In other words, if one resides in a country where vaginal repair is a necessity, it is likely because either armed conflict or the systemic devaluation and marginalization of women occurs within that society. Moreover, any country that encourages and condones female genital mutilation is more

likely to have a complicated human rights record and a dubious adherence to the rule of law with respect to women.

Whereas if women can revel in the concept of vaginal rejuvenation and self-fulfillment, they probably live in societies where there is no armed conflict (at least on their soil), human rights are valued, and a rule of law exists which contemplates women as worthy contributors to society. However, the rule of law does not completely correct systemic gender issues. Indeed, at least one reason behind vaginal rejuvenation centers on male pleasure—the belief that a tighter vagina provides a male with more pleasure than one that has been subjected to the natural forces of nature such as childbirth. It is neither the intent of this article to debate that issue at this time, nor is it the intent of this article to denigrate women who have chosen to have vaginal rejuvenations for cosmetic reasons or for enhancement of pleasure. Rather, the intent is to juxtapose the circumstances that demand that a vagina be fixed, whether “broken” by rape and genital mutilation in a society where women are devalued, or amidst circumstances where women have achieved a modicum of equality and willfully choose to restore their vaginas to their youthful status. All of these situations speak loudly on the status of women in their respective societies. Although there are daily incidents of violence against women that center around vaginas,<sup>12</sup> this article focuses on rape, female genital mutilation, and vaginal rejuvenation using the Democratic Republic of the Congo, Somalia, and the United States as nation examples of each in that order. Finally, seven solutions will be discussed: education, healthcare, international aid, close scrutiny of power-sharing agreements, encouragement of governmental infrastructure, repudiation of a culture of impunity for violating women, and a clearly articulated renunciation of violence against women by the world community.

## II. SEXUAL CRIMES AGAINST FEMALES: ARE WOMEN HUMAN?

Professor Catharine A. McKinnon asks, “Are women human?” More specifically, she queries:

If women were human, would we have so little voice in public deliberations and in government in the countries where we live? Would we be hidden behind veils and imprisoned in houses and stoned and shot for refusing? Would we be beaten nearly to death, by men with whom we are close? Would we be sexually molested in our families? Would we be raped in genocide to terrorize and eject and destroy our ethnic communities, and raped again in that undeclared war that goes on every day in every country in the world in what is called peacetime?<sup>13</sup>

Although Professor McKinnon’s questions are provocative, the truths they carry are both eye-opening and extremely disturbing. A few incidents of sexual violence against women reflect a few bad actors; however, massive, systemic incidents of sexual violence against women reflect rogue governments and some helplessness and disinterest on the part of “legitimate governments.”<sup>14</sup> In the final analysis, the question of whether women are human remains unanswered, but the prevalence of the incidents of sexual violence outlined below indicate that in many parts of the world, women are considered and treated in these societies as far less than human.

### *A. Rape*

*How do I tell you of girls as young as nine raped by gangs of soldiers, of women whose insides were blown apart by rifle blasts and whose bodies now leak uncontrollable streams of urine and feces?*

Eve Ensler<sup>15</sup>

Evolutionary biologist Randy Thornhill and evolutionary anthropologist Craig T. Palmer co-wrote an article entitled, “Rape is a Natural Biological Act.”<sup>16</sup> Although these two scientists did not endorse or justify the act of rape, they certainly asserted a thesis that is quite disturbing. They wrote:

We want to challenge the dearly held idea that rape is not about sex. We realize that our approach and our frankness will rankle some social scientists, including some serious and well-intentioned rape investigators. But many facts point to the conclusion that rape is, in its very essence, a sexual act. Furthermore, we argue, rape has evolved over millennia of human history, along with courtship, sexual attraction and other behaviors related to the production of offspring. Consider the following facts: most rape victims are women of childbearing age; in many cultures rape is treated as a crime against the victim's husband; rape victims suffer less emotional distress when they are subjected to more violence; rape takes place not only among human beings but also in a variety of other animal species; married women and women of childbearing age experience more psychological distress after a rape than do girls, single women or women who are past menopause. As bizarre as some of those facts may seem, they all make sense when rape is viewed as a natural, biological phenomenon that is a product of human evolutionary heritage.<sup>17</sup>

This is not a quote from the year 1840, but rather, one from 2000. The message from these learned men seems to be that men are endowed with a biological imperative to reproduce and that they are merely fulfilling that uncontrollable urge to procreate by raping fertile women. Facts will disprove this thesis.

Moreover, the idea that the psychological harm of rape is greater to fertile women than to nonfertile females is wholly absurd. Has anyone bothered to tell the nine-year-old who was raped and had her genitalia rendered null and void that she is better positioned "psychologically" to deal with the lifelong trauma that she has endured in the name of "the urge to reproduce?"<sup>18</sup>

Professors Thornhill and Palmer are scientists, and as such, their job is to document human behavior and to reach conclusions based upon patterns of recurrence and other factors. However, the danger in a purely clinical assessment of human behavior is that the conclusions may be used to absolve bad actors from horrific behavior. And further, if rape is purely about sex, how does one account for the systemic degradation,

dehumanization, and physical torture of women in the act of “procreating”? Moreover, assuming that the stance taken by the professors has some validity, if women *are* human beings with status equal to their male counterparts shouldn’t they have the right to determine if they want to procreate, or should they be subjected to men’s inner Neanderthal? Didn’t the concept of “consent” also emerge as a product of human evolutionary heritage?

Rape is more than the actualization of horny men wanting to spawn heirs. Systemic rape of females in countries where they are treated as subhuman has taken on a patina of torture and cruelty beyond comprehension and reason.<sup>19</sup> As a result of these rapes, women have had their genitalia mangled and destroyed, and there is very little that they can do, individually, to fix themselves.<sup>20</sup> Rape is not just sex. Rape is war, and females are the casualties of battle. And, more often than not, women are destroyed both symbolically and actually through the destruction of their genitalia.<sup>21</sup> Professor Catharine A. MacKinnon said it best: “Rape is a daily act by men against women; it is always an act of domination by men over women.”<sup>22</sup>

### **1. Rape as a Fact of Daily Life Worldwide**

In 2000, the US Department of Justice issued a research report entitled the *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*.<sup>23</sup> That report cited the *National Violence Against Women Survey*,<sup>24</sup> which stated that in the United States, 876,064 women are raped per year.<sup>25</sup> In addition, 31 percent of female rape victims reported being physically injured during their rape, which included biting, slapping, choking, and other forms of physical contact.<sup>26</sup> If one operates under the assumption that many rapes go unreported (or take place within families and are labeled as incest), then the actual annual number of rapes in the United States is much higher than estimated. In fact, “for every sexual assault reported to the police, three to ten go unreported.”<sup>27</sup> Moreover, a study published in the *New York Times* suggests that “one in five adolescent

girls will become the victims of physical or sexual violence in a dating relationship.”<sup>28</sup> A Department of Justice study reported that an estimated “25 percent of college women will be victims of rape or attempted rape before they graduate within a four-year college period.”<sup>29</sup>

The United States is ranked number one in per capita rapes.<sup>30</sup> This statistic is deceiving, because there is no uniform global definition of rape,<sup>31</sup> therefore, an act that is classified as rape in the United States may be classified as something else (or nothing at all) in other countries. Notwithstanding the fact that this lack of a global definition of rape might skew some of the statistics, it is estimated that one in three American women will be sexually assaulted in her lifetime.<sup>32</sup>

Likewise, globally, at least one in three females is beaten or sexually abused in her lifetime.<sup>33</sup>

Prevalence data on sexual violence is even more limited than physical violence. However, evidence suggests that a substantial proportion of girls and women have experienced child sexual abuse, forced sex and other forms of sexual coercion in virtually every setting of the world. For example, population-based studies have asked about “forced” sexual debut among sexually experienced young people and found rates from 7 [percent] (New Zealand), to 46 [percent] (in the Caribbean).<sup>34</sup>

Although data is limited on worldwide rapes, George Mason University Sexual Assault Services compiled the following troubling information:

- “In South Africa, a sex crime happens every twenty seconds.”<sup>35</sup>
- “14,000 of the 331,815 reported crimes committed against women in the Russian Federation were rapes.”<sup>36</sup>
- “In Canada, 23.3 [percent] of women had been victims of rape and attempted rape.”<sup>37</sup>
- “A large number of sexual assault victims are less than age 15.”<sup>38</sup>
- “In Costa Rica, Peru, and Uruguay, a rapist can go free under the Penal Code if he proposes to marry the victim and she consents.”<sup>39</sup>



- “Island-wide random surveys of women in Barbados revealed that nearly one-third of respondents had been sexually abused during their childhood or adolescence.”<sup>40</sup>
- “In Bosnia and Herzegovina, estimates of the numbers of women raped range from 10,000 to 60,000.”<sup>41</sup>
- “A survey in the United Kingdom found that 19 [percent] of women had been victims of sexual violence.”<sup>42</sup>

Moreover, female adolescents who reported to have had a forced sexual initiation range from 7 percent in New Zealand to 48 percent in the Caribbean.<sup>43</sup> In other words, “[w]omen are routinely violated sexually and reproductively every day and in every country of the world.”<sup>44</sup>

Unfortunately, rape is a part of the landscape worldwide, and “rape is so stigmatizing that many women do not report it, and thus researchers have difficulty tabulating accurate figures.”<sup>45</sup> For example, Worldwide Sexual Assault Statistics report that under Islamic law, a woman needs to provide four credible male witnesses if she reports being raped. If she is unable to provide these witnesses, she may be charged with adultery.<sup>46</sup> In that instance, a woman is doubly violated because she was both physically raped by a man (or men) and raped by the country that is arguably charged with protecting her rights. Her best alternative is silence.

As the above-stated facts demonstrate, rape and the sexual violation of women are common denominators among all nations. Certainly, the West cannot claim any moral authority with respect to the annual number of rapes of women. However, there is a difference between horrific acts of rape, generally, and the monstrous acts that rape has mutated into within some countries. It almost sounds ridiculous to propose that there are degrees of deprivation, but if one is to believe the quote from Eve Ensler that opened this article that is precisely the assertion.<sup>47</sup> Moreover, the main distinction between rape as an everyday fact of life worldwide and the horrific forms of rape that have manifested in the last two decades is the role of governments

in condemning and prosecuting these acts. In the former situation, governments have enacted and enforced laws against rape; whereas in the latter situation, sometimes governments are complicit in these systemic rapes.

While far from being models of gender equality, some nations have taken up what Nicholas D. Kristof calls the “Axis of Equality”<sup>48</sup> and have worked to level the playing field for women. In these nations, women are viewed as valuable and equal members of society. While the occurrence of rape has not ended here, it is viewed as a vile crime. This fact may appear to be superfluous in light of the staggering statistics on rape, but it does represent a functioning rule of law.

Likewise, many countries have co-signed onto various declarations and proclamations that support the call for human rights.<sup>49</sup> The international community has attempted to address the human rights of women by enacting, *inter alia*, the 1948 Universal Declaration of Human Rights (“UDHR”),<sup>50</sup> the 1979 Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”),<sup>51</sup> and the United Nations’ 1993 Declaration of the Elimination of Violence Against Women.<sup>52</sup> But if women are not treated or considered humans, these documents are worthless. Women are not protected by the rule of law, but rather, dominated by the rule of the mob. This appears to be the fate of many women worldwide.

## 2. Rape and War

*Alas, for Women, there is nothing unprecedented about mass rape in war.*

Susan Brownmiller<sup>53</sup>

It appears that rape is as old as war. Bernard A. Cook writes, “Mass rape in war is not a modern phenomenon, it has always occurred during wartime. . . . Regardless of the reasons for its occurrences, the failure to punish the

perpetrators has been consistent over time.”<sup>54</sup> The passages below support Cook’s assertion:

When you march up to attack a city, make its people an offer of peace.

If they accept and open their gates, all the people in it shall be subjected to forced labor and shall work for you.

If they refuse to make peace and they engage you in battle, lay siege to that city.

When the Lord your God delivers it into your hand, put to the sword all the men in it.

As for the women, the children, the livestock and everything else in it, you may take these as plunder for yourself.

And you may use the plunder the Lord your God gives you from your enemies.

This is how you are to treat all the cities that are at a distance from you and do not belong to nations nearby.<sup>55</sup>

And:

For I [God] will gather all the nations against Jerusalem to battle, and the city shall be taken and the houses looted and the women raped: half the city shall go into exile, but the rest of the people shall not be cut off from the city.<sup>56</sup>

The above text is not the ramblings of some ancient military strategist, but rather a quote from the Old Testament of the Bible, the holiest of Christian texts. This Bible passage appears to condone, encourage, and arguably command armies to “plunder” the spoils of war. Moreover, this passage is not a random example of God’s wrath, but rather, one in a series of passages in the Bible which encourage the rape and plunder of women.<sup>57</sup>

Likewise, in Greece and Rome and during the Crusades, incidences of mass rapes have been documented.<sup>58</sup> During the Middle Ages, people believed that soldiers raped for sexual release and that women existed to

satisfy men's sexual appetites.<sup>59</sup> From rapes of black slave women and Shoshone Indian women before, during, and after the Civil War to the infamous "Rape of Nanking," rape during war has been well documented.<sup>60</sup> These are just a few examples of wartime rape; unfortunately, there are many more.

Historically, the rationale for rape during wartime has been divided into three general categories. First, in ancient times, rape was a crime against the father or husband; it was a noble right and a reward to the victors.<sup>61</sup> Second, from around the eighteenth century until the early twentieth century, rape was viewed as standard operating procedure, a casualty of war, and an indication of the lack of military discipline or revenge.<sup>62</sup> Third, during the twenty-first century, rape became a weapon of terror and control and is used for ethnic cleansing aimed at destroying communities.<sup>63</sup>

It is clear that rape of civilians by civilians in peacetime and rape by soldiers during wartimes are both prevalent crimes in all nations, as they have been for centuries. The argument is not that rape is absent from countries where the rule of law is robust and functioning—clearly it is not. Rather, the argument is that, in some countries, rape during war has taken on a new dimension intended to destroy women. There is neither the pillage view nor the opportunistic view of rape, but an almost demonic, gratuitous plundering of women's souls.

The lack of a rule of law, coupled with the low status of women,<sup>64</sup> has allowed sexual violence against women that is "almost unimaginable."<sup>65</sup> In fact, in the last three decades, rape has become something altogether different; "rape and sexual abuse are not just a by-product of war but are used as a deliberate military strategy."<sup>66</sup> As a result of these new atrocities, the need to repair vaginas has grown exponentially.

*B. The Unprecedented Need to Repair Vaginas—Making Rape More Inhumane than Thought Possible*

*The women tell her they are ‘not women anymore.’ They are often too physically damaged to farm, or to bear children, and there is such stigma associated with rape in Congo—where female virginity is prized and the husband of a rape survivor is considered shamed—that rape survivors are routinely shunned by husbands, parents, and communities.*

Stephanie Nolan<sup>67</sup>

One of the most recent examples of the women suffering this inhumane rape can be found in the Democratic Republic of the Congo<sup>68</sup> (DRC) where civil war and an absence of the rule of law have created a situation where “Rape has become almost a cultural phenomenon.”<sup>69</sup>

**1. A Case Study—Background for Unrest in the DRC**

Anthony Gambino laid out a brief history of the DRC in a report to the Council on Foreign Relations; he wrote that violence and instability have haunted the DRC for several decades since its independence from Belgium.<sup>70</sup> Shortly after independence, the Congolese military revolted and the province of Katanga seceded from the country.<sup>71</sup> In 1960, The UN Security Council authorized approximately 20,000 military personnel to help insure the security of the country.<sup>72</sup> The purpose of this UN-sponsored group was to create order and maintain stability. These troops left the DRC in 1964 after it appeared that the disruption caused by Katanga’s secession had eased.<sup>73</sup>

However, less than eighteen months after the departure of the UN peacekeeping unit, the elected government was overthrown by General Joseph Mobutu.<sup>74</sup> Mobutu implemented a one-party system, changed the name of the country to Zaire, and promoted cultural awareness.<sup>75</sup> From all accounts, relative peace existed for about ten years.<sup>76</sup>

In 1996, Laurent Kabila led a rebellion against Mobutu, seized control of the entire Zaire by 1997, and changed the country's name back to the DRC. The situation was further complicated by Rwanda's encroachment into the DRC during its own 1994 civil war.<sup>77</sup> This intrusion and the withdrawal of support by Western nations caused instability within the DRC, creating an unstable environment that was ripe for genocide and mass rape.<sup>78</sup>

In 1998, a larger war ensued. Several of the DRC's neighbors joined forces with dissenting groups operating within the DRC. The region split into three factions: Angola supported President Kabila,<sup>79</sup> Rwanda supported a rebel movement known as RCD-Goma,<sup>80</sup> and Uganda supported the MLC, the other major rebel group which had formed during President's Kabila's reign.<sup>81</sup> In 1999, these warring groups signed a ceasefire agreement, and the UN created an organization to monitor it.<sup>82</sup> When President Kabila was assassinated in 2001, his son, Joseph, became president.<sup>83</sup> By the end of 2002, all neighboring troops had withdrawn from the DRC following the Pretoria Accord.<sup>84</sup> And although Joseph Kabila made some positive changes in the country, the Pretoria Accord was never fully implemented and chaos continued to reign despite the regimen change.

## **2. The Gates of Hell**

It was about the time that the gates of hell opened for the women of the DRC. Within the last ten years, hundreds of thousands of DRC women have faced hellish ordeals, including rape and gang rape.<sup>85</sup> In 2006, the DRC held an election that purportedly ended the chaos the country had endured for decades; however, the Human Rights Watch estimates that, despite this election, 200,000 females were victimized by sexual violence in the decade between 1998 and 2008.<sup>86</sup> In 2008 alone, nearly 16,000 rapes were reported in the DRC.<sup>87</sup> Susan Pritchett wrote, "The rule of law has deteriorated and along with it, the status of women in society. . . . [S]ince there are no longer any laws or rules [in the DRC], combatants pour out their anger and their madness on the women and the little girls."<sup>88</sup>

Anneke Van Woudenberg, the Congo Specialist for Human Rights Watch, reports that among all the violence occurring in the DRC, rape has become the most defining and prevalent representation of the war.<sup>89</sup> Females, with few rights and little value, are the most vulnerable members of this society.<sup>90</sup> Nonetheless, sexual violence against women has produced victims beyond the women themselves. For example, women are responsible for economic activities that sustain the family, and when sexual fear prevents women from carrying out those duties, the entire community and its economic stability suffers. In 2009, a UN peacekeeping force of approximately 17,000 troops was put in place, but this has not prevented the rapes and attacks on women from continuing.<sup>91</sup>

What makes the sexual violence against women and girls in the DRC so very different from the sexual violence that occurs on a daily basis in any other given city or war-like conflict? It is the sheer volume, madness, and brutality of these rapes<sup>92</sup> that sets these incidents apart from the “ordinary” horror of rape. This unimaginable brutality,<sup>93</sup> coupled with the lack of rule of law<sup>94</sup> and adding in an international reaction of inaction,<sup>95</sup> has resulted in a generation of broken women.<sup>96</sup> Stephen Lewis, the former UN Special Envoy for AIDS in Africa said, “There is no precedent for the insensate brutality of the war on women in [the DRC]. The world has never dealt with such a twisted and blistering phenomenon.”<sup>97</sup> When coupled with the fact that raped women become outcasts in their communities<sup>98</sup> and are abandoned by their husbands and families,<sup>99</sup> rape effectively becomes a sort of death.

### **3. Survivors of Brutality**

In 2008, HBO presented a documentary entitled, “The Greatest Silence: Rape in the Congo.”<sup>100</sup> The director, Lisa Jackson, interviewed doctors, peacekeepers, and even some of the rapists<sup>101</sup> and created a documentary that would give the world an inside look at the daily horrors experienced by

women in the DRC. By examining the narratives of the victims in particular, we see the true, long-lasting devastation of these women:

- “There was no dinner, she said. It was me who was dinner. Me, because they kicked me roughly to the ground, and they ripped off all my clothes, and between the two of them, they held my feet. One took my left foot, one took my right, and the same with my arms, and between the two of them they proceeded to rape me. Then all five of them raped me.”<sup>102</sup>
- “We found them in our house. They pillaged everything. They put my husband on the bed and beat him. Then two of the soldiers raped me. This story is so tragic—I can’t believe this happened to me. I prefer death instead of life. Now, the world is without me because of my situation.—[Quoted from] 27-year-old mother of three children who was raped in June 2002 and subsequently abandoned by her husband.”<sup>103</sup>
- “Honorata Barinjibanwa, an 18-year-old woman with high cheekbones and downcast eyes, said she was kidnapped from a village that the Rastas raided in April and kept as a sex slave until August. Most of that time she was tied to a tree, and she still has rope marks ringing her delicate neck. The men would untie her for a few hours each day to gang-rape her, she said. ‘I’m weak, I’m angry, and I don’t know how to restart my life,’ she said from Panzi Hospital in Bukavu, where she was taken after her captors freed her. She is also pregnant.”<sup>104</sup>
- “In Walungu the team found 24-year-old Lucienne M’Maroyhi. She was at home one night with her two children and her younger brother, when six soldiers broke in. They tied her up and began to rape her, one by one. ‘I was lying on the ground, and they gave a flashlight to my younger brother so that he could see them raping me,’ she recalls. ‘They were telling your brother to hold the flashlight?’ Cooper asks. ‘Yes,’ she says. ‘They raped me like they were animals, one after another. When the first one finished, they washed me out with water, told me to stand up, so the next man could rape me.’ She was convinced they’d kill her, just as soldiers had murdered her parents the year before. Instead, they turned to



her brother. ‘They wanted him to rape me but he refused, and told them, ‘I cannot do such a thing. I cannot rape my sister.’ So they took out their knives and stabbed him to death in front of me,’ she recalls. Lucienne was then dragged through the forest to the soldiers’ camp. She was forced to become their slave and was raped every day for eight months. All the while, she had no idea where her children were. Finally, Lucienne escaped. Back in her village, she found her two little girls were alive. But she also learned that she was pregnant. She was carrying the child of one of her rapists. Lucienne’s husband abandoned her. That happens to rape survivors all over Congo.’<sup>105</sup>

- “Shami Alubu, 21, came out of the jungle and back to the town of Kibombo last year, although she can’t go home. In early 2002, while working in her fields, she was snatched by Mai Mai militants, who dragged her into town, then kept her there for a full day, beating and raping her with guns and sticks. The whole time, she was within earshot of her 7-month-old son Florent, who was sobbing wildly. When it was over, she limped back to her house—but at the sight of her, her husband ordered her away. ‘It was like he thought I *wanted* to go with the Mai Mai,’ Shami says bitterly.’<sup>106</sup>
- “Last May, 6-year-old Shashir was playing outside her home near Goma, in the Democratic Republic of the Congo (DRC), when armed militia appeared. The terrified child was carried kicking and screaming into the bush. There, she was pinned down and gang-raped. Sexually savaged and bleeding from multiple wounds, she lay there after the attack, how long no one knows, but she was close to starving when finally found. Her attackers, who’d disappeared back into the bush, wiped out her village as effectively as a biblical plague of locusts. ‘This little girl couldn’t walk, couldn’t talk when she arrived here. Shashir had to be surgically repaired. I don’t know if she can be mentally repaired,’ says Faïda Veronique, a 47-year-old cook at Doctors on Call for Service (DOCS), a tented hospital in the eastern city of Goma, who took in the brutalized child.’<sup>107</sup>
- “Also in the room is 28-year-old Henriette Nyota. Her spirit is all but broken. Three years ago, she said, she was gang-raped as her

husband and four children were forced to watch. The men in uniform then disemboweled her husband and continued raping her and her two oldest daughters, 10 and 8. The assault went on for three days.”<sup>108</sup>

These stories barely scratch the surface of the brutality that women and girls have experienced in the DRC. The Oxford Committee for Famine Relief (OXFAM) reports that 60 percent of those sexually assaulted were gang raped, and more than 50 percent of these assaults occurred in the victims’ homes.<sup>109</sup> “Some of them have knives and other sharp objects inserted in them after they’ve been raped, while others have pistols shoved into their vaginas and the triggers pulled back,” says Dr. Denis Mukwege Mukengere.<sup>110</sup>

What is more disheartening than the military rapes is that a recent study by OXFAM reported that in 2008, civilians committed 38 percent of rapes in the DRC, as compared with 1 percent in 2004.<sup>111</sup> The study stated, “These findings imply a normalization of rape among the civilian population, suggesting the erosion of all constructive social mechanisms that ought to protect civilians from sexual violence.”<sup>112</sup>

#### 4. The Resulting Damage

*There are thousands of violated ladies showing up. It’s like nothing we have ever seen anywhere in the world.*

Dr. Jo Lusi <sup>113</sup>

*Reproductive Health Matters*, an independent, international publication on reproductive rights and sexual health for women, addressed the issue in 2004 with an article, its headline literally screaming, “Destruction of the Vagina in Violent Rape a War Crime in Congo.”<sup>114</sup> The article contained descriptions of the most common injury of the gang rapes, vaginal fistula.<sup>115</sup>

Vaginal fistula, the rupture of the vaginal wall which can cause urine and faeces [*sic*] to leak uncontrollably, are not uncommon in poor areas of the world where childbearing starts at an early age. Fistulae can also occur as a result of very violent rape. In the

eastern Congo, gang rape has been so violent, so systematic and so common during the country's five years of war that thousands of women are suffering from vaginal fistula.<sup>116</sup>

The inability to control one's bodily functions brings with it other health problems, as well as ostracism from the community at large.<sup>117</sup> Reporter Emily Wax wrote, "What makes the fistula cases in Congo so jarring to medical professionals here is the large number of them caused by rape."<sup>118</sup> In other words, the rapes have been so heinous and violent that they have caused a phenomenon shocking to even doctors. Wax added, "There are so many cases being reported that the destruction of the vagina is considered a war injury and recorded by doctors as a crime of combat."<sup>119</sup> In addition to the tragedy of needing to repair so many vaginas, for many rape victims it may take more than one surgery to correct the damage that has been done.<sup>120</sup> Fortunately, doctors recognize the full breadth of the damage to females as well as the larger social implications. "We are here repairing an organ that is so important to women and to our country and to our dignity."<sup>121</sup> A report by Harvard World Media Human Rights frames the issue of widespread vaginal destruction in the DRC:

The rapes are epidemic and horrific in their details. Women are gang raped in public, taken into sexual slavery, and violated with guns, knives, bottles, and sticks. They are sometimes mutilated, with limbs chopped off by machetes, or raped while husbands and children are killed, houses razed, and crops burned.<sup>122</sup>

Medical personnel at the Goma hospital have treated women of all ages, varying from eight years to seventy-three years old.<sup>123</sup> The devastation is thus multigenerational, as many rape victims endure years of suffering from the damage to their vaginas. Wax reported that females who are unable to obtain medical treatment often omit horrible odors and become the "village recluse—unable to work, or to have children or sexual relations."<sup>124</sup>

Aside from vagina fistula, vaginas are damaged by the sticks, knives, guns, and other foreign objects that have been inserted as part of the rape.<sup>125</sup>

In addition, shooting women through the vagina and forcing family members to participate in the rape have added to the sexual cruelty and abuse that females have experienced in the DRC.<sup>126</sup> Stephanie Nolen, an award-winning Canadian journalist, writes,

They rape a woman, five or six of them at a time—but that is not enough. Then they shoot a gun into her vagina. . . . In all my years here, I never saw anything like it. . . . [T]o see so many raped, that shocks me, but what shocks me more is the way they are raped. ‘Each armed group has a trademark manner of violating,’ he explains. ‘The Burundians rape men as well as women. The Mai Mai—local defense forces—rape with branches or bayonets, and mutilate their victims. The Rwandans, like those who attacked Thérèse, set groups of soldiers to rape one woman.’<sup>127</sup>

Dr. Jean-Yves Mukamba, the director of medicine and the only doctor for the 25,000 square kilometers surrounding the city of Kibombo, stated that he is surrounded by women who have a range of vaginal injuries from venereal disease and HIV to prolapsed uteruses and torn vaginas.<sup>128</sup> In addition, there are unwanted pregnancies, genital ulcers, genital scars, and constant pain in the abdominal pelvic area.<sup>129</sup> Some have estimated as high as 30 percent of women have been infected with HIV as a result of being raped.<sup>130</sup>

Estimates on the number of women raped are likely inaccurate because many women fail to report incidents due to their feelings of shame in acknowledging the rape.<sup>131</sup> As a result, “A lot of us keep these secrets to ourselves.”<sup>132</sup> Laura Davis, a Senior Advisor to the Europe and Africa programs at the International Center for Transitional Justice from 2007 to 2008 cites a USAID Report<sup>133</sup> on the effects of rape in the DRC:

The effects of rape on this scale are disastrous—not only in terms of health (HIV infection rates reach 27 percent amongst rape survivors; fistulas, urinary and faecal incontinence and permanent damage to the woman’s reproductive organs are widespread). They also lead to a rise in malnutrition, as women are afraid to work in the fields; a decrease in economic activities as women avoid

market places; and interrupted education, as children are kept at home for fear of their safety. The social fabric of communities is destroyed for the long term as rape survivors, their children, and children resulting from rape are rejected, stigmatised or otherwise re-abused by their communities.<sup>134</sup>

### 5. Vaginal Repair

Panzi Hospital—located in Kibombo—is one of only a few hospitals in the DRC that offers surgery to repair vaginas.<sup>135</sup> Dr. Denis Mukwege is the only gynecologist at Panzi Hospital and one of only two doctors in the DRC who can perform the surgery necessary to repair a vagina.<sup>136</sup> He can only perform five surgeries a week,<sup>137</sup> which leaves many women with no hope for repair. Dr. Mukwege treats ten women and young girls each day and begins with counseling to address the deep psychological problems that result from the rapes.<sup>138</sup> He tells the following story:

Once I was talking to a young girl, Luisa. Her mother was raped in her presence. At age 8, her attackers completely destroyed her genitalia. But a lot about her astonished me to the point of tears. I asked her what she wanted to happen to the people who did this to her and she said they must be pardoned because they don't know what they do. She was able to respond this way in spite of her suffering. Now 10 years old, she is unable to hold her urine. When you examine her you realize that her whole reproductive system was destroyed. Her father, who was abducted, never came back. She'll say, 'I'm still waiting for my brothers to come back.' She doesn't realize that her whole life has been destroyed.<sup>139</sup>

On April 1, 2008, Dr. Mukwege testified before the US Senate Judiciary Committee's Subcommittee on Human Rights and the Law. He spoke on behalf of his patients and related a number of their stories to the senators who were present. He started his testimony by naming the abuse that the females of the DRC had received as "sexual terrorism." He also pointedly observed with respect to this terrorism, "This is known by the national and international community, without anyone making a serious decision to end

this shameful crime against humanity in the 21st century.”<sup>140</sup> Despite his and Dr. Mukamba’s heroic work in caring for rape victims in the DRC, Dr. Mukwege’s testimony was not discussed in any American media source—not on the nightly news in the United States; not on CNN, MSNBC, ABC, or NBC; nowhere.<sup>141</sup>

*C. The Devaluation of Females, Absence of the Rule of Law, Impunity for Rapists, and the Lack of Infrastructure Create the Perfect Storm*

Many factors have led to the devastation of vaginas in the DRC, including the low status of women in this society, the absence of a rule of law that treats women as equals, a government that ignores crimes against women, and the lack of both medical and judicial infrastructures. Moreover, the DRC government has been unstable for decades and there exist social mores which embrace practices that have proven to be primarily detrimental to women.

Women in the DRC exist in a society where they are continually “beaten down.”<sup>142</sup> “Women in Congo do most of the work—at home, in the fields and in the market, where they carry enormous loads of bananas on their bent backs—and yet, they are often powerless.”<sup>143</sup> The laws do not treat the sexes as equal.<sup>144</sup> Oddly enough, while the government is quite capable of enforcing those laws that maintain gender inequalities, any new laws being enacted to protect women appear to be unenforceable.<sup>145</sup> Moreover, the DRC has had some sort of ongoing conflict for three decades, and during that time frame, gender equality has not been a high priority.

Most troubling, the DRC lacks a comprehensive, effective, and functioning judicial system. Laura Davis reported, “The justice system is, in general, unable to deliver day-to-day rule of law for the population, let alone tackle serious crime, including the serious crimes and abuses committed during the wars. The ability of courts to deliver justice for victims of rape and sexual violence is shockingly low.”<sup>146</sup> The DRC has made rape a war crime, and thus far, only eight people have been convicted

in the courts.<sup>147</sup> The social mores that support a system of shunning women who have been physically raped, ostracizing women who have no control over their bodily functions, and absolving men for deserting their raped wives (and often taking the children with them) all contribute heavily to an ongoing psychological rape of these victims.

It is clear that there is a direct correlation between the absence of the rule of law, the low status of females in the DRC, the ongoing internal conflict, and the number of females whose vaginas are in need of repair. As recent as July 2010, a mob of thirty armed men attacked and gang-raped at least 179 women in the DRC. A *New York Times* article reported that most women were raped by two to six men at a time.<sup>148</sup> The astounding impunity of these men is even more shocking in light of growing knowledge of rape in the DRC. Yet, this increased awareness has not slowed the prevalence of this sexual violence. It is evident that the world and specific humanitarian officials are watching closely, but even that knowledge has not stopped the rapes.

The DRC represents the most glaring evidence of this devastating problem, but there are other current and historical examples of conflict regions where mass rape has flourished. Sudan,<sup>149</sup> Bosnia Herzegovina,<sup>150</sup> and Rwanda<sup>151</sup> have also recently experienced widespread, systemic sexual violence against women. In each country, the same factors were present: conflict, unstable governmental and judicial systems, and unequal gender status, resulting in the destruction of vaginas and lives. Yet, the DRC may be seen as the prototype of a society that lays waste to females and the very essence of their sexuality, their vaginas, by routinely abusing and denigrating them.

### III. FEMALE GENITAL MUTILATION

The other most common worldwide reason<sup>152</sup> that vaginas are in need of repair is Female Genital Mutilation (“FGM”).<sup>153</sup> FGM must be included in this category because of the longevity of its practice, the severity of the

harm against women, its prevalence in society, and the sheer number of its victims.

FGM is the ritual cutting of the female genitalia,<sup>154</sup> performed on women in their infancy, childhood, preteen and teenage years, as well as in their adulthood.<sup>155</sup> Therefore, the notion that somehow only consenting adult women are willingly participating in this cultural practice should be dismissed. Some adult women have willingly undergone FGM<sup>156</sup> to support and enhance their cultural identities.<sup>157</sup> Many believe that FGM makes them more feminine,<sup>158</sup> and it is commonly seen as a rite of passage to adulthood.<sup>159</sup> However, viewing FGM purely in that light begs the question of why it is being performed on the youngest females in a society.<sup>160</sup>

It is also important to acknowledge that some scholars believe that condemnation of female genital mutilation is clouded by Western feminism, which lacks the cultural context to fully understand the ritual and is grounded in gender moralizing.<sup>161</sup> One such person is Professor Leslye Obiora, a leading scholar on gender and human rights and a critic of the antifemale circumcision campaign.<sup>162</sup> She stated, “Even if the practice is susceptible to flagrant abuse, it is conceivable that such factors as the relative power of the collective of women, the belief and value system, and the multiplicity and interdependence of relationship serve to check the extent of the abuse.”<sup>163</sup>

The reliance on culture and the fear of Western paternalism are certainly understandable. This is especially true in light of the colonial history of the countries where FGM is practiced. However, every ritual that is designated as cultural is not necessarily beneficial to the people practicing it, and every criticism of FGM from the West is not always grounded in gender moralizing. There have to be some universal truths which transcend culture that the entire world should be able to agree upon. For example, the world can probably agree that killing albinos because it was once believed that their limbs contain magic and curative powers is a cultural tradition that can be discarded.<sup>164</sup> Likewise, the practice of ironing young girls’ breasts to



stop their development and thereby make them less attractive to men is also a tradition the world can do without.<sup>165</sup>

Those are extreme examples and although, on its face, FGM appears outside of this category of “universal wrongs,” the destruction that FGM has caused, as testified to by those who were subjected to it,<sup>166</sup> should place it on the extinction list. Most of the nations where FGM is practiced now have laws prohibiting it. In addition, many other countries have banned it from their shores. The fact that the League of African Nations designated the practice as “mutilation”—as well as the fact that there are declarations which go so far as to call FGM “torture”—are reasons enough to abandon this ritual.<sup>167</sup>

#### *A. Background on the Categories and Origins of FGM*

FGM is generally described by category types:

**Type I:** Clitoridectomy by excision of the clitoral hood with or without removal of part or the entire clitoris;<sup>168</sup>

**Type II:** Clitoridectomy by removal of the clitoris together with part of the labia minora;<sup>169</sup>

**Type III:** Infibulation,<sup>170</sup> which involves removal of part or all of the external genitalia and stitching or narrowing the vaginal opening, leaving a small hole for urine and menstrual flow;<sup>171</sup>

**Type IV:** A catch-all category for all other procedures on the female genitalia.<sup>172</sup>

Type III is the severest form of FGM, in which the female genitalia are totally destroyed. And though the actual cutting is a one-time act, in this form of FGM, the pain can continue for a lifetime. The stitching or narrowing of the vagina has to be done with a material that can be removed and reused because the vaginal opening has to be reopened every time a husband wishes to have sexual intercourse with his wife. Many times, some material other than thread is used to sew up the opening, and in most cases, no anesthesia is used.<sup>173</sup>

Types I and II account for 85 percent of cuttings, which means that approximately 15 percent of cuttings involve Type III, the severest form.<sup>174</sup> It should be noted that there is no anesthesia used, no medical personnel present, and the most basic and rudimentary cutting tools are used.<sup>175</sup>

FGM has traditionally been practiced in more than thirty countries around the world.<sup>176</sup> Most countries are in Africa, but not all.<sup>177</sup> Again, it should be noted here that the words, “has traditionally been practiced,” are meant to not only convey a fact, but to acknowledge that the practice of FGM has been imported from those thirty countries to the world at large. It has even been performed in the state of Georgia in the United States.<sup>178</sup> Furthermore, the words “traditionally has been practiced” also carry with them the implicit concept of both governmental and societal support of the practice of FGM.

FGM has been practiced since antiquity,<sup>179</sup> primarily in religious-based societies, while different motivations are often offered in other societies.<sup>180</sup> Islam is the religion most readily associated with FGM.<sup>181</sup> Ironically, there is no text in the Koran<sup>182</sup> that demands that this ritual be performed, and the often-cited Sunnahs<sup>183</sup> are vague in their requirements.<sup>184</sup> It can be argued that high rates of FGM in the countries mentioned above is because of Islam, but it appears that it has more to do with the legal status of women, the absence of rule of law, civil war and strife, and the dehumanization of one-half of the population.

The number of females who have been cut since the inception of FGM is incalculable. Historically, the large number of FGM victims exceeds the number of rape victims who have been damaged as a result of war and unrest.<sup>185</sup> Because the practice is centuries old, it is too difficult to accurately extrapolate those figures into modern day numbers. In addition, the secrecy<sup>186</sup> that surrounds FGM has prevented accurate statistics from being gathered even today. It is estimated that “more than 130 million girls and women alive today have undergone FGM . . . and 2 million girls a year are at risk.”<sup>187</sup> The countries with the highest percentage are Djibouti (a 98

percent cutting rate); Somalia (also with a 98 percent cutting rate); and, Eritrea, Sierra Leone, and Ethiopia (each has a 90 percent cutting rate).<sup>188</sup> At the lower end of the spectrum, the DRC has a 5 percent cutting rate.<sup>189</sup> This means that 98 percent of females in Djibouti and Somalia and 90 percent of females in Eritrea, Sierra Leone and Ethiopia will be subjected to FGM at some point in their lives. The damage done to vaginas as a result of FGM is comparable to that done under conditions of civil unrest and war.

### *B. Complications and Deaths Resulting from FGM*

FGM, especially the severest form, commonly results in complications and can cause death.<sup>190</sup> This is especially true when coupled with the fact that often no medical personnel are involved and the general conditions of hospitals are substandard.<sup>191</sup> Unfortunately, actual death rate statistics are not known, but it is estimated that in some parts of Sudan, one-third of girls who have been cut will die as a result of it.<sup>192</sup> Moreover, countries that practice FGM have the highest maternal and infant mortality rates.<sup>193</sup> FGM can result in problems with menses; 55.4 percent of women in Somalia stated that they had abnormal periods.<sup>194</sup> Clearly, FGM is a public health issue of astounding proportions.<sup>195</sup> As a result of FGM, females are faced with, at a minimum, cut clitorises<sup>196</sup> potential fistula<sup>197</sup> and cysts,<sup>198</sup> incontinence,<sup>199</sup> recurring urinary tract infections,<sup>200</sup> obstructed labor,<sup>201</sup> and disfigured genitalia.<sup>202</sup>

### **1. Survivors of Female Genital Mutilation**

FGM is not just a concept; it is a real-life practice that has destroyed women both physically and emotionally. Some proponents of FGM dismiss the West's outrage at the practice as paternalistic. They charge critics with seeking out the worst case scenarios and of being fueled by a lack of understanding of the ritual,<sup>203</sup> but these are real stories that must be documented:

- The circumciser approached me menacingly, waving the blade in front of my face. She gorged out my clitoris and the labia majora and minora as I almost fainted. She then inserted two fingers into the fresh wound to make sure that the work was complete and that nothing was left.<sup>204</sup>
- The night before my circumcision, the family made a special fuss over me and I got extra food at dinner. Mama told me not to drink too much water or milk. I lay awake with excitement, until suddenly she was standing over me, motioning. The sky was still dark. I grabbed my little blanket and sleepily stumbled along after her. We walked out into the brush. “We’ll wait here,” Mama said, and we sat on the cold ground. The day was growing lighter; soon I heard the click-click of the gypsy woman’s sandals. Then, without my seeing her approach, she was right beside me. “Sit over there.” She motioned toward a flat rock. There was no conversation. She was strictly business. Mama positioned me on the rock. She sat behind me and pulled my head against her chest, her legs straddling my body. I circled my arms around her thighs. She placed a piece of root from an old tree between my teeth. “Bite on this.” Mama leaned over and whispered, “Try to be a good girl, baby. Be brave for Mama, and it’ll go fast.” I peered between my legs and saw the gypsy. The old woman looked at me sternly, a dead look in her eyes, then foraged through an old carpet-bag. She reached inside with her long fingers and fished out a broken razor blade. I saw dried blood on the jagged edge. She spit on it and wiped it on her dress. While she was scrubbing, my world went dark as Mama tied a blindfold over my eyes. The next thing I felt was my flesh being cut away. I heard the blade sawing back and forth through my skin. The feeling was indescribable. I didn’t move, telling myself the more I did, the longer the torture would take. Unfortunately, my legs began to quiver and shake uncontrollably of their own accord, and I prayed, please, God, let it be over quickly. Soon it was, because I passed out. When I woke up, my blindfold was off and I saw the gypsy woman had piled a stack of thorns from an acacia tree next to her. She used these to puncture holes in my skin, then poked a strong white thread through the holes to sew me up. My legs were completely numb, but the pain between them was so intense that I wished I would die.<sup>205</sup>

- The girl at D.C. General was 7 years old when it was done to her. Her mother had carefully dressed and perfumed her for the ceremony. Eggs were broken over her head for fertility. A dozen strong hands held her still as she underwent the equivalent of Stone Age surgery. Something sharp—a flint, a piece of broken glass, possibly a razor was used to slice off her clitoris. Then the inner lips of her vagina were cut loose and surrounding flesh was scraped away. Finally the outer lips were sewn tightly shut with catgut and acacia thorns—a process called infibulation—leaving an aperture only about the width of her thumb to pass urine and menstrual blood. There was no anesthesia. Not allowed to cry, she was told to bite on a stick of wood to bear the pain. For weeks her legs were tied together, held motionless, while her wound healed.<sup>206</sup>

Once the full gravity of the situation is comprehended, the need for repair becomes evident.

## 2. Somalia: A Case Study

There is a great need for vaginal repair in countries where FGM has been practiced. There is also a correlation between the prevalence of FGM, the severity of the procedure, and the overall status of women in those countries. For example, in Somalia—a country with the greatest prevalence of the severest form of FGM<sup>207</sup>—women have little status because some sort of civil war or unrest has existed for the last two decades, and the rule of law has been generally nonexistent or ignored. As noted above, this conclusion is not limited to just Somalia, and the same may be said of countries with a lower prevalence rate.<sup>208</sup> However, the basic thesis of this article is glaringly supported when discussing Somalia because it has both the highest percentages of females subjected to FGM<sup>209</sup> and the highest prevalence of cutting with Type III, the severest form of FGM.<sup>210</sup>

As noted above, Somalia has a 98 percent rate of female genital mutilation.<sup>211</sup> But can we infer anything about females in that society by merely citing percentages of FGM occurrence? Fortunately, or

unfortunately as the case may be, no inference is necessary because there are raw facts to demonstrate the correlation between FGM and the status of Somali women.

It is important to examine Somalia's recent history because it will reveal the societal upheaval which has resulted in the absence of the rule of law. In 1991, Somali President Said Barre was overthrown.<sup>212</sup> Since that time, civil war,<sup>213</sup> a lack of rule of law, and a broken infrastructure<sup>214</sup> have all impacted women tremendously. Barre represented a centralized government, but with his ouster, Somali society devolved into one ruled by tribes and clans. When Barre was president, women reportedly made strides, both in politics<sup>215</sup> and in society generally.<sup>216</sup> To be sure, females were subjected to FGM under Barre's rule, but the dissolution of the government has left females without any protection from FGM or any voice to say no to the practice.<sup>217</sup> Like the DRC, the status of women in Somalia is "generally affected by the prevailing political and socio-economic conditions."<sup>218</sup> Thus, the collapse of the centralized government has left women at the mercy of a patriarchal clan system.<sup>219</sup> Upon marriage, women are expected to align themselves with their husbands' families; however, they are never really fully accepted into his family because women retain the lineage of birth.<sup>220</sup> This system creates a sort of limbo for women and renders them powerless in their own families, as well as in their husbands' families. As a result of this system, the words of Nadine Puechguirbal become real: "From all over the world, history tells us that the ordeal of a woman starts when she becomes dependent on a family entity and is subservient to the patriarchal rule that prevents her from escaping her fate and asserting her rights as a free and independent individual."<sup>221</sup>

Zam Zam Adbullahi, a human rights activist in Somalia, believes that one of the greatest challenges in the struggle for rights is the opposition to women's liberty. She stated,

Women in Somalia have no control, no political voice, and they take no part in decision making. Many are afraid to speak up

against abuse because they are scared of losing everything and of their husbands throwing them out.<sup>222</sup>

Moreover, Somali women have little or no protection under family law, civil law, or customary laws. Under the Family Law Code, both men and women are permitted to marry at age eighteen. However, women may marry at sixteen with parental authorization.<sup>223</sup> There is a great deal of evidence that both early marriages and arranged marriages are common.<sup>224</sup>

Furthermore, under the Code, husbands, not wives, have the right of Talaq,<sup>225</sup> or the right to initiate a divorce after trying a sixty-day reconciliation. If the husband is deemed to be at fault in the divorce, he can be ordered to pay support to his ex-wife for a period of three months to a year. If the wife is deemed to be at fault, she must pay back her dower.<sup>226</sup> In addition, a woman who has children may be given custody of male children until they reach the age of ten and female children until the age of fifteen.<sup>227</sup> Polygamy is permitted, subject to the authorization of a competent court, and a man can take other wives without his wife's permission.<sup>228</sup> By law, the man is the head of the household and has sole parental authority.<sup>229</sup>

In summary, a Somali woman can be married off against her will to a husband who can divorce her if he desires to do so. The husband is also free of any financial obligations to the ex-wife after a year, and he is entitled to the children once they reach the age dictated by the court. Yet, it appears very likely that the husband will gain custody of his children much sooner than the law permits because the social structure has made it impossible for the woman to support herself. The clan, which consists of his family members, will certainly abandon her, and the money that the court has ordered the husband to pay could cease in as few as four months.

Likewise, civil law offers no protection to women. Women have few, if any, property rights. A report entitled "Housing, Land and Property Rights in the South Central Somalia" lays out the situation that women are confronted with in Somalia:

As a general rule, women do not benefit directly from the distribution of the land from their fathers; only when a woman gets married will she get a portion of land from the husband which is sufficient to sustain the new household. Under customary practice, the entitlement to use land for women depends exclusively on their relation to the male relatives before and after marriage. Women are prohibited from owning, renting, or inheriting land or any property on their names. In the majority of communities, married daughters are not entitled to inherit land from their fathers, and when they do inherit, this is a significantly smaller proportion than would have been the case were they men.<sup>230</sup>

The Constitution of Somalia specifically addresses the rights of women and states in pertinent part:

1. The rights, freedoms, and duties laid down in the Constitution are to be enjoyed equally by men and women, save for matters which are specifically ordained in Islamic Sharia.
2. The Government shall encourage and shall legislate for, the right of women to be free of practices which are contrary to Sharia and which are injurious to their person and dignity.
3. Women have the right to own, manage, oversee, trade in, or pass on property in accordance with the law.
4. In order to raise the level of education and income of women, and also the welfare of the family, women shall have the right to have extended to them education in home economics and to have opened for them vocational, special skills and adult education schools.<sup>231</sup>

These provisions appear to provide at least some protections for Somali women; however, the fact that any rights given to women are subject to Sharia law<sup>232</sup> has proven to be problematic. The mix of civil law with Sharia leaves the interpretation of all law to the whim of whichever particular



group is running the country at any given time. For example, as recent as August 2010, Al Shabaab,<sup>233</sup> an extremist group, interpreted Sharia law as prohibiting women from wearing “un-Islamic” bras,<sup>234</sup> and they begun ordering women at gunpoint to shake their breasts.<sup>235</sup> Women were whipped for wearing hidden undergarments in violation of Islamic law. Likewise, the rival faction of Hizbul-Islam<sup>236</sup> ordered women in their district “to wear heavy, thick veils and not light ones.”<sup>237</sup> Hence, neither civil law nor Sharia law (as interpreted by which ever group is at the firing end of weapons) has been of any assistance to Somali women.

Lastly, customary law, which is known as Xeer Soomaali,<sup>238</sup> is a strong and constant force in the daily lives of Somali women. Different from civil and religious law, Xeer is the traditional means of compensating for losses in disputes among the clans. Because women cannot own property, often the subject of disputes which need to be settled, Xeer is of no assistance to them especially when it comes to the issue of FGM.

Civil law, Sharia law, customary law, and the general lack of a centralized government have the compounding effect of creating an environment for women where they are disenfranchised, uneducated,<sup>239</sup> and powerless to resist FGM. As a result, women and their vaginas are broken and in need of repair.

### **3. Vaginal Repair for Female Genital Mutilation**

Fortunately, there are repair surgeries available to women who have been subjected to female genital mutilation. The most common surgeries are clitoral restoration, fistula repair, and defibulation. There are, however, barriers such as costs and widespread unavailability that prevent the bulk of women who desire to be restored from having surgery.<sup>240</sup> Dr. Pierre Foldes, a French urologist, has been a leader in performing restorative surgery. Thus far, he is the only surgeon to have developed the technique that restores the clitoris.<sup>241</sup> “To reconstruct a clitoris, Dr. Fordes removes all scar tissue that has grown over the excised tip and snips the ligaments that

support it, hence allowing more of the clitoral body to slip down so that it is exposed as a small tip like the original.”<sup>242</sup>

Years ago, while working in Burkina Faso, Dr. Foldes performed this restorative surgery in secret because he received death threats from a community leader. These death threats continued even after he continued performing the surgeries in his native France. One can only speculate over why restoring women’s vaginas, dignity, and sexual sensation could be seen as a threat to the community, but nonetheless, it was. Dr. Fordes said that he was shocked to discover that no work had been done by the “male-dominated medical fraternity” to develop surgical techniques to restore vaginas. He said:

It was shocking for me to discover in my research that there was nothing, absolutely nothing, on this organ, although there are hundreds of books on the penis, and several techniques to lengthen it, enlarge it or repair it. Nobody was studying the clitoris because it is associated with female pleasure. There was very little anatomical detail on it. It was as if it didn’t exist. I had to start from scratch.<sup>243</sup>

Dr. Fordes words carry more truth than intended, for many of the women who were subjected to this mutilation were (and still are in many cases) as invisible as their vaginas. He does not charge for the surgery, which he performs mainly in France, saying “[v]ictims shouldn’t pay for the crimes against them. These women have already paid a huge price.”<sup>244</sup> Because of this innovative technique for restoring the clitoris, women who are wounded physically, as well as psychologically, now have hope for normal clitoral function.

In February 2010, Clitoraid, an international organization dedicated to restoring the clitoris, announced that hospitals in the United States would be performing surgeries to assist FGM victims. The organization’s website urges individuals to “adopt a clitoris” and make a difference in a woman’s life.<sup>245</sup>

Clitoraid's "Adopt a Clitoris" program is to create real, long lasting changes for women who have been forced to experience clitoral excision or genital mutilation against their will. "Adopt a Clitoris" is shocking for you. But what could be more shocking than the mutilation that these women have experienced? We hope to bring this abhorrent reality to the public's attention so that it may finally stop.<sup>246</sup>

In 1998, Edna Adam Ismail, the former first lady of Somalia, founded a hospital in Somaliland specifically for the purpose of educating women about FGM and providing comprehensive health services to them.<sup>247</sup> Since 2002, the hospital has expanded to include medical professionals who can perform fistula surgery on women who have been subjected to FGM.<sup>248</sup> Reporter Madeline Taskier writes, "performing surgery to repair the fistula is successful 90 percent of the time, but many women in these regions often do not have access to trained surgeons and have little knowledge of the existing treatments."<sup>249</sup>

In 2008, Engender Health, with funds from the US Agency for International Development, launched a global project entitled Fistula Care. The purpose of the project is to prevent and repair fistulas for women who have been victims of FGM.<sup>250</sup> Fistula Care is focusing on:

- Training doctors in fistula repair surgery and strengthening the capacity of hospitals to provide fistula care;
- Improving the quality of current fistula services;
- Raising awareness in communities and hospitals about both fistula prevention and the availability of care and repair services for affected women;
- Supporting women as they reenter family and community life.<sup>251</sup>

In addition to clitoral restoration and fistula repair, Swiss Medical Weekly reports that a surgery called defibulation has been developed to repair the severest form of FGM.<sup>252</sup>

Defibulation is a surgery that exposes the vaginal opening and the urethral meatus (partial defibulation) and the clitoral tissue and sometimes the whole intact body of the clitoris (total defibulation), which were covered by the scar of the infibulation. Furthermore, it is a medical procedure which promotes women's health by allowing gynaecological screenings such as the PAP test, instrumental exams such as hysteroscopy, transvaginal ultrasound or insertion of a urinary catheter. It renders vaginal delivery easier, decreases the risk of urogenital infections and is part of the psychosexual therapy of dysfunctions such as painful penetration and dyspareunia.<sup>253</sup>

While the news of global efforts to repair the horrific damage done to vaginas is welcomed and applauded, until FGM is stopped, these heroic efforts will result in a revolving door of women and girls and more and more destroyed vaginas.

#### IV. VAGINAL REJUVENATION

*A person's body is her territory—not something she merely owns, but something she is.*

Rebecca Whisnant<sup>254</sup>

“You too can be a 40-year-old virgin” was the title of Anderson Cooper's February 14, 2006 blog post.<sup>255</sup> Cooper, a reporter on CNN News, wrote about the newest plastic surgery that women from all over the United States and abroad were seeking—vaginal plastic surgery.<sup>256</sup> In actuality, the surgery is not new at all—it has been around for nearly sixty years; however, in the past, the surgery was performed to repair medical injuries or anomalies such as uterine, bladder, or rectal prolapse.<sup>257</sup> Surprisingly, women now undergo such procedures when there is no such injury. Dr. V. Leroy Young, Chairman of a committee of the American Society of Plastic Surgeons, stated that vaginal cosmetic surgery is the fastest-growing trend in cosmetic plastic surgery.<sup>258</sup> “While some women undergo the operations to improve comfort, many want to conform to the ideals set by the porn

industry.”<sup>259</sup> As Cooper put it, some women are having their vaginas rejuvenated, reconstructed, and sometimes “revirginized.”<sup>260</sup>

An internet website, 24–7 Press Release, declared April 30, 2010, as the “First Annual Vaginal Rejuvenation Awareness Day.”<sup>261</sup> The webpage explains that many women’s vaginas “relax” after childbirth, and vaginal rejuvenation provides an opportunity to regain the vaginal elasticity of pre-childbirth days. Similarly, Mireya Navarro wrote an article that discussed a yoga instructor who wanted to achieve her beauty ideal “in the most private part of her anatomy—her genitals.”<sup>262</sup> Navarro stated that the instructor compared her vagina to those of women she had viewed in pornographic films and concluded, “They were tiny and dainty and symmetrical. Nobody looked like me.”<sup>263</sup>

Westernized women are seeking genital plastic surgery for many reasons. The reasons range from cosmetic and increasing self-esteem to improving their sex lives.<sup>264</sup> It appears that we have loosened our sexual inhibitions such that women are now taking the opportunity not only to view other women’s private parts, but also to compare size and shape and then seek a “designer vagina.”<sup>265</sup>

A 2010 *Washington Post* article stated that a growing number of Chinese women are seeking vaginal surgical restoration.<sup>266</sup> Apparently, without the use of advertisement, Chinese women are seeking out plastic surgeons to have a procedure known as “hymen restoration.” Dr. Zhou Hong stated, “We can fix it so perfect, so the men believe they are marrying virgins.”<sup>267</sup> Zhou went on to say, “most of her patients are sexually active young women who are about to marry and have told their future husbands they are virgins. . . . [A] smaller number want to forget a bad relationship and start over and a few have been victims of rape.”<sup>268</sup>

#### *A. What is Vaginal Rejuvenation?*

To be sure, vaginal plastic surgery or rejuvenation refers to a few different vaginal surgeries. The two most popular cosmetic surgeries are

labiaplasty and vaginoplasty.<sup>269</sup> “In labiaplasty, the surgical reshaping of female external genital structures, larger or uneven inner vaginal lips are cut and shortened;”<sup>270</sup> whereas in vaginoplasty, the vaginal muscles are tightened.<sup>271</sup> Vaginoplasty is generally the operation most often referred to as “vaginal rejuvenation.”<sup>272</sup> In addition to these two most popular forms of vaginal plastic surgery, there are also “clitoral unhooding,” “perineoplasty,” and “hymenoplasty.”<sup>273</sup>

In clitoral unhooding, doctors clip the clitoris to produce a greater surface of the clitoris thereby improving sexual stimulation.<sup>274</sup> In perineoplasty, the vaginal opening is reconstructed, which leads to an altered vaginal appearance as well as a stronger perineal body and “potentially, sex function.”<sup>275</sup> Hymenoplasty is a surgical procedure in which the “hymeneal ring is surgically altered via small, tightening revisions to produce size minimization of the vaginal aperture.”<sup>276</sup>

There is skepticism surrounding the claim that vaginal rejuvenation surgery can enhance sexual pleasure. For instance, Dr. Thomas Stovall, President of the Society of Gynecologic Surgeons, said that there is no scientific data to back up the claim of enhanced sexual pleasure.<sup>277</sup> On the other hand, Dr. Michael Goodman, a gynecologist in California, prepared a study showing that 250 female participants were overwhelmingly happy with the results of their vaginal cosmetic surgery and now had improved sex lives.<sup>278</sup> According to Dr. Susan Kolb, an Atlanta plastic surgeon, for her patients, “the surgery is about gaining control over their sexuality.”<sup>279</sup>

Dr. Bernard Stern, a gynecologist in Fort Lauderdale, Florida, stated that his practice quadrupled when he began to focus exclusively on vaginal cosmetic surgery.<sup>280</sup> In a *Time* article, Dr. Kolb said that she has noticed a 20 percent increase of patients seeking vaginal cosmetic surgery every year since 2004.<sup>281</sup> The same article stated that there are around one thousand women per year undergoing vaginal cosmetic surgery in the United States and eight hundred in the United Kingdom.<sup>282</sup> Although that number appears

relatively small, “the pace is accelerating.”<sup>283</sup> It appears that vaginal cosmetic surgery is here to stay.

*B. The Correlation Between Women Controlling Their Vaginas and the Rule of Law*

Women in the West are free to express their sexuality because they live in countries where they are not as poor, uneducated, or violated as their counterparts who suffer from war, rape, and female genital mutilation. Arguably, there is a correlation between the ability to express one’s sexuality without religious or governmental interference and the rule of law.

One criticism commonly leveled at Western feminists is that they have not expressed the same outrage at vaginal plastic surgery as they have with female genital mutilation.<sup>284</sup> Is there, in fact, some Western paternalism that allows criticism, condemnation, and outrage at mangled vaginas elsewhere, but renders the West mute when a comparable procedure is done on our shores in the name of controlling one’s sexuality?<sup>285</sup>

Moreover, what is the difference between altering vaginas by rape and FGM or altering them by opting to do it on a surgeon’s table? Is it folly to compare repair with rejuvenation when they both lead to the same end—fixed vaginas—some broken by societies that devalue them and others broken by a psychological need for perfection? Is it mere nuanced wordplay designed to force a predetermined outcome? Or is there some truth to the premise that the ability to determine what one desires to do with her most private of parts indicates that she lives in a lawful society that affords her an equal status with her male counterparts? Perhaps nations that do have a full functioning rule of law are not as advanced with respect to the treatment of women as we have come to believe. Just maybe, repair versus rejuvenation is a mere fiction, and there are many more broken vaginas than one can surmise from mere observation.

Despite a woman’s sexual freedom to alter her vagina, another problem surfaces as a result of the glorification of vaginal cosmetic surgery. This

type of surgery may fit into the American definition of “female genital mutilation.” In 1995, Congress enacted legislation which made performance of FGM illegal in the United States.<sup>286</sup> The Act states in pertinent part:

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

(b) A surgical operation is not a violation of this section if the operation is—(1) 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 (2) 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 of midwife.

The distinguishing fact of this law is how it prohibits the cutting of a minor. Aside from that important distinction, vaginal cosmetic surgery, arguably, fits the criteria for female genital mutilation. Therefore, we come full circle and discover more about the status of women worldwide than intended. Even women who exist under a fully functioning rule of law are faced with the reality that they have used their freedom(s) and their rule(s) of law to reduce themselves to the same status as women who have no control over their vaginas. They all end up broken in some way.

## V. SOLUTIONS

Ultimately, we must determine how to bring equality and vaginal repair to women who have suffered from systemic torture and degradation. Not surprisingly, the same solutions rise to the surface time and time again: education, healthcare, international aid, close scrutiny of power-sharing agreements, encouraging and supporting strong governmental infrastructure



with viable judiciaries, repudiation of a culture of impunity for violating women, and a clearly articulated renunciation of violence against women by the world community that has consequences attached therein.

Women's rights and equality have long been in the agenda of the international community such that remedial measures have been instituted to promote women's interests. For example, in 1995, as part of the Beijing Declaration and Platform for Action, the Commission on the Status of Women outlined twelve critical areas of concern for women.<sup>287</sup> These include:

1. Eradicating poverty by providing equal access to affordable housing, land, natural resources, credit, and other services;
2. Educating women and closing the gender gap in both primary and secondary education by 2005;
3. Strengthening health services to reduce maternal mortality;
4. Eliminating violence against women and eliminating trafficking in women;
5. Increasing women's participation in conflict resolution where there has been armed conflict;
6. Eliminating economic disparity by ensuring equal pay, providing equal access to resources and employment;
7. Giving women equal participation in power sharing structures;
8. Integrating women's perspectives in legislation and the government in general;
9. Protecting women by ratifying and enforcing human rights treaties;
10. Allowing women access to information and participation in the media;

11. Involving women in environmental decision making;
12. Ensuring that girls have equal access to education and a positive self-image.<sup>288</sup>

While efforts have continued to address the above-stated areas of concern, there is still a very long way to go in order to achieve the articulated goals. In April 2010, UN Secretary General Ban Ki-moon launched a global effort to improve the health of women and children.<sup>289</sup> The plan includes “political commitment and accountability,” “integrated delivery,” and “financing.”<sup>290</sup> Likewise, US Vice President Joseph Biden was the co-writer of the International Violence Against Women Act (I-VAWA).<sup>291</sup> The aim of the Act was “to help end gender-based violence, from educational programs to health aid, to special training for peacekeeping forces.”<sup>292</sup> Unfortunately, I-VAWA never became law and is not slated for further action.

As always, education is a key factor in eradicating female genital mutilation and also in preventing wartime rape of women. Women must be educated to reach their full potential in their respective societies and to have voices that can say no to the destruction of their vaginas. In a report on the results on educating girls and women, Barbara Herz and Gene B. Sperling outlined the measurable benefits of educating females.<sup>293</sup> A summary of their study provided that the following results are evidence:

- Education generally leads to increased income and productivity for individuals and for nations as a whole. Although women often start from a weaker economic position than men, evidence shows that educating girls generally produces greater gains in productivity and income than educating boys, and educating girls has as much or more impact on national economic growth.<sup>294</sup>

- A strong and extensive body of evidence confirms that educating women is the single most effective way to encourage smaller, healthier, and better-educated families.<sup>295</sup>
- Evidence is increasingly showing that education can be one of the best defenses against HIV/AIDS, both because of education's impact on women's earning capacity, empowerment, and family well-being, and because school-based HIV education programs discourage risky behavior among young girls in particular.<sup>296</sup>
- A growing body of research suggests that education helps empower women to stand up for themselves and their children. By changing women's "bargaining position" in both the family and society, education can bring benefits not only to women and their children, but to the broader community and society, such as through more effective and representative governance.<sup>297</sup>

First, it is clear that all women must be educated, but it should be equally clear that men must also be educated to fully comprehend how the destruction of women ultimately leads to their own destruction and the destruction of the community. Once educated and not solely reliant upon marriage and a patriarchal system for survival, women will say no to FGM, and once educated, men will lead the fight against FGM and rape.<sup>298</sup>

Second, it is also imperative that healthcare be made available to women worldwide. It is of the utmost importance that women be healed once such horrific acts are performed against them. Women should not be pariahs in their communities because of bad acts performed against them by men who act with impunity. Healthcare services must repair the damage that has been done in addition to ongoing healthcare to ensure that vaginal fistulas and diseases are eradicated. Mental healthcare must also address the psychological consequences that flow from broken vaginas and destroyed lives.

Third, adequate international aid must address the broken infrastructures that support and maintain the low status of women. In some instances, that aid should be in the form of on-the-ground security forces. The DRC's government stated that mass rapes cannot be stopped unless there is more international aid.<sup>299</sup> On the one hand, it is apparent that more aid and a greater security presence would help prevent mass rapes; however, it is imperative that the government of the DRC develop and enforce a zero tolerance for rape and punish those who have committed these atrocities. With respect to FGM, funds are needed for women's education and healthcare. FGM will be stopped by an internal grassroots effort of women. A study in Ethiopia conclusively showed that once educated, women will say no to FGM.<sup>300</sup>

Fourth, in addition to these obvious solutions that raise the status of women, a closer scrutiny of power-sharing agreements<sup>301</sup> must be a priority if women are to ever receive justice. In recent years, power-sharing agreements have been utilized to end civil conflicts and questionable elections. Although these have been touted as viable solutions in the named scenarios, they, unfortunately, can lead to situations where women are doubly victimized. If two warring forces, both of which have been brutally raping women, enter into a power-sharing agreement to end conflict, women become faced with living under the rule of the rapists. It is not conceivable that either group would prosecute itself for the rapes and mutilations of women.

Fifth, collapsed infrastructures must be rebuilt. All the declarations and proposals mean little or nothing if there is no governmental infrastructure to provide education, healthcare, or access to justice. Even in places where there is a purported rule of law, if there is no viable judiciary to try cases, victimized women cannot bring their rapists to justice.<sup>302</sup>

Sixth, the culture of impunity—which is pervasive in civil war and FGM—must be repudiated, and a culture of respect towards women should be created in its place. It is no longer acceptable to argue that cultural

differences demand a different result for some women, and the failure to acknowledge such is grounded in Western paternalism. Repercussions and punishments must be put in place, clearly communicated, and enforced against perpetrators. For example, in 2000, the UN Security Council adopted a resolution on women, peace, and security.<sup>303</sup> Thus, section 11 of the resolution:

*Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard *stresses* the need to exclude these crimes, where feasible from amnesty provisions.<sup>304</sup>

This resolution is important because it is the first time that the “immense impact of war on women”<sup>305</sup> has been addressed. Unfortunately, little has been done to enforce it.

Lastly, the world community must articulate a clear renunciation of violence against women. Whether it is rape in war or FGM, breaking vaginas to the point where they are destroyed is not acceptable. When the rest of the world was ignorant about devastating rapes that took place (and continue to occur) and the acts of FGM that debilitated an untold number of girls and women, silence was understandable. But now that there is knowledge, there is no excuse for inaction.

## VI. CONCLUSION

There is still much work to be done in order to improve the worldwide status of women. A collective response from communities around the world is necessary to end gender-based violence and thereby end the destruction of vaginas. Women must be the sole owners of their vaginas. As frivolous as it may seem, and in light of all the damage that has been done to vaginas, maybe women should have the freedom to rejuvenate, bejewel, or bedazzle that which belongs to them. Women have long endured the brunt of

physical and psychological trauma from armed conflict and ignorance. Neither war nor tradition should relegate them to subhuman positions. In reality, the entire society is traumatized and diminished when women are dehumanized, for “[w]omen hold up half the sky,”<sup>306</sup> and without them, the sky will surely fall.

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<sup>1</sup> Eve Ensler, *Women Left for Dead—and the Man Who’s Saving Them*, GLAMOUR (Aug. 1, 2007), available at <http://www.glamour.com/magazine/2007/08/rape-in-the-congo>.

<sup>2</sup> The term “war against women” was used as the title of a segment that originally aired on a CBS show, 60 Minutes, on Jan. 13, 2008. See *60 Minutes: War Against Women; The Use of Rape as a Weapon in Congo’s Civil War* (CBS News television broadcast Aug. 17, 2008) available at <http://www.cbsnews.com/stories/2008/01/11/60minutes/main3701249.shtml>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> JOSHUA S. GOLDSTEIN, *WAR AND GENDER, HOW GENDER SHAPES THE WAR SYSTEM* 362–63 (Cambridge University Press, 2001).

<sup>6</sup> See *Conflict-Related Sexual Violence*, UN WOMEN, [http://www.unifem.org/gender\\_issues/women\\_war\\_peace/conflict\\_related\\_sexual\\_violence.php](http://www.unifem.org/gender_issues/women_war_peace/conflict_related_sexual_violence.php) (last visited Feb. 5, 2011) (“Wartime sexual violence . . . results in devastating situations for individuals, families and communities who must cope with unwanted pregnancies and children, stigmatization and rejection, diseases and reproductive health issues, psychological trauma, and disintegration of the social fabric.”).

<sup>7</sup> See generally Jeffrey Gettleman, *Rape Epidemic Raises Trauma of Congo War*, N.Y. TIMES (Oct. 7, 2007), at A1, [http://www.nytimes.com/2007/10/07/world/africa/07congo.html?\\_r=1&ref=congothedemocraticrepublicof](http://www.nytimes.com/2007/10/07/world/africa/07congo.html?_r=1&ref=congothedemocraticrepublicof). Gettleman reports on Honorata Barinjibanwa, an eighteen-year-old woman who was kidnapped from her village and kept as a sex slave for four months. Honorata was tied to a tree and the men who kept her would untie her for a few hours every day and gang rap her. Honorata upon being released stated, “I’m weak, I’m angry, and I don’t know how to restart my life.” *Id.* In addition, she had become pregnant. See *id.*

<sup>8</sup> See generally Patricia A. Broussard, *The Importation of Female Genital Mutilation to the West: The Cruellest Cut of All*, 44 U.S.F. L. REV. 787, 798 (2010).

<sup>9</sup> Fuambai Ahmadu, *Rites and Wrongs: An Insider/Outsider Reflects on Power and Excision*, in FEMALE "CIRCUMCISION" IN AFRICA: CULTURE, CONTROVERSY, AND CHANGE 283 (Bettina Shell-Duncan & Ylva Hernlund, eds., 2000).

<sup>10</sup> *Violence Against Women: Facts and Figures*, UNITED NATIONS DEVELOPMENT FUND FOR WOMEN ("UNIFEM") 3 (2007), [http://www.unifem.org/attachments/gender\\_issues/violence\\_against\\_women/facts\\_figures\\_violence\\_against\\_women\\_2007.pdf](http://www.unifem.org/attachments/gender_issues/violence_against_women/facts_figures_violence_against_women_2007.pdf) [hereinafter UNIFEM] ("It is estimated that more than 13 million girls and women alive today have undergone FGM, mainly in Africa and some Middle Eastern countries, and two million girls a year are at risk of mutilation").

<sup>11</sup> Sandy Kobrin, *More Women Seek Vaginal Plastic Surgery*, COSMETIC SURGERY NEWS, <http://www.cosmeticsurgery-news.com/article2308.html> (last visited Mar. 13, 2011).

<sup>12</sup> UNIFEM, *supra* note 10, at 1 ("Violence against women and girls is a problem of pandemic proportions.").

<sup>13</sup> CATHARINE A. MACKINNON, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES 41 (2006).

<sup>14</sup> "Legitimate intending" is intended to mean governments where a rule of law is both present and generally followed.

<sup>15</sup> Ensler, *supra* note 1.

<sup>16</sup> RANDY THORNHILL & CRAIG T. PALMER, *Rape is a Natural Biological Act*, in SEXUAL VIOLENCE: OPPOSING VIEWPOINTS 21, (Helen Cothran, ed., 2003).

<sup>17</sup> *Id.* at 22–23.

<sup>18</sup> See generally Ensler, *supra* note 1.

<sup>19</sup> See DENEEN L. BROWN, *The Brutal Truth*, WASH. POST (Apr. 8, 2008), <http://www.washingtonpost.com/wpdyn/content/article/2008/04/07/AR2008040702782.html>.

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> Catharine A. Mackinnon, *Rape, Genocide, and Women's Human Rights*, 17 HARV. WOMEN'S L.J. 5, 10 (1994) (emphasis removed).

<sup>23</sup> US DEP'T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN (2000), <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf>.

<sup>24</sup> *Id.* at iii–v.

<sup>25</sup> *Id.* at 15. The number of rapes in this and other reports vary widely, often depending on the focus of each survey and its methodology. See US DEP'T OF JUSTICE, RAPE AND SEXUAL ASSAULT: REPORTING TO POLICE AND MEDICAL ATTENTION 1992–2000 (2002), <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsarp00.pdf>.

<sup>26</sup> US DEP'T OF JUSTICE, *supra* note 23, at iv.

<sup>27</sup> *Worldwide Sexual Assault Statistics*, GEORGE MASON UNIV. SEXUAL ASSAULT SERV., <http://www.gmu.edu/depts/unilife/sexual/brochures/WorldStats2005.pdf> (last visited Feb. 6, 2011).

- <sup>28</sup> *Dating Violence*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, [http://www.uncfsp.org/projects/userfiles/File/DCESTOP\\_NOW/NCADV\\_Dating\\_Violence\\_Fact\\_Sheet.pdf](http://www.uncfsp.org/projects/userfiles/File/DCESTOP_NOW/NCADV_Dating_Violence_Fact_Sheet.pdf) (last visited Feb. 10, 2011).
- <sup>29</sup> *National Statistics on Sexual Assault*, Nat'l Ctr. on Domestic and Sexual Violence, <http://www.ncdsv.org/images/NationalStatisticsSexAssault--AFReport8-24-05.pdf> (Aug. 24, 2005).
- <sup>30</sup> *Rapes by Country*, NATIONMASTER.COM, available at <http://www.nationmaster.com/graph/crime/crime-rape>. (last visited Mar. 12, 2011).
- <sup>31</sup> In a report prepared for the World Bank, Sarah Bott notes that sexual violence within marriage is common. She writes that many men and women believe that men have the right to beat their wives when they refuse to engage in sex with them. Thus, forced sex in marriage may not be deemed the crime of rape as it has been classified in the United States. Because of this, the reported incidents of rape in the United States may be higher because spousal rape is more likely to be reported and is counted in US statistics. See Sarah Bott et al., *Preventing and Responding to Gender-based Violence in Middle and Low-income Countries: A Global Review and Analysis* 9, 11 (World Bank Policy Research Working Paper No. 3618, 2005), available at [http://www.wds.worldbank.org/external/default/WDSContentServer/TW3P/IB/2005/06/28/000112742\\_20050628084339/Rendered/PDF/wps3618.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/TW3P/IB/2005/06/28/000112742_20050628084339/Rendered/PDF/wps3618.pdf).
- <sup>32</sup> GEORGE MASON UNIV. SEXUAL ASSAULT SERV., *supra* note 27.
- <sup>33</sup> Press Release, United Nations Children's Fund ("UNICEF"), Millions of Women Still Live in Poverty, Executive Director of United Nations Children's Fund Tells Commission on Status of Women, U.N. Doc. WOM/1178 (Feb. 28, 2000), available at <http://www.un.org/News/Press/docs/2000/20000228.wom1178.doc.html>.
- <sup>34</sup> Bott, *supra* note 31, at 10.
- <sup>35</sup> GEORGE MASON UNIV. SEXUAL ASSAULT SERV., *supra* note 27.
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.*
- <sup>39</sup> *Id.*
- <sup>40</sup> *Id.*
- <sup>41</sup> *Id.*
- <sup>42</sup> *Id.*
- <sup>43</sup> Bott, *supra* note 31, at 10.
- <sup>44</sup> MACKINNON, *supra* note 13, at 181.
- <sup>45</sup> NICHOLAS D. KRISTOF & SHERYL WUDUNN, HALF THE SKY: TURNING OPPRESSION INTO OPPORTUNITY FOR WOMEN WORLDWIDE 61–62 (Alfred A. Knopf 2009).
- <sup>46</sup> GEORGE MASON UNIV. SEXUAL ASSAULT SERV., *supra* note 27.
- <sup>47</sup> Ensler *supra* note 1.
- <sup>48</sup> Kristof, *supra* note 45, at 205.
- <sup>49</sup> Broussard, *supra* note 8, at 793–98.
- <sup>50</sup> Universal Declaration of Human Rights, G.A. Res. 217A at 71-73; U.N. GAOR, 3d Sess., 1st plen.mtg, U.N. Doc A/810 (Dec. 12, 1948).
- <sup>51</sup> Convention on the Elimination of All Forms of Discrimination against Women, opened for signature Dec. 18, 1979, 1249 U.N.T.S. 13.



<sup>52</sup> Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, ¶ 6, U.N. Doc. A/RES/48/104 (Dec 20, 1993).

<sup>53</sup> Susan Brownmiller, *Making Female Bodies the Battlefield*, in MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA, 180, 181 (Alexandra Stiglmayer ed. 1994).

<sup>54</sup> BERNARD A. COOK, WOMEN AND WAR: A HISTORICAL ENCYCLOPEDIA FROM ANTIQUITY TO THE PRESENT 481 (2006).

<sup>55</sup> *Deuteronomy* 20:10–15 (New International Version).

<sup>56</sup> 1 *Zechariah* 14:2 (New International Version).

<sup>57</sup> *Id.*; see also *Deuteronomy* 22:28–29; *Judges* 5:30; *Numbers* 31:7–18 (New International version).

<sup>58</sup> See Eileen Meir, *Prosecuting Sexual Violence Crimes During War and Conflict: New Possibilities for Progress*, 10 INT'L LEGAL THEORY, 83, 84 (2004) (pointing to the rape of the Sabine women in Rome in her article on sexual violence and war).

<sup>59</sup> COOK, *supra* note 54, at 481.

<sup>60</sup> GOLDSTEIN, *supra* note 5, at 362, 366. Goldstein wrote that the wartime atrocities and acts of rape against Nanking, the Chinese nationalist capital, were of such a magnitude that the violence has been characterized as a rape of the entire city. During the period from 1937–1938, between 20,000 and 80,000 women were raped. Many of them were subjected to “sexual torture,” “perversion,” and “games of recreational rape.”

<sup>61</sup> Laura Smith-Spark, *How Did Rape Become a Weapon of War?* BBC NEWS, <http://news.bbc.co.uk/2/hi/4078677.stm> (last visited Mar. 13, 2011).

<sup>62</sup> *Id.*

<sup>63</sup> See Slavenka Drakulic, Editorial, *Rape as a Weapon of War*, N.Y. TIMES (June 26, 2008), <http://www.nytimes.com/2008/06/26/opinion/26iht-eddrakulic.1.14013076.html>; see also Smith-Spark, *supra* note 60.

<sup>64</sup> Compare ALEXIS ARIEFF, CONG. RES. SERVICE, SEXUAL VIOLENCE IN AFRICAN CONFLICTS 16 (2010) (citing reports from WHO and the African Association for Defence of Human Rights and World Organization Against Torture, states: “As in other regions, many African constitutions and statutes do not accord women equal rights under the law, which can negatively affect a women’s ability to inherit property, retain control of assets following divorce, or bring legal suits against men. For example, DRC’s Family Code restricts management of family property to male heads of households and prohibits married women from initiating legal actions without their husbands’ authorization. In many cases women’s inferior status reflects wider phenomena of social discrimination. While many African countries have ratified international human rights treaties, African domestic courts do not take these agreements into consideration in their rulings.”), with JODY FEDER, CONG. RES. SERVICE, FEDERAL AND STATE LAWS REGARDING PHARMACISTS WHO REFUSE TO DISPENSE CONTRACEPTIVES 1 (2005) (“Until recently, most conscience clause laws were designed to allow medical practitioners to opt out of providing abortion-related services.”).

<sup>65</sup> Stephanie McCrummen, *Prevalence of Rape in E. Congo Described as Worst in the World*, WASH. POST (Sept. 9, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/08/AR2007090801194.html>.

<sup>66</sup> Smith-Spark, *supra* note 61.

- <sup>67</sup> Stephanie Nolen, “Not Women Anymore . . .”: *The Congo Women Face Pain, Shame, and AIDS*, MS. MAGAZINE, Spring 2005, <http://www.msmagazine.com/spring2005/congo.asp>.
- <sup>68</sup> McCrummen, *supra* note 65.
- <sup>69</sup> *Id.* The DRC is not alone and other countries could have been used to make the point; however, DRC appears to have the most egregious record of brutal rapes.
- <sup>70</sup> Anthony W. Gambino, *Congo Securing Peace, Sustaining Progress*, 2008 COUNCIL ON FOREIGN RELATIONS—COUNCIL SPECIAL REPORT NO. 20 (October 2008).
- <sup>71</sup> *Id.* at 10.
- <sup>72</sup> *Id.*
- <sup>73</sup> *Id.*
- <sup>74</sup> *Id.*
- <sup>75</sup> US DEPT. OF STATE BUREAU OF AFRICAN AFFAIRS, BACKGROUND NOTE: DEMOCRATIC REPUBLIC OF THE CONGO (2010), <http://www.state.gov/r/pa/ei/bgn/2823.htm>.
- <sup>76</sup> *Id.*
- <sup>77</sup> Gambino, *supra* note 70, at 11.
- <sup>78</sup> *Id.* (Gambino writes that Western nations, including the United States, lost interest in DRC, because the cold war had ended and their strategic position was no longer needed. He adds that many nations felt that the burdens of supporting DRC outweighed the benefits from doing so.).
- <sup>79</sup> *Id.*
- <sup>80</sup> *Id.* at 12.
- <sup>81</sup> *Id.*
- <sup>82</sup> *Id.*
- <sup>83</sup> *Id.*
- <sup>84</sup> US DEPT. OF STATE BUREAU OF AFRICAN AFFAIRS, *supra* note 75. (The Pretoria Accord resulted from DRC and Rwanda meeting in South Africa to negotiate Rwanda leaving DRC).
- <sup>85</sup> See *War Against Women*, *supra* note 2.
- <sup>86</sup> *Stopping Rape as a Weapon of War in Congo*, HUMAN RIGHTS WATCH (Sept. 18, 2009), <http://www.hrw.org/en/news/2009/09/18/stopping-rape-weapon-war-congo>.
- <sup>87</sup> *Id.*
- <sup>88</sup> Suzan M. Pritchett, Note, *Entrenched Hegemony, Efficient Procedure, or Selective Justice?: An Inquiry into Charges for Gender-Based Violence at the International Criminal Court*, 17 TRANSNAT’L L. & CONTEMP. PROBS. 265, 267 (2008).
- <sup>89</sup> Jan Goodwin, *Silence = Rape*, THE NATION (Mar. 8, 2004), <http://www.thenation.com/article/silencerape>.
- <sup>90</sup> *Id.* See also Wairagala Wakabi, *Sexual Violence Increasing in Democratic Republic of Congo*, 371 THE LANCET 15 (2008) (“forcing family members to participate among military and militia groups.”).
- <sup>91</sup> Gettleman, *supra* note 7, at A1.
- <sup>92</sup> Pritchett, *supra* note 88, at 267.
- <sup>93</sup> Wakabi, *supra* note 90 (Karin Wachter said, “[a]s the security situation unravels yet again, we are seeing trends rising and multiple forms of sexual violence—from

abduction, gang rape, shooting women through the vagina and forcing family members to participate among military and militia groups.”).

<sup>94</sup> Although there are laws which address rape, impunity appears to be the true rule of law. Rebecca Feeley & Colin Thomas-Jensen, in a Strategy Paper entitled, *Getting Serious about Ending Conflict and Sexual Violence in Congo*, write:

In 2006, describing sexual violence as a ‘new form of criminality’ which would ‘not remain unpunished,’ the Congolese government modified their laws and penalties. The laws detail three types of sexual violence: 1) indecent assaults on minors committed without violence, 2) indecent assaults on minors committed with violence, and 3) rape. Depending on the age of the victim, sentences range from 6 months to 20 years in prison. If the victim dies from sexual violence, the perpetrator is to serve a life sentence.”

Even though adjustments have been made to Congolese penal code, the foremost problem is the culture of impunity that exists in the absence of a strong Congolese state. For the women and young girls who have had the courage to publicly identify their rapists, prosecutions are slow to nonexistent. Perpetrators thrown into jail are often able to simply pay guards for their release. Some have even just broken through the walls. There is little to no follow-up by authorities if a man escapes. Even worse, because there is no witness protection program in Congo, many perpetrators are able to find and terrorize their accusers again. There are numerous accounts of victims being re-raped in revenge. Women and young girls have even had their mouths cut off so that they “won’t tell again.”

Rebecca Feeley & Colin Thoms-Jensen, *Getting Serious about Ending Conflict and Sexual Violence in Congo* 6–7 (Enough Working Paper No. 15, 2008), available at, <http://www.enoughproject.org/files/publications/CongoSerious.pdf>.

<sup>95</sup> Wakabi, *supra* note 90. The author opines, “The international response to the sexual violence has been criticised as inconsistent, inadequate, and piecemeal in fashion.”

<sup>96</sup> In March 2008, singer Miriam Makeba visited Kinshasa, Democratic Republic of the Congo, and commented that women survivors face a “‘triple tragedy’ of physical, psychological, and social damage.” *Miriam Makeba Visits Rape Survivors in Congo (DR)*, FAO NEWSROOM (Mar. 13, 2008), available at, [www.fao.org/newsroom/en/news/2008/1000810/index.html](http://www.fao.org/newsroom/en/news/2008/1000810/index.html).

<sup>97</sup> Wakabi, *supra* note 90.

<sup>98</sup> Emily Wax, *A Brutal Legacy of Congo War: Extent of Violence against Women Surfaces as Fighting Recedes*, WASH. POST, Oct. 25, 2003, at A1.

<sup>99</sup> *Id.*

<sup>100</sup> THE GREATEST SILENCE: RAPE IN THE CONGO (Jackson Films Inc. 2007).

<sup>101</sup> Reporter DeNeen Brown, in a review of the documentary, writes:

Six rapists in the lush forest of the Democratic Republic of Congo: One in a green hood, another in a red baseball cap, another in military fatigues and a camouflage hat, another in black sunglasses. Their guns are pointed down. Smoking cigarettes, they swagger. They hold up their fingers, counting the number of women they have

raped, violated, damned. Sexual terror as a weapon of war, perpetrated sometimes with sticks, knives, tree limbs.

The men seem unafraid to confess. They are bragging to an American filmmaker who holds a camera, recording their words.

“Ask him to tell me what he did,” says Lisa F. Jackson, whose chilling documentary, “The Greatest Silence: Rape in the Congo,” debuts tonight on HBO. In a 10-year-old conflict that has left some 5 million people dead, the tens of thousands of women and girls who have been systematically raped and mutilated by an array of combatants are the silent victims among the living, Jackson tells us. What makes her documentary more stunning: She goes into the forest and confronts the rapists.

“I slept with some women,” says the rapist, a gray sweater wrapping his head, the sleeves tied around his neck.

“Did they want you to sleep with them?” Jackson inquires, her voice incisive, a bit on edge. A translator repeats her words in Swahili. Is it about control? Sex? Why violate a woman, leave her to bleed in her village, while her husband watches, tied to a tree? Why would 20 men line up and take turns, one after the other, raping a girl until she passes out and separates herself from a pain too evil to imagine?

Why insert a machete into a woman, leaving her organs so torn and dysfunctional that she flees her village and hides her shame and her stench in the bush, another victim of war?

“After we’ve been raped, our men don’t want us anymore. We are considered half-human beings,” a lonely woman confides to Jackson and her camera.

In another scene, the gray-sweatered rapist doesn’t flinch at Jackson’s question: “If she says no, I must take her by force. If she is strong, I’ll call some of my friends to help me. All this is happening because of the war. We would live a normal life and treat women naturally if there was no war.”

DeNeen L. Brown, *The Brutal Truth: A filmmaker Confronts the Rapists of the Congo and Finds No Remorse*, WASH. POST, Apr. 8, 2008, at C1.

<sup>102</sup> Jeffrey Gettleman, *Rape Victims’ Words Help Jolt Congo Into Change*, N. Y. TIMES, Oct. 17, 2008, available at, [www.nytimes.com/2008/20/18/world/africa/18congo.html](http://www.nytimes.com/2008/20/18/world/africa/18congo.html).

<sup>103</sup> “Now, the World is Without Me”: *An Investigation of Sexual Violence in Eastern Democratic Republic of Congo*, HARVARD HUMANITARIAN INITIATIVE, 1 (Apr. 2010), <http://www.oxfam.org/sites/www.oxfam.org/files/DRC-sexual-violence-2010-04.pdf>.

<sup>104</sup> Gettleman, *supra* note 7, at A1.

<sup>105</sup> *60 Minutes*, *supra* note 2.

<sup>106</sup> Nolen, *supra* note 67.

<sup>107</sup> Goodwin, *supra* note 89.

<sup>108</sup> Jeff Koinange, *Rape, brutality Ignored to Aid Congo Peace*, CNN.COM (May 24, 2006), available at, [www.cnn.com/2006/WORLD/africa/05/23/koinange.rape.war/index.html](http://www.cnn.com/2006/WORLD/africa/05/23/koinange.rape.war/index.html).

<sup>109</sup> *New Report Shows Shocking Pattern of Rape in Eastern Congo*, OXFAM (Apr. 15, 2010), <http://www.oxfam.org/en/pressroom/pressrelease/2010-04-15/new-report-showsshocking-pattern-rape-eastern-congo>.

<sup>110</sup> Koinange, *supra* note 108. Dr. Mukwege is the doctor tasked with providing care for women who are fortunate enough to make it to his hospital.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Emily Wax, *A Brutal Legacy of Congo War: Extent of Violence against Women Surfaces as Fighting Recedes*, WASH. POST (Oct 25, 2003), at A1, available at <http://www.washingtonpost.com> also available at, [http://www.monitor.upeace.org/archive.cfm?id\\_article=123](http://www.monitor.upeace.org/archive.cfm?id_article=123) (quoting Jo Lusi, head of a hospital in Goma that repairs destroyed vaginas).

<sup>114</sup> *Destruction of the Vagina in Violent Rape a War Crime in Congo*, REPRODUCTIVE HEALTH MATTERS (May 2004), [http://findarticles.com/p/articles/mi\\_hb264/is\\_23\\_12/ai\\_n29101318/](http://findarticles.com/p/articles/mi_hb264/is_23_12/ai_n29101318/).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Wax, *supra* note 113.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* (“A vast majority of women in the tents were waiting for operations, sometimes a second or third procedure . . . .”)

<sup>121</sup> *Id.*

<sup>122</sup> *Looking Horror in the Face*, HARVARD WORLD MEDIA HUM. RTS., <http://www.news.harvard.edu/hwm/congo/stories/main.html> (last visited Mar. 13, 2011).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Sarah Gieseke, *Rape as a Tool of War in the Eastern Democratic Republic of the Congo*, (Apr. 13, 2007) (unpublished manuscript), <http://www.du.edu/korbel/cord/symposia/2007/gieseke07.pdf> (“The sexual assault is often accompanied by beating to the head or other parts of the body, even stabbing, and may not only consist of penal penetration of the vagina but forced oral sex, genital mutilation, and the forced entry of objects such as sticks, animals and guns into the vaginal tract.”).

<sup>126</sup> See Wakabi, *supra* note 90.

<sup>127</sup> Nolen, *supra* note 67.

<sup>128</sup> *Id.*

<sup>129</sup> Rape as a Weapon of War: Accountability for Sexual Violence in Conflict: Hearing Before the S. Judiciary Comm., Subcomm. on Human Rights and the Law (Apr. 1, 2008), available at, [http://judiciary.senate.gov/hearings/testimony.cfm?id=3225&wit\\_id=7082](http://judiciary.senate.gov/hearings/testimony.cfm?id=3225&wit_id=7082) [hereinafter Mukwege] (statement of Dr. Denis Mukwege, Director, Panzi General Referral Hospital).

<sup>130</sup> *Id.*

<sup>131</sup> See Gettleman, *supra* note 104.

<sup>132</sup> *Id.*

<sup>133</sup> See generally Marion Pratt & Leah Werchick, USAID/BUREAU FOR DEMOCRACY, CONFLICT AND HUMANITARIAN ASSISTANCE (DCHA), *Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo: An assessment of Programmatic Responses to Sexual Violence in North Kivu, South Kivu, Maniema, and Orientale Provinces, January 9–16, 2004* (Mar. 18, 2004), [http://asci.researchhub.ssrc.org/sexual-terrorism-rape-as-a-weapon-of-war-ineaster n-democratic-republic-of-congo-an-assessment-of-programmatic-responses-tosexual-violence-in-north-kivu-south-kivu-maniema-and-orientale-provinces/attachment](http://asci.researchhub.ssrc.org/sexual-terrorism-rape-as-a-weapon-of-war-ineaster-n-democratic-republic-of-congo-an-assessment-of-programmatic-responses-tosexual-violence-in-north-kivu-south-kivu-maniema-and-orientale-provinces/attachment).

<sup>134</sup> Laura Davis, *Country Case Study: DRC, Justice-Sensitive Security System Reform in the Democratic Republic of Congo*, INITIATIVE FOR PEACEBUILDING 13 (Feb. 2009), [http://www.initiativeforpeacebuilding.eu/pdf/Justice\\_Sensitive\\_Security\\_System\\_reform\\_in\\_the\\_DRC.pdf](http://www.initiativeforpeacebuilding.eu/pdf/Justice_Sensitive_Security_System_reform_in_the_DRC.pdf).

<sup>135</sup> Nolen, *supra* note 67.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Kai T. Hill, *Doctor Speaks Out on Atrocities of Rape*, CATHOLIC RELIEF SERVS., <http://crs.org/democratic-republic-of-congo/doctor-rape-victims/> (last visited Mar. 13, 2011).

<sup>139</sup> *Id.*

<sup>140</sup> Pratt & Werchick, *supra* note 133.

<sup>141</sup> Editorial license.

<sup>142</sup> Gettelman, *supra* note 102.

<sup>143</sup> *Id.*

<sup>144</sup> In a 2004 assessment report for the US Agency for International Development (USAID) and Bureau for Democracy, Conflict, and Humanitarian Assistance (DCHA), Marion Pratt and Leah Werchick noted:

The team was told that at the highest levels of the transitional government, at least one representative was allegedly heard to say dismissively that rape was a women's issue that women needed to deal with it on their own. One MONUC commander of a sub-office in the North Kivu told several members of the team that rape was normal behavior or be expected of soldiers who had been without women in the forest for a long time.

Marion Pratt et al., *Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo*, US AGENCY FOR INT'L DEV. 13 (Mar. 18, 2004), [http://pdf.usaid.gov/pdf\\_docs/PNADK346.pdf](http://pdf.usaid.gov/pdf_docs/PNADK346.pdf).

<sup>145</sup> See generally Davis, *supra* note 134, at 13 (explaining that Congo security agents themselves prey on women and children instead of protecting them).

<sup>146</sup> Davis, *supra* note 134, at 21.

<sup>147</sup> See Davis, *supra* note 134, at 21.

<sup>148</sup> Josh Kron, *Rwandan Rebels Raped at Least 179 Women in Congo*, *Humanitarian Officials Say*, N.Y. TIMES, Aug. 23, 2010, <http://www.nytimes.com/2010/08/24/world/africa/24congo.html>.

<sup>149</sup> See Ann Curry, *Sudanese Wield Rape as a Weapon of War*, NBC NEWS, Nov. 30, 2006, [http://www.msnbc.msn.com/id/15718844/ns/nightly\\_news/](http://www.msnbc.msn.com/id/15718844/ns/nightly_news/).

<sup>150</sup> See generally Smith-Spark, *supra* note 61 (accounting various instances of systematic raping of women in Bosnia); Brownmiller, *supra* note 53, at 180–82 (explaining the prevalent raping of women in Herzegovina as a product of violence).

<sup>151</sup> See Kron, *supra* note 148.

<sup>152</sup> Female genital mutilation is the most common, but certainly not the only destroyer of genitalia in the region. Obstetric fistula is a condition that affects between 400,000 and 800,000 women. Poverty, lack of medical care, and failed infrastructures are the most common reasons for obstetric fistula.

Obstetric fistula, caused by prolonged and obstructed labour (sic) without prompt medical intervention, usually through a Caesarean section, leaves women with chronic incontinence and in most cases results in a stillborn baby. Unable to stay dry, women with fistula are often abandoned by their husbands and rejected by their communities.

Saira Stewart, *Obstetric Fistula: Natalie Imbruglia Sheds Light on Devastating Condition*, UN CHRON., Sept.–Nov. 2005, at 63, available at <http://commons.wvc.edu/jm/inharo/pols101/Articles%20to%20Choose%20From/Obstetric%20Fistula.pdf>.

<sup>153</sup> This term was adopted in 1991 at the Inter-African Committee Regional Conference on Traditional Practices Affecting the Health of Women and Children, which was held in Burkina-Faso. See UN Comm’n on Human Rights, Ouagadougou, Burkina Faso, April–May 1991, *Rep. of the U.N. Seminar on Traditional Practices Affecting the Health of Women and Children*, U.N. Doc. E/CN.4/Sub.2/1991/48 (June 12, 1991).

<sup>154</sup> See *Female Genital Mutilation*, WORLD HEALTH ORG. (Feb. 2010), <http://www.who.int/mediacentre/factsheets/fs241/en/>.

<sup>155</sup> See *id.*

<sup>156</sup> See Ahmadu, *supra* note 9, at 284. Ahmadu, a Western-bred African anthropologist who willingly underwent FGM, wrote:

My main quarrel with most studies on female initiation and the significance of genital cutting relates to the continued insistence that the latter is necessarily ‘harmful’ or that there is this urgent need to stop female genital mutilation in communities where it is done. Both of these assertions are based on the alleged physical, psychological, and sexual effects of female genital cutting. I offer, however, that the aversion of some writers to this practice of female ‘circumcision’ has more to do with deeply imbedded Western cultural assumptions regarding women’s bodies and their sexuality than with disputable health effects of genital operations on African women.

Ahmadu, *supra* note 9, at 284.

<sup>157</sup> See Sheng Wang, *Female Genital Mutilation*, MED HUNTERS (Feb. 5, 2007 12:59 AM) <http://web.archive.org/web/20070302145236/http://www.medhunters.com/articles/fgm.html> (accessed by searching Med Hunters in the Internet Archive index); Ahmadu, *supra* note 9, at 307 (Ahmadu says, “Another feature of excision is the way in which the scar itself symbolizes women’s sameness or common female identity. In effect, the operation rite is what defines and, thus, essentializes [sic] womanhood.”).

<sup>158</sup> See Ahmadu, *supra* note 9, at 307.

<sup>159</sup> See *In-Depth: Razor’s Edge: The Controversy of Female Genital Mutilation*, INTEGRATED REGIONAL INFORMATION NETWORKS, <http://www.irinnews.org/InDepthMain.aspx?InDepthId=15&ReportId=62462> (last visited Mar. 13, 2011).

<sup>160</sup> See WORLD HEALTH ORG., *supra* note 154 (reporting that sometimes the victims are infants).

<sup>161</sup> See L. Amede Obiora, *The Anti-Female Genital Circumcision Campaign Deficit*, in FEMALE CIRCUMCISION AND THE POLITICS OF KNOWLEDGE: AFRICAN WOMEN IN IMPERIALIST DISCOURSES 183 (2005).

<sup>162</sup> See *id.* at 191, 195. Professor Obiora said:

Female circumcision has been a standing source of conflict between the West and Africa. Ample evidence that previous attempts of abolition have not changed. *Id.* at 193.

An unscrupulous and reckless outsider may exploit pertinent power differentials and violate the realities of the lives of women by refusing to understand the realities through the perceptual prism of those experiencing it. *Id.* at 195.

<sup>163</sup> *Id.* at 190

<sup>164</sup> There is a practice of using the body parts of albinos for good luck charms. Many say that the belief is long-standing and akin to a cultural ritual. See *Albino Girl Killed for Witchcraft*, SKY NEWS, Oct. 21, 2009, <http://news.sky.com/skynews/Home/World-News/Africa-Young-Albino-Girl-Killed-And-Mutilated-To-Give-Body-Parts-To-Witch-Doctors-In-Tanzania/Article/200810315125431>.

<sup>165</sup> See Sharmon Lynnette Monagan, *Patriarchy: Perpetuating the Practice of Female Genital Mutilation*, 2 J. ALTERNATIVE PERSP. SOC. SCI. 160, 173 (2010), available at [http://www.japss.org/upload/8\\_Sharon\[1\].pdf](http://www.japss.org/upload/8_Sharon[1].pdf).

<sup>166</sup> See generally Mary Ann French, *The Open Wound*, WASH. POST, Nov. 22, 1992, at F1, <http://pqasb.pqarchiver.com/washingtonpost/search.html> (type “au(mary ann french) and ‘the open wound’” in “1987–Current” search; then click “The Open Wound”) (presenting various experiences showing the destruction associated with FGM).

<sup>167</sup> See Isabelle R. Gunning, *Uneasy Alliances and Solid Sisterhood: A Response to Professor Obiora’s Bridges and Barricades*, 47 CASE W. RES. L. REV 445 (1997).

<sup>168</sup> See generally, Nahid Toubia, *Female Circumcision as a Public Health Issue*, NEW ENG. J. MED. ONLINE, <http://content.nejm.org/cgi/content/full/331/11/712>. (“From the perspective of public health, female circumcision is much more damaging than male circumcision. The mildest form is anatomically equivalent to amputation of the penis.”).



<sup>169</sup> Committee on Bioethics, *Female Genital Mutilation*, 102 AM. ACAD. PEDIATRICS 154 (1998).

<sup>170</sup> Infibulations appear almost exclusively among Islamic people. Hanny Lightfoot-Klein, *Prisoners of Ritual: Some Contemporary Developments in the History of Female Genital Mutilation* (Apr. 30–May 1, 1991), <http://www.fgmnetwork.org/Lightfoot-klein/prisonersofritual.htm>.

<sup>171</sup> McCrummen, *supra* note 65, at 153–56.

<sup>172</sup> *Id.* The American Academy of Pediatrics states that Type IV includes pricking, piercing, or incising the clitoris and or the labia. It also may include stretching the clitoris and or the labia, cauterizing the clitoris, and scraping or introducing corrosive substances into the vagina.

<sup>173</sup> *See generally* French, *supra* note 166, at F1.

<sup>174</sup> FRAN HOSKEN, THE HOSKEN REPORT: GENITAL AND SEXUAL MUTILATION OF FEMALES 3 (Women's International Network 4th ed. 1993), *available at* <http://www.questia.com/Index.jsp>.

<sup>175</sup> Wanda K. Jones et al., *Female Genital Mutilation/Female Circumcision*, 112 PUB. HEALTH REP. 368, 370 (1997), *available at*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1381943/pdf/pubhealthrep00038-0014.pdf>.

<sup>176</sup> The African countries are, Egypt, Benin, Burkina-Faso, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Djibouti, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, and Zaire (now known as the Democratic Republic of Congo). *Id.*

<sup>177</sup> FGM also occurs in Yemen, Oman, Saudi Arabia, Israel, and is also found in Indonesia, Malaysia, Pakistan, and India. *Female Genital Cutting, Frequently Asked Questions*, Available at: [www.womenshealth.gov/FAQ/female-genital-cutting.cfm](http://www.womenshealth.gov/FAQ/female-genital-cutting.cfm).

<sup>178</sup> *See* Patricia A. Broussard, *Female genital Mutilation: Exploring Strategies for Ending Ritualized Torture; Shaming, Blaming and Utilizing the Convention against Torture*, 15 DUKE J. GENDER L. & POL'Y 19, 21, 22 (2008).

<sup>179</sup> *See generally* Lightfoot-Klein, *supra* note 170.

<sup>180</sup> Other reasons given are to make a female marriageable, to guarantee male superiority, tradition, hygiene and health, in addition to insurance for virginity and chastity. *See* Broussard, *supra* note 178, at 30–35.

<sup>181</sup> First, there is no text in the Koran that addresses FGM. Second, if one accepts the date of circa 600 AD for the establishment of Islam, then FGM predates Islam; therefore, it cannot be said to be caused by the teachings of Islam. In fact, FGM appears to be a law based on custom.

<sup>182</sup> Some Islamic scholars have interpreted verse 16:23 of the Koran that reads, "Assuredly Allah knoweth that which they keep hidden and that which they proclaim. Lo! He loveth not the proud," as God testing Abraham by commanding him to be circumcised. *See* Sami A. Aldeeb Abu-Sahlieh, *To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision*, 13 MED. & L. 575, 575–622 (July 1994), <http://www.fgmnetwork.org/authors/samialdeeb/Mutilate/index.html>.

<sup>183</sup> *Id.* The Sunnahs of Islam refer to traditions that arise as a result of Mohammed's words and actions. And are also a retelling of conversations that He had with individuals

he met. Sunnahs are not generally considered the equivalent of the teachings of the Koran. However, they serve for the basis of the belief that Islam dictates FGM.

<sup>184</sup> See *id.* This is purportedly a conversation that Mohammed had with a woman which justifies FGM:

The most mentioned narration reports a debate between Mohammed and Um Habibah (or Um 'Atiyyah). This woman, known as an exciser of female slaves, was one of a group of women who had immigrated with Mohammed. Having seen her, Mohammed asked her if she kept practicing her profession. She answered affirmatively adding: "unless it is forbidden and you order me to stop doing it." Mohammed replied: "Yes, it is allowed. Come closer so I can teach you: if you cut, do not overdo it (la tanhaki), because it brings more radiance to the face (ashraq) and it is more pleasant (ahza) for the husband." According to the others, he said: "Cut slightly and do not overdo it because it is more pleasant for the woman and better (ahab, from other sources) for the husband." We shall hereinafter refer to this narration as the exciser's narration. *Id.*

<sup>185</sup> This statement is based on the fact that FGM is centuries old.

<sup>186</sup> Wang, *supra* note 157. Sheng Wang writes:

Until the 1990s, FGM received little international attention. As with other forms of violence against women and children, it was seen as a 'private' issue that was rarely discussed outside of the family or community. Since FGM is a traditional practice, some international organizations were slow to get involved due to concerns that their actions would be seen as a form of cultural imperialism. *Id.*

<sup>187</sup> UNIFEM, *supra* note 10, at 3.

<sup>188</sup> Jones et al., *supra* note 175, at 372.

<sup>189</sup> *Id.*

<sup>190</sup> HOSKEN, *supra* note 174, at 33–34 (explaining infibulation and the unfortunate circumstances for women who are infibulated).

<sup>191</sup> French, *supra* 166, at F1.

<sup>192</sup> Laura Reymond et al., *Female Genital Mutilation—The Facts*, PATH.ORG, at 2, <http://www.path.org/files/FGM-The-Facts.htm> (last visited May 17, 2011).

<sup>193</sup> *Id.* at 2.; see also Robin Maher, *Female Genital Mutilation: The Modern Day Struggle to Eradicate a Torturous Rite of Passage*, AMERICAN BAR ASSOCIATION GPSOLO MAGAZINE, (1997). available at,

[http://www.americanbar.org/content/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/maher.html](http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/maher.html)

<sup>194</sup> Reymond, et al., *supra* note 192, at 3.

<sup>195</sup> See Nahid Toubia, *Female Circumcision as a Public Health Issue*, 331 NEW ENG. J. MED. 712, 712 (1994), available at <http://content.nejm.org/cgi/content/full/331/11/712>.

<sup>196</sup> French, *supra* note 166.

<sup>197</sup> Committee on Bioethics, *Female Genital Mutilation*, 102 AM. ACAD. PEDIATRICS 153, 154 (1998), available at

<http://aappolicy.aappublications.org/cgi/reprint/pediatrics;102/1/153.pdf>. Fistulas are holes created between the vaginal wall and the bladder, and holes created between the vaginal wall and the rectum. Forward, *Fistula*, available at: <http://forwarduk.org.uk/key-issues/fistula>. *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> Toubia, *supra* note 195, at 712 (“From the perspective of public health, female circumcision is much more damaging than male circumcision. The mildest form is anatomically equivalent to amputation of the penis.”).

<sup>203</sup> *Id.*

<sup>204</sup> Denis Gathanju, *Maasai Ritual of Female Circumcision, Genital Cutting Throughout Africa and the Middle East*, ORATO.COM (Aug. 1, 2006, 5:23 PM), <http://www.orato.com/world-affairs/maasai-ritual-of-female-circumcision>.

<sup>205</sup> *The Warie Dirie Story*, THE FEMALE GENITAL CUTTING EDUCATION AND NETWORKING PROJECT, (June 1999) <http://www.fgmnetwork.org/articles/Waris.html>. Warie Dirie is a former supermodel who left modeling to become an activist for Somali women.

<sup>206</sup> *See generally* French, *supra* note 166, at F1.

<sup>207</sup> *See generally* Jones, et al., *supra* note 175.

<sup>208</sup> *See id.*, for FGM statistics. (The greatest example of the correlation between the status of women and the severity of the FGM procedure is the Democratic Republic of the Congo. DRC, formally known as Zaire, has a 5 percent prevalence rate of FGM; however, some of the greatest human rights atrocities against females and their vaginas have occurred in that country.)

<sup>209</sup> *Id.*

<sup>210</sup> Reymond, et al., *supra* note 192, at 2.

<sup>211</sup> *See generally* Jones, et al., *supra* note 175.

<sup>212</sup> Alexandros Yannis, *State Collapse and Prospects for Political Reconstruction and Democratic Governance in Somalia*, AFR. Y.B. INT’L L. 23 (Kluwer Law International 1997).

<sup>213</sup> *Id.* at 23.

<sup>214</sup> *Id.* at 24

<sup>215</sup> Helen Chapin Metz, *Somalia: A Country Study*, LIB. CONGRESS, (1992), available at <http://countrystudies.us/somalia/42.htm> (“In early 1975, Siad Barre announced a decision by the Supreme Revolutionary Council (SRC) and the Council of Ministers to give equal rights to women in several respects, including equal inheritance rights, a move that led to protests by some Islamic leaders. Perhaps more important was the government's insistence that girls attend school, particularly beyond the elementary level.”).

<sup>216</sup> *See* US Department of State, *Somalia: Profile of Asylum Claims and Country Conditions*, Mar. 2000, at 18 available at [http://www.asylumlaw.org/docs/somalia/usdos00\\_somalia\\_profile.pdf](http://www.asylumlaw.org/docs/somalia/usdos00_somalia_profile.pdf). (stating that “[i]n 1988 the Siad Barre government forbade any form of FGM in government hospitals and adopted a policy favoring the complete eradication of all forms of FGM. At one time, there was a fair amount of

outreach activity aimed at discouraging FGM.” However, the collapse of the centralized government led to the collapse of this policy and FGM continued to be practiced as it had been.)

<sup>217</sup> *Id.* The U.S. Department of State Report notes:

Somalis believe that FGM is a religious obligation. The concept of family honor is also involved. Many believe that FGM ensures virginity, and that the family’s honor will also remain intact if the daughters are subjected to FGM. Women who have not undergone FGM may be considered to be harlots and command a lower bride price or dowry. *Id.*

<sup>218</sup> *Women’s Rights in Islam and Somali Culture*, THE ACAD. FOR PEACE & DEV. HARGEYSA, SOMALILAND, Dec. 2002, at 6, available at [http://www.unicef.org/somalia/SOM\\_WomenInIslam.pdf](http://www.unicef.org/somalia/SOM_WomenInIslam.pdf).

<sup>219</sup> *Id.* at 5.

<sup>220</sup> *Id.*

<sup>221</sup> Nadine Puechguirbal, *Women and Children: Deconstructing a Paradigm*, 5 SETON HALL J. DIPL. & INT’L REL. 5, 9 (2004).

<sup>222</sup> *Struggling for Women’s Rights in Somalia*, AMNESTY INT’L, Jan. 20, 2009, <http://www.amnesty.org/en/news-and-updates/feature-stories/struggling-womens-rights-somalia-20090120>.

<sup>223</sup> SOMALI FAMILY CODE 1975 (no. 23/75).

<sup>224</sup> Somalia: Prevalence of forced or arranged marriages in Somalia; consequences for a young woman who refuses to participate in a forced or arranged marriage, UNHCR REF WORLD, (Sept. 20, 2007) <http://www.unhcr.org/refworld/country,,IRBC,,SOM,456d621e2,47ce6d7a2b,0.html>.

<sup>225</sup> See ISLAMIC-DICTIONARY.COM (last visited Feb. 16, 2011)

<http://www.islamicdictionary.com/index.php?word=talaq>. Talaq means divorce.

<sup>226</sup> See generally Jones, et al., *supra* note 175.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Displacement Solutions, *Housing, Land and Property Rights in the South Central Somalia Preliminary Assessment and Proposed Strategies for Expanded Approaches*, 14 (Aug. 2008), available at [http://www.internaldisplacement.org/8025708F004CE90B/\(httpDocuments\)/9430F86E51FB5A08C12574BE002DB8A4/\\$file/HLP+Somalia+DS+Report+FINAL+Aug08.pdf](http://www.internaldisplacement.org/8025708F004CE90B/(httpDocuments)/9430F86E51FB5A08C12574BE002DB8A4/$file/HLP+Somalia+DS+Report+FINAL+Aug08.pdf).

<sup>231</sup> SOMALILAND CONST. art. XXXVI. (May 31, 2001).

<sup>232</sup> Sharia law is generally thought of as the law of the Koran. DICTIONARY.COM <http://dictionary.reference.com/browse/sharia+law> (last visited Feb. 16, 2011).

<sup>233</sup> For a more extensive article on Al Shabaab, see Nir Rosen, *Somalia’s al-Shabab: A Global or Local Movement?*, TIME MAG., Aug. 20, 2010, available at <http://www.time.com/time/world/article/0,8599,2010700,00.html?xid=rssmostpopularemail>.

<sup>234</sup> *Id.*

<sup>235</sup> *Women in Somalia Forced by Hardliners to Shake their Breast*, IRISH SUN, Oct. 20, 2009, available at <http://story.irishsun.com/index.php/ct/9/cid/aba4168066a10b8d/id/555958/cs/1/>

<sup>236</sup> *FACTBOX—Who are Hizbul Islam?*, REUTERS, May 2, 2010. Reuters reports:

The group was founded on Feb. 4, 2009. Hizbul Islam is an umbrella organisation of four groups led by cleric Sheikh Hassan Dahir Aweys, who has been an influential figure among Islamists.

<sup>237</sup> Mohammed Omar Hussein, *Somalia: Islamist Impose New Rules on Farmers and Women in Somalia*, SOMALIWEYN NEWS, April 19, 2010, available at [http://www.somaliweyn.org/pages/news/June\\_10/19June20.html](http://www.somaliweyn.org/pages/news/June_10/19June20.html).

<sup>238</sup> CRD Somalia, *Traditional Governance in Somalia South Central Somalia Brief Report for the World Bank*, 2 (2005) available at <http://info.worldbank.org/etools/docs/library/153065/southcentralsomalia.pdf>.

The Somali society employed effective traditional governance system (TGS) adoptable to run its mundane matters. An egalitarian in nature, the TGS handled all societal relations between communities, conflicts, resource sharing, and the provision of the rule of law through the traditional customary laws. Mostly pastoral and agro-pastoral communities, the Somalis observed and adhered to the codes and conducts of the TGS. This traditional system of governance used to consist of a set of contractual agreements (*xeer*), which defined the rights and the responsibilities of the individual within a group bound together by ties of kinship based on shared patrilineal descent from a common ancestor and of a similar set of agreements which regulated the group's relations with other neighboring groups. *Id*

<sup>239</sup> UNICEF, *Women's Rights in Islam and Somali Culture*, THE ACAD. FOR PEACE & DEV. HARGEYSA, SOMALILAND, Dec. 2002, at 1, available at [http://www.unicef.org/somalia/SOM\\_WomenInIslam.pdf](http://www.unicef.org/somalia/SOM_WomenInIslam.pdf) (“Educational employment opportunities, and indeed the promotion of girl's education in general, are major problems gender disparities are significant in school enrollment statistics, with girls comprising only 36 percent of the student population in grades 1–8”).

<sup>240</sup> *Black Women Seeking Clitoris Reconstruction Not A Luxury*, AFRIK-NEWS, April 13, 2009, available at <http://www.afrik-news.com/article15564.html> (reports that the surgery cost approximately US\$140 US in a public hospital and US\$400 in a private clinic. In West Africa the average salary is around \$600 per year. This makes the surgery cost-prohibitive for most women. In addition, in Burkina Faso, the surgery is only available in the two largest cities. Women who have no transportation or funds for transportation can avail themselves to this surgery.).

<sup>241</sup> Christine Aziz, *Dr. Foldes and the Women*, NEWS.SCOTSMAN.COM, May 7, 2004, <http://news.scotsman.com/ViewArticle.aspx?articleid=2526631>.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

- <sup>245</sup> Sandrini Gonzalez, *Clitoraid Announces New Round of Clitoral Repair Surgeries In U.S. for FGM Victims*, Feb. 25, 2010, available at <http://soyfashionista.com/wall-of-inspiration/articles/clitoraid-announces-new-round-of-clitoral-repair-surgeries-in-u-s-for-fgm-victims.html>.
- <sup>246</sup> *Restoring a source of dignity and pleasure*, CLITORAID, <http://clitoraid.org/index.php> (last visited Mar. 13, 2011).
- <sup>247</sup> Madeline Taskier, *Celebrating Solutions: Repairing Obstetric Fistula and Female genital Mutilation in Somaliland*, WOMEN DELIVER, December 27, 2010, available at <http://www.womendeliver.org/updates/entry/celebrate-solutions-repairing-obstetric-fistula-and-female-genital-mutilati/>.
- <sup>248</sup> *Id.*
- <sup>249</sup> *Id.*
- <sup>250</sup> *Major Global Effort to Improve Women's Lives*, ENGENDER HEALTH LEADS FISTULA CARE PROJECT, Jan. 31, 2008, available at <http://www.engenderhealth.org/media/press-releases/2008/2008-01-31-fistula-care-project.php>.
- <sup>251</sup> *Id.*
- <sup>252</sup> Jasmine Abdulcadir, *Care of Women with female genital mutilation/cutting*, SWISS MEDICAL WEEKLY, Jan. 6, 2011, available at <http://www.smw.ch/content/smw-2011-13137/>.
- <sup>253</sup> *Id.*
- <sup>254</sup> Rebecca Whisnant, *A Woman's Body is like a Foreign Country*, GLOBAL FEMINIST ETHICS 161 (The Rowan and Littlefield Publishing group, Inc., 2008).
- <sup>255</sup> See Anderson Cooper, *You too can be a 40-year-old virgin*, ANDERSON COOPER 360° BLOG, Feb. 14, 2006, 8:08 AM, <http://www.cnn.com/CNN/Programs/anderson.cooper.360/blog/2006/02/you-too-can-be-40-year-old-virgin.html>.
- <sup>256</sup> *Id.*
- <sup>257</sup> Sandy Kobrin, *More Women Seek Vaginal Plastic Surgery*, WOMEN'S ENEWS, Nov. 14, 2004, <http://www.womensenews.org/story/health/041114/more-women-seek-vaginal-plastic-surgery>.
- <sup>258</sup> *Id.*
- <sup>259</sup> *Id.*
- <sup>260</sup> Cooper, *supra* note 255.
- <sup>261</sup> *1st Annual Vaginal Rejuvenation Awareness Day*, 24-7 PRESS RELEASE, Apr. 26, 2010, <http://www.24-7pressrelease.com/press-release/1st-annual-vaginal-rejuvenation-awareness-day-april-30th-2010-vaginalsurgeryinfo-148322.php>.
- <sup>262</sup> Mireya Navarro, *The Most Private of Makeovers*, N.Y. TIMES, Nov. 28, 2004, at ST1, available at [http://www.nytimes.com/2004/11/28/fashion/28PLAS.html?\\_r=1](http://www.nytimes.com/2004/11/28/fashion/28PLAS.html?_r=1).
- <sup>263</sup> *Id.*
- <sup>264</sup> See generally Michael P. Goodman, *Female Cosmetic Genital Surgery*, 113 AM. C. OBSTETRICIANS & GYNECOLOGISTS (VOLUME 1) 154 (2009).
- <sup>265</sup> Laura Fitzpatrick, *Plastic Surgery Below the Belt*, TIME, Nov. 19, 2008, [http://www.time.com/time/health/article/0,8599,1859937,00.html?imw=Y&loomia\\_si=t0:a16:g2:r2:c0.0582902:b35535002](http://www.time.com/time/health/article/0,8599,1859937,00.html?imw=Y&loomia_si=t0:a16:g2:r2:c0.0582902:b35535002).
- <sup>266</sup> Keith B. Richburg, *Knowing Cultural View of Virginity, Chinese Women Try Surgical Restoration*, WASH. POST, Aug. 17, 2010, at A6.

- <sup>267</sup> *Id.*
- <sup>268</sup> *Id.*
- <sup>269</sup> Navarro, *supra* note 262.
- <sup>270</sup> Kobrin, *supra* note 257.
- <sup>271</sup> Navarro, *supra* note 262.
- <sup>272</sup> Michael P. Goodman, *Female Cosmetic Genital Surgery*, 113 AM. COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS 158 (2009).
- <sup>273</sup> Goodman, *supra* note 264, at 158.
- <sup>274</sup> *Id.*
- <sup>275</sup> *Id.*
- <sup>276</sup> *Id.*
- <sup>277</sup> Navarro, *supra* note 262, at ST1.
- <sup>278</sup> *Id.*
- <sup>279</sup> Fitzpatrick, *supra* note 265.
- <sup>280</sup> *Id.*
- <sup>281</sup> *Id.*
- <sup>282</sup> *Id.*
- <sup>283</sup> *Id.*
- <sup>284</sup> Virginia Braun & Celia Kitzinger, *The Perfectible Vagina: Size Matters*, 3 CULTURE, HEALTH & SEXUALITY No. 3, 263–277 (2001).
- <sup>285</sup> Obiora, *supra* note 163.
- <sup>286</sup> Patricia A. Broussard, *The Importation of Female Genital Mutilation to the West: The Cruellest Cut of All*, 44 U.S.F. L. REV. 787, 800 (2010).
- <sup>287</sup> Vikram Sura, *Commission on the Status of Women Adopts New Resolutions*, 42 UN CHRONICLE, June-Aug. 2005, at 12.
- <sup>288</sup> *Id.*
- <sup>289</sup> Secretary-General’s Forum, *A Global Effort on Women and Children’s Health*, New York, Apr. 14, 15, 2010, <http://www.un.org/sg/hf/summary.htm>.
- <sup>290</sup> *Id.*
- <sup>291</sup> International Violence against Women Act, H.R. 4594 (2010).
- <sup>292</sup> *Id.*
- <sup>293</sup> BARBARA HERZ & GENE B. SPERLING, WHAT WORKS IN GIRLS’ EDUCATION: EVIDENCE AND POLICIES FROM THE DEVELOPING WORLD 21 (Council on Foreign Relations 2004).

This paper summarizes the extensive body of research on the state of girls’ education in the developing world today; the impact of educating girls on families; economies, and nations; and the most promising approaches to increasing girls’ enrollment and education quality. The overall conclusions are straightforward, educating girls pays off substantially. *Id.*

- <sup>294</sup> *Id.*
- <sup>295</sup> *Id.*
- <sup>296</sup> *Id.*
- <sup>297</sup> *Id.*

<sup>298</sup> See Ali Idrissou-Toure, *2005 The Year of 'No More Excisions,'* INTER PRESS SERV. NEWS AGENCY, Jan. 16, 2005, available at <http://ipsnews.net/africa/interna.asp?idnews=27048>. Toure related that a man who once performed FGM became educated and traveled around the regions where it was performed to speak out against it.

<sup>299</sup> Patrice Citera, *Congo Government: Mass Rapes Can't Be Stopped Without More International Aid*, THE HUFFINGTON POST (Aug. 26, 2010), [http://www.huffingtonpost.com/2010/08/26/congo-mass-rapes-international-aid\\_n\\_696329.html](http://www.huffingtonpost.com/2010/08/26/congo-mass-rapes-international-aid_n_696329.html).

<sup>300</sup> *Ethiopian Women Reject Genital Cutting*, AFROL NEWS, (Nov. 2, 2010), <http://www.afrol.com/articles/22348>

<sup>301</sup> See A. Carl LeVan, *Power Sharing and Inclusive Politics in Africa's Uncertain Democracies*, 24 GOVERNANCE 23, 31–53 (2011) for a more detailed analysis of power sharing agreements.

<sup>302</sup> See, e.g., *Democratic Republic of Congo*, ABA RULE OF LAW INITIATIVE, (last visited Feb. 2, 2011), [http://apps.americanbar.org/rol/africa/democratic\\_republic\\_congo.html](http://apps.americanbar.org/rol/africa/democratic_republic_congo.html). The American Bar Association opened a legal clinic in DRC in January 2008.

In eastern DRC, ABA Rule of Law Initiative (ABA ROLI) operates several programs to combat sexual and gender-based violence (SGBV). Starting with our first program in January 2008, funded by the U.S. Department of State's Bureau of Human Rights, Democracy and Labor (DRL), ABA ROLI has worked to increase the number of rape prosecutions and to combat the culture of impunity that has fueled the rape epidemic in the DRC. From January 2008–March 2010, ABA ROLI has provided legal assistance to nearly 1,100 SGBV survivors and filed roughly 550 cases with police, resulting thus far in 118 trials and 72 convictions.

<sup>303</sup> S.C. Res. 1325, U.N. Doc. S/RES/1325 (October 31, 2000).

<sup>304</sup> *Id.* at ¶11.

<sup>305</sup> Sura, *supra* at note 287.

<sup>306</sup> KRISTOF & WUDUNN, *supra* note 45 (quoting Chinese Proverb).