Towards a ‘Sensitive’ Approach to Ending Female Genital Mutilation/Cutting in Africa

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Female genital mutilation (FGM) remains one of the worst forms of gender discrimination in some communities in Africa (and beyond). Owing to the fact that FGM is sanctioned by culture (albeit abusive ones), intervention to end its practice has often been fruitless and counterproductive, arousing debates about ‘cultural relativism’ and ‘universalism’. In an effort to find better alternatives, I have researched scholarly journals, international human rights law instruments and other literature on the topic. In this Article I propose that mothers who procure the cuttings for their daughters, and the women who perform them, be treated as victims rather than perpetrators. I thus recommend that African states abandon criminal punishment as a response to FGM and focus their resources towards sensitisation campaigns. Inspired by the Tostan model and the campaign against the now extinct Chinese foot binding practice, such campaigns will be meaningful if they are culturally sensitive and adopt a holistic approach to women’s human rights. FGM can be abandoned only if its victims are empowered enough to reflect on their social conditions and be the primary agents of their social transformation.

I. INTRODUCTION

Female genital mutilation (hereafter FGM) remains an issue of concern in many parts of Africa. It is deemed a rite of passage and an aspect of culture in practicing communities.¹ Yet, it has come to be considered by international bodies as an affront to women’s human rights.² This has aroused debates about

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² ‘Female Genital Mutilation’ (World Health Organization)
cultural relativism and universalism as they relate to international human rights. Like any other human rights violation, FGM cuts across national borders and this requires that everyone in the human family undertakes to play a role in ending its practice.

This Article builds on research by academics and other experts in the field of FGM in an attempt to develop a better human rights approach, which can be invoked in the campaign to end the practice. In this Article I argue that mothers who procure genital cutting for their daughters, and the women who perform such cuttings, are victims rather than perpetrators. I then propose that African states move their focus away from criminal punishment as a response to FGM and instead channel their resources towards supporting programmes that are devoted to sensitising communities on the broader issues of human rights. Such sensitisation should respect practicing communities’ cultural values and empower women to reflect on their social conditions, which will turn them into agents of their own social transformation.

The first part of this Article reopens the debate between cultural relativism and universalism and offers an overview of FGM, including the rationale behind the practice, as well as the legal frameworks that provide legitimacy for intervention. The second part of this Article points out the problems with the current approaches taken by African states in addressing FGM, while proposing alternatives drawn from the experiences of Tostan\(^3\) and lessons from the campaign to end foot binding in China.

II. RELATIVISM v UNIVERSALISM: DEBATE

Proponents of FGM point to cultural relativism\(^4\) as an argument for non-intervention. Sandra Lane and Robert Rubinstein, for example, posit that cultural values differ in that each value has its own meaning, and therefore should be understood in its own context.\(^5\) Anti-FGM advocacy need not seek to
establish whether FGM-practising cultures are good or bad. Some of its adherents may claim to draw benefits while many outsiders see only a violation of human rights.\(^6\) Rather, I believe the real debate is about who has the legitimacy to make such a judgment and, as a result, to speak on behalf of the victims. Afua Twum-Danso Imoh links human rights to globalisation, implying that human rights judgments can be made on local and global scales. She concludes that ‘the reality of people’s lives shows that they live their lives at the crossroads of culture and global standards, leading to a situation whereby the outlook of many communities incorporates both local and global values’.\(^7\)

Rising interconnectedness between people around the world, and the resulting discovery of foreign cultures, may lead to the inevitable tendency to make ethnocentric value judgments.\(^8\) Carlos D Londono Sulkin warns of the harmful human potential to overlook personal biases when evaluating foreign cultures.

Without some ironic awareness that our preference and convictions, even if we are willing to fight for them, are a function of the contingencies of our biographies, our causes can become coarse battering rams with no consideration for different points of view or room for subtlety, and may therefore start perpetuating our own cruelties.\(^9\)

Universalists, on the other hand, argue that ‘moral judgments would seem to be essentially universal’.\(^10\) Regardless of which perspective anti-FGM advocates take when formulating intervention tactics, there is a need to grasp FGM’s cultural underpinnings so as to sensitively negotiate a solution for its abandonment. Richard Shweder has suggested that interventionists construct a ‘synoptic account of the inside point of view, from the perspective of those many African women for whom such practices seem both normal and

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\(^6\) For the Kono people of Sierra Leone, for example, a woman who has had excision of the genitalia is ‘admirable, informed, courageous, capable of dealing with pain, mature, and womanly’. See Sulkin (n 1) 18. Elsewhere, such as in Sudan, excision of the female genitalia entails ‘getting married, pleasing a husband, and having children’. See Ellen Gruenbaum, ‘The Cultural Debate Over Female Circumcision: The Sudanese Are Arguing This One Out for Themselves’ (1996) 10(4) Medical Anthropology Quarterly 455.

\(^7\) Afua Twum-Danso Imoh ‘Rites vs Rights: Female Genital Cutting at the Crossroads of Local Values and Global Norms’ (2013) 56(1) International Social Work 39.

\(^8\) A person brought up in a communitarian culture — in Africa for example — may be shocked to see white people taking their aged parents into nursing homes rather than taking care of them at home.

\(^9\) Sulkin (n 1) 18.

desirable’. Ellen Gruenbaum similarly suggests that intervention would be more effective if ‘change efforts are sophisticated, culturally informed, and socially contextualized’. She argues that ‘while cultural values are indeed powerful in structuring thought and action, human actors regularly critique their backgrounds, making choices that reinterpret their cultural and religious values and add new elements’. Gruenbaum’s assertion leads to the idea that cultures do not remain stagnant; they evolve.

Writing about interventions to end other human rights abuses in Africa, Josiah Cobbah has pointed to ‘a dysfunction that plagues the imposition of Western liberalism over communal African lifestyle’. He goes on to argue that ‘we may be seeing these abuses because we are attempting too hard to make Westerners out of Africans’. Cobbah’s argument implies that it is unfair to criticise Africans for violating women and children’s rights so long as such violations are sanctioned by their culture. However, this author believes that no human rights violation can ever be justified by claims of cultural relativism. Inflicting unnecessary pain on an unwilling individual amounts to an abuse of human rights. By the same token, to say that ‘human rights are universal’ is to simply demand that everybody be treated equally — with dignity — regardless of who they are.

Ann-Belinda S Preis has argued that ‘[h]uman rights have become “universalized” as values subject to interpretation, negotiation, and accommodation. They have become “culture”’. Preis goes on to suggest that ‘culture must not be viewed as an externalized impediment to the struggle towards human rights, but an integral part of the struggle itself’. Indeed, any meaningful anti-FGM intervention will have to be informed by the debates about the cultural claims around which FGM takes place, so as to design intervention approaches which are culturally sensitive.

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12 Ellen Gruenbaum, ‘Socio-Cultural Dynamics of Female Genital Cutting: Research Findings, Gaps, and Directions’ (2005) 7(5) Culture, Health & Sexuality 429.
13 ibid 430.
18 ibid 296.
Victims of FGM might not regard themselves as such, as they are socialised into believing that genital mutilation is mandatory for a variety of reasons defined by their particular society. Yet, this does not exclude the fact that they are indeed victims of social injustice, of which FGM is a part. Some women may be aware of the adverse health consequences associated with FGM but at the same time ‘deem the practice to have positive and even necessary effects as far as maturation, health, bodily comfort, and beauty are concerned’. No one should claim to possess the legitimacy to set the standard for beauty, and as Shweder has warned, we should not assume that ‘our perceptions of beauty and disfigurement are universal’. Thus, the debate should not be one that seeks to determine the rationality of the perceived benefits of FGM, as this may result in endless debates about cultural relativism, about what the standards for benefit are within individual cultures. Rather, the debate should be about the nature of the political and socioeconomic forces which facilitate and perpetuate the practice.

Victims are forced to undergo genital cuttings due to societal norms. Abdullahi Osman El-Tom has argued that ‘[o]ne could be forgiven for concluding that Female Cutting is designed by men not only to subjugate and humiliate women, but equally to satisfy some bizarre and sadistic aptitude for sexual pleasure’. Amede Obiora thinks otherwise. She suggests that:

Instead of being subject to a monolithic regime of patriarchs, it may well be that African women resort to female genital circumcision to create notions of womanhood adept for their peculiar conditions of existence.

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19 In Sierra Leone, for example, FGM/C is explicitly a sacrifice for the fertility both of the individual and the community. FGM is undergone to eliminate the ambiguity of gender identity; initiation is the occasion for the social/cultural construction of male and female genders. FGM/C is believed to ensure that women will desire conjugal relations over masturbation, and thus guarantee reproduction. It is often believed that an un-cut woman will not bear live or healthy children and is often ‘required’ if a girl is to be marriageable. See more at [http://www.refugeelegalaidinformation.org/female-genital-mutilation].
20 Sulkin (n 1) 18.
21 Shweder (n 11) 216.
22 Abdullahi Osman El-Tom, ‘Female Circumcision and Ethnic Identification in Sudan With Special Reference to the Berti of Darfur’ (1998) 46(2) Geojournal 166.
El-Tom’s statement is not without merit, although he might be too extreme in suggesting that FGM is designed by men, given the fact that the custom is ‘typically controlled and managed by women’.24

In order to assess the merits of El-Tom and Obiora’s opposing statements, it is vital that we answer the following two questions: what is (are) the rationale(s) behind FGM and who are its real beneficiaries? Answers to these enquiries will be found in the next Section, which opens with a review of the scope of FGM in Africa and closes with a discussion about FGM-related health and other complications.

III. OVERVIEW OF FGM (IN AFRICA)

3.1 Scope of the Problem

FGM is prevalent in the west, east, north and north-eastern regions of Africa, as well as in some parts of Asia and the Middle East and additionally among some immigrant communities from these regions in Western countries.25 According to the World Health Organization (WHO), more than 125 million girls and women alive today have undergone FGM in the 29 countries where the practice is prevalent,26 27 of the countries being African.27 A common element of the practice is the environment in which it is performed. According to International Refugee Rights Initiative, an Oxford, UK-based international non-profit organisation, ‘[i]t is unlikley that anesthetics or antiseptics are used, as enduring pain is considered integral to the meaning of the ritual’.28 Instruments such as ‘knives, scissors, and pieces of glass or razor blades’ are used to ‘circumcise’ the victims.29

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28 ‘Female Genital Mutilation: Grounds for Seeking Asylum’ (n 25).
29 ibid.
The term ‘female genital mutilation’ is said to have been first coined by Fran Hosken, an American writer, feminist and author of *The Hosken Report: Genital and Sexual Mutilation of Females* (1979). The practice is believed to predate the introduction of the three major religions (Judaism, Christianity and Islam) in Africa and could be as old as 4,000 to 5,000 years. FGM varies in type and prevalence from one country and culture to another and is performed on victims at ages ranging from infancy to adulthood. African countries with the highest rates of prevalence are reportedly Somalia (98%), Guinea (96%), Djibouti (93%), Egypt (91%), Sierra Leone (91%), Eritrea (89%), Sudan (89%) and Mali (85%). Countries such as Kenya, Côte d’Ivoire and Ghana, where ‘[e]thnicity or cultural group is the best predictor of circumcision’, have relatively lower rates (50%, 43% and 30%, respectively).

As is the case with prevalence, the mode of operation, or the extent of tissue removed from the victims’ genitalia, varies from one procedure to the other, creating four categories as recognised by the WHO.

- **Clitoridectomy:** partial or total removal of the clitoris and, in very rare cases, only the prepuce.

- **Excision:** partial or total removal of the clitoris and the labia minora, with or without removal of the labia majora.

- **Infibulation:** narrowing of the vaginal opening through the creation of a covering seal, which is formed by cutting and repositioning the inner, or outer, labia, with or without removal of the clitoris.

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31 El-Tom (n 22) 163.

32 ‘Seven Things to Know About Female Genital Surgeries in Africa’ (n 24) 21.

33 Shweder (n 11) 2016—17.

34 ibid.


36 The removal of the prepuce of the clitoris is also referred to as ‘sunna’. It is practiced mainly by the Zabarma of Sudan, who regard it as a milder form of FGM. As the name ‘sunna’ implies, this form of FGM appears acceptable in Islam. See Ellen Gruenbaum (n 6) 458.

37 This type of procedure is also referred to as ‘pharaonic circumcision’ and is common among the Kenana of Sudan, for example. See Gruenbaum (n 6) 458.
Other: all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterising the genital area.\textsuperscript{38}

Schweder has deplored the amount of publicity that ‘infibulation’ has received in the ‘anti-FGM literature’ even though it is not typical in most ethnic or cultural groups and accounts for only 15 per cent of all cases.\textsuperscript{39} Other commentators, such as Rebecca Cook, have voiced their concerns regarding the choice of terms used to describe FGM in general. Cook’s concern may be an attempt to denounce the generic nature of the term ‘mutilation’, given variations in types of cuttings and amount of tissue removed during the aforementioned procedures.\textsuperscript{40}

Others, such as Carla Obermeyer, Sandra Lane and Robert Rubinstein, find the term ‘circumcision’ to be inappropriate. They argue (and rightly so) that the term ‘circumcision’ implies an analogy between female and male circumcision, when the former involves removal of much more ‘anatomical structures’.\textsuperscript{41} This is more so in cases involving excision and infibulation. Christine Walley sees a ‘relativistic tolerance’ in the term ‘circumcision’ and ‘moral outrage’ in the term ‘mutilation’.\textsuperscript{42} Although Obermeyer regards the term ‘mutilation’ as an effort to ‘capture the extent of the operations’ and to maximise their ‘dramatic impact’, he deplores what he sees as an implied ‘value judgement’ about the intent of its practitioners that is implicit when using the term mutilation to describe the practice.\textsuperscript{43}

From these discussions, it becomes evident that the WHO’s classification of the procedures as described earlier, under one rubric of ‘FGM’, is problematic. The grouping under one term fails to account for variations both in the extent and gravity of the cuttings and the motivations behind the practice, as we will see in the next Section. In an effort to find an appropriate language — one which accounts for the cultural sensitivities around this topic without losing touch

\textsuperscript{39} Shweder (11) 218.
\textsuperscript{40} Cook (n 35) 7.
\textsuperscript{41} Carla Makhlof Obermeyer, ‘Female Genital Surgeries: The Known, the Unknown, and the Unknowable’ (1999) 13(1) Medical Anthropology Quarterly 84. See also Lane and Rubinstein (n 5) 35.
\textsuperscript{43} Obermeyer (n 41) 84.
with the victims’ physical and emotional pain — I will use a more objective term, ‘female genital cutting’, for the rest of this Article.

3.2 Rationale Behind FGC

We have seen that FGC varies in extent from one cultural/ethnic group to another. The same can be said about the meaning and motives behind the practice. Alison Slack suggests that a ‘society’s cultural, traditional, historical, economic, and religious background’ are determinants of the meaning and motives for the practice. An understanding of and a thorough reflection on the rationale behind FGC will enable change-makers to grasp the real forces behind the practice. This will in turn help us to devise efficient ways to interact with the locals in an attempt to reach a consensus on ways to end it.

Although FGC is believed to predate both Christianity and Islam in Africa, conformity to religious beliefs, especially those tied to Islam, appears in the literature as one of the rationales. Eugenie Anne Gifford, for example, has argued that ‘The strict demands of chastity and sexual repression imposed by Islamic tradition certainly contribute to the perpetuation of the custom’. Another explanation is based on the idea of a possible agreement between African societies and both the Koran and the Bible on the necessity of certain values, among them ‘virginity’ and ‘modesty’. However, given the fact that many non-practicing communities also adhere to Christianity or Islam, religion cannot possibly be the explanation behind the practice. Although it could be a motivation, religion has proven to be a weaker claim compared to other rationales, which have featured in many discussions about the topic. Anti-FGC advocates could thus tailor their message around religion as one of the ways to dissuade people from the practice.

Other possible explanations suggest that FGC is not just a religious requirement, but also a practice that is beneficial to its victims. For example, for

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44 The term cutting seems objective. Rather than mutilation, it does not imply a value judgment.
45 ‘Seven Things to Know About Female Genital Surgeries in Africa’ (n 24) 21.
47 ibid 445–46.
48 Note, however, that many researchers have argued that the Koran does not specifically recommend female genital cutting, and that any connection between the practice and Islam is just implied by adherents of the practice. See for example, Abdullahi Osman El-Tom (n 22) 164.
Kono women and men of Sierra Leone, cut female genitalia are cleaner and nicer looking. The Kono believe that FGC is a source of admiration, courage, maturity and awareness for women.\textsuperscript{51} El-Tom reports that for the Berti of Darfur (Sudan), cut female genitalia are synonymous with fertility, cleanliness, beauty and are considered ‘sweet-smelling’, among other positive things.\textsuperscript{52} These perceptions might not necessarily be real but they are couched in cultural beliefs. Therefore, any effort to end FGC would necessitate negotiations with adherents of the practice in ways that are respectful and mindful of these beliefs.

However, although the aforementioned rationales imply that FGC is beneficial to its victims, other popular reasons for the practice epitomise a lingering system of gender discrimination. The most common of such rationales include ‘marriageability’ and female chastity.\textsuperscript{53} These two notions are closely tied to issues of honour.\textsuperscript{54} In FGC practicing societies, ‘honour’ entails control of women’s sexuality, for such reasons as the belief that ‘[i]f not properly channelled, female sexuality is the greatest possible source of disgrace to both the immediate family and tribe’.\textsuperscript{55} Therefore, ‘circumcision’ as FGC is believed to be, is perceived as ‘a way to prevent social shame for the family that might come if an unmarried teenage daughter has sexual relations’.\textsuperscript{56} This is evidence of gender discrimination — a form of violence against women — as a teenage male’s sexuality is not regarded with the same level of scrutiny. As Cook has pointed out, in these societies ‘female purity, exhibited in the virginity of brides and fidelity of wives’ is a cultural requirement, whereas men’s pre-marital or extra-marital sexual relationships are tolerated and even praised as ‘sexual adventure’.\textsuperscript{57}

FGC is a rite of passage and an important cultural practice for many of its victims. When asked about the rationale behind the practice, many such victims have no answer other than ‘the continuation of their tradition’.\textsuperscript{58} For the victims, getting their daughters ‘circumcised’ is an expression of love and care and a mark of ‘cultural identity’.\textsuperscript{59} Yet, these beliefs hide an ugly and oppressive system of discrimination against women.

\textsuperscript{51} Sulkin (n 1) 18.
\textsuperscript{52} El-Tom (n 22) 163—64.
\textsuperscript{53} ibid.
\textsuperscript{54} Lane and Rubinstein (n 5) 34.
\textsuperscript{55} Walley (n 42) 414.
\textsuperscript{56} V Berggren and others, ‘Being Victims or Beneficiaries? Perspectives on Female Genital Cutting and Reinhibition in Sudan’ (2006) 10(2) African Journal of Reproductive Health 29.
\textsuperscript{57} Cook (n 35) 9.
\textsuperscript{58} Slack (n 46) 448.
\textsuperscript{59} Imoh (n 7) 40.
Some commentators have argued that:

Although the maintenance of a group’s cultural identity and the promotion of social and political cohesion are legitimate objectives, the right to belong — to contribute to and participate in one’s community as a full member — should not be conditioned on a practice of human suffering.60

The idea of ‘human suffering’ inherent in FGC, as epitomised by the gruesome pain which the victims are made to endure,61 defies all claims of cultural relativism. Gruesome physical pain cannot be said to be relative, and no one should be unnecessarily made to endure it under any circumstance, including cultural obligations.

That the practice is mainly controlled and managed by women,62 even those belonging to matrilineal societies, such as the Kono of Sierra Leone,63 does not preclude these same women from being victims. Gruenbaum challenges us to deeply examine the practice of FGC and identify its beneficiaries. This, in turn, would enable us to channel our resistance towards the right audience.64 There is little doubt, in my opinion, that FGC is but one of the many manifestations of a system of male privilege. Such a system suggests that it is the responsibility of girls and women to be guardians of family honour, to endure the gruesome pain of infibulation, for example, in order to satisfy their future husbands’ sexual desires, even at the cost of jeopardising their health.

3.3 Health and Other Concerns

In addition to enduring physical and psychological pain,65 victims of FGC are also prone to health complications, both immediate and long-term.66 Among the most cited immediate risks are ‘shock, bleeding, bacterial infection, urine

60 Simms (n 50) 1950.
61 We have seen earlier that these procedures are conducted without anesthesia in the majority of cases, thus implying that the victims are subjected to gruesome pain.
62 ‘Seven Things to Know About Female Genital Surgeries’ (n 24) 23.
63 Shweder (n 11) 217.
64 Gruenbaum (n 6) 460—61.
66 ‘Female Genital Mutilation’ (n 2).
retention, open sores in the genital region, and injury to nearby genital tissue’. However, more severe immediate consequences can occur considering the manner in which the cuttings are carried out. Karungari Kiragu was on point when she argued that ‘the proficiency of the circumciser, the bluntness of the instruments, and the struggles of the young girl during the operation’ could lead to even more severe consequences, including death. One could also argue that the more extreme the operation, the more dangerous it could be in terms of immediate and long-term health repercussions. Long-term health consequences, especially in cases of infibulation, include ‘formation of scar tissue, keloids, and cysts around the wound and stitch line, and pain during urination’.

Other problems include difficulty and pain during sexual intercourse and child birth. The more extreme cases of child birth difficulties include ‘[the necessity for] caesarian sections, incision into the perineum, excessive blood loss, and resuscitation for the new-born baby’. Without proper precautions, there is a risk of HIV transmission, especially if the same instrument is used on many ‘initiates’. These findings were confirmed by various studies, including one conducted by the WHO in six African nations. Nevertheless, there is a substantial amount of research that either minimises these risks or denies them altogether. For example, referring to health and other related problems, Sulkin has argued that ‘a body of clinical and ethnographic research does not support this, and questions the scientific rigor of the admittedly enormous literature that does support it’. Furthermore, a study conducted in The Gambia found

67 Anna Winterbottom, Jonneke Koomen and Gemma Burford, ‘Female Genital Cutting: Cultural Rights and Rites of Defiance in Northern Tanzania’ (2009) 52(1) African Studies Review 59. See also ‘Female Genital Mutilation’ (n 2).
68 Karungari Kiragu, ‘Female Genital Mutilation: A Reproductive Health Concern’ (Population Reports, Meeting the Needs of Young Adults, Series J, No 41, Vol XXIII, No 3, 1995).
69 Infibulation and excision are the most severe types of cutting.
Kiragu (n 68) 2.
74 Sulkin (n 1) 18.
'little evidence of any difference in infertility between cut and uncut women'.\textsuperscript{76} Some commentators have pointed out ‘cigarette smoking during pregnancy’\textsuperscript{77} and other pressing issues affecting most African women, such as malaria and diarrhoea,\textsuperscript{78} as being more dangerous than FGC. Unlike undergoing FGC, pregnant women are not coerced into smoking, and malaria and diarrhoea can be unavoidable in some living conditions in Africa. Cigarette smoking and said diseases are a cause for concern but this does not justify inaction regarding FGC, which can be avoided as it is both unnecessary and potentially harmful to women’s health.

Pointing out the immediate and long-term health and other related risks does not amount to suggesting that all instances of FGC lead to adverse health consequences. Rather, it is an effort to highlight the possibility of said risks, so as to allow the concerned women, who might not be aware of these consequences,\textsuperscript{79} to make informed choices regarding their daughters’ wellbeing. Moreover, the bulk of the reported research findings that appear to refute the possibility of FGC-related health problems simply minimise them. Advocating FGC abandonment does not require showing that all cases result in adverse health consequences or deaths. This would be an exaggeration, and therefore counter-productive.\textsuperscript{80} However minimal health issues caused by FGC may be, they are a cause for concern, and worthy of consideration because they can be avoided simply by abandoning the practice.

Despite the lack of agreement in research findings regarding long-term FGC-related health complications, there is no denying the agony that the victims are subjected to during the cuttings. The same can be said about the pain that infibulated women have to endure during ‘di-infibulation’ and ‘re-infibulation’ at and after childbirth.\textsuperscript{81} Moreover, reports of post-traumatic stress disorder\textsuperscript{82} only reaffirm the anguish inherent in the practice. Thus, FGC is part and parcel of gender-based violence, which is an affront to human rights. The next Section explores the various ways in which international human rights law can be invoked as a rationale to advocate FGC abandonment in Africa.

\textsuperscript{76} Morison and others (n 65) 651.
\textsuperscript{77} Quoted in ‘Seven Things to Know About Female Genital Surgeries in Africa’ (n 24) (as cited in Conroy, ‘Female Genital Mutilation’).
\textsuperscript{78} Gruenbaum (n 6) 460.
\textsuperscript{79} Simms (n 50) 1948.
\textsuperscript{80} Morison and others (n 65) 652.
\textsuperscript{81} Okonofua (n 74) 7.
\textsuperscript{82} Alice Behrendt and Steffen Moritz, Posttraumatic Stress Disorder and Memory Problems after Female Genital Mutilation’ (2005) 162(5) American Journal of Psychiatry 1001.
IV. LEGAL FRAMEWORK

International law should not be invoked in a confrontational manner against the mothers who procure the cuttings for their daughters or the women who perform the said cuttings. Rather, it should be used as a safeguard for women’s human rights by stimulating dialogue geared towards behavioural change. This Section discusses three particular human rights provisions, which can be invoked as legal ground for advocating FGC abandonment in Africa.

4.1 Protection Against Cruel, Inhuman or Degrading Treatment

Unnecessary infliction of cruel, inhuman or degrading treatment on any individual is prohibited under international human rights law. Given the circumstances in which FGC is carried out, there is no doubt that it violates the above-mentioned provision. Nonetheless, the said provision should not be restricted to the typical method of genital cutting (one with no access to a health specialist). To suggest otherwise would amount to making a case for the medicalisation of FGC, which, as the WHO warns, ‘would obscure its human rights aspects’. Rather, the aforementioned provision pertains to FGC in and of itself.

Mothers do not get their daughters’ genitalia altered out of cruelty or lack of concern. Arguably, they do so with their mistaken perception of what is their daughters’ best interest. Nevertheless, this does not exclude the fact that FGC constitutes a cruel and degrading treatment which has for far too long been sustained by a belief system which subjugates women.

As we have seen earlier, the practice is mostly performed on young girls who by law are not capable of giving consent, especially for such an unnecessary and life-changing procedure. The Convention on the Rights of the Child (CRC) condemns FGC in unequivocal terms. Article 37(a) prohibits all forms of torture and inhuman or degrading treatment directed against children and tasks States Parties to take all necessary steps to abolish ‘traditional practices prejudicial to the health of children’. This is a very important provision; it refutes all claims generally used to support FGC, such as the right to practice culture and the right of parents to decide what is good for their children. So

83 ICCPR (n 15).
86 ibid art 24(3).
long as FGC has been proven to cause health and other psychological repercussions on its victims, its prohibition becomes an obligation under international human rights law. This, in turn, implies an obligation on African states to take the necessary steps to eliminate it.  

4.2 Right to Health

Every individual has the right to enjoy the highest attainable standard of health. States Parties to the International Covenant on Economic, Social and Cultural Rights (ESCR), for example, must recognise this right, which is also explicitly confirmed under the CRC. Due to the proven health and psychological complications associated with its practice, FGC risks the capacity for girls and women to fully enjoy their right to health.

Although not all cases of FGC actually result in health complications, the primary purpose of ‘the right to health’ is to ensure that measures are put in place to allow everyone to enjoy it. It is not a right to be enjoyed as an after-effect but one that necessitates proactive protection measures. Therefore, African states must ensure that all necessary measures are in place so as to enable every individual to live in good health. FGC, as we have seen, can cause health problems, which in turn hinders the ability of its victims to realise their right to health. Consequently, it must be prohibited.

4.3 Protection Against Discrimination

FGC is one among the many manifestations of gender discrimination in Africa. Change will require a holistic approach — one that aims to raise awareness among women and girls about their right to protection against all forms of discrimination. For example, girls are expected to remain virgins, and are subjected to infibulation, to guarantee marriageability. Women’s sexual activities, either before or outside of marriage, are not tolerated in the name of family honour — norms which are not equally imposed on men.

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87 Other relevant human rights instruments include Article 5 of the Universal Declaration of Human Rights and Article 5 of the African Charter on Human and People’s Rights.
89 Convention on the Rights of the Child (n 85) art 24.
90 Other manifestations of gender discrimination may include issues such as child marriage, economic rights, lack of access to education for the girl child, and preferential treatment of boys to the detriment of their girls counterparts.
FGC runs counter to various international human rights standards that prohibit discrimination based on any ground, including sex. The African Charter on Human and People’s Rights (ACHPR) requires States Parties to ‘ensure elimination of every discrimination against women and children and to ensure their rights in accordance with international declarations and conventions’.91 Furthermore, the International Covenant on Civil and Political Rights (ICCPR) prohibits discrimination based on any ground, including sex.92 The Committee on the Elimination of Discrimination Against Women (CEDAW) also condemns all forms of discrimination against women and requires States to ‘take appropriate measures to eliminate discrimination against women by any person, organization, or enterprise’.93

The above-mentioned international regulations stress punishment as a response to FGC. Nevertheless, in my view, the human rights approach for FGC abandonment must be undertaken differently from punishment. Such an approach should not use confrontation against those who bear responsibility for the practice. Rather, it should elicit debate — grounded on women and children’s rights — about any practices that hinder women’s and girls’ ability to enjoy their basic rights as equal members of society. This will necessitate collaboration with local stakeholders, keeping in mind their interests, in order to negotiate better ways to enable women to fully enjoy their rights.

Indeed, a better understanding of and respect for local peoples’ cultural values will be necessary to co-opt influential community members who can use their influence to elicit large-scale behavioural change. This will also be necessary in order to lend legitimacy to the campaign and to generate trust among community members, who will be the primary architects of change, as will be demonstrated later in this Article. However, as the next Section will show, this has not been the approach taken by African states when intervening to end FGC.

V. ELIMINATING FGC – CURRENT APPROACHES

5.1 How the Issues Are Currently Framed

Efforts by international bodies to end FGC, although noble endeavours, have been neither successful nor mindful of practicing communities’ values and

92 ICCPR (n 15) art 26.
beliefs. This can be seen, for example, in the way international bodies describe FGC. Labels such as ‘harmful traditional practices’⁹⁴ are scientifically correct in that they capture the extent of the harm inherent in FGC. Yet, they may be perceived as both accusatory and judgmental. They underscore a knowledge gap at the top-level of international bodies about the complex socioeconomic forces surrounding FGC in practicing communities.

Neil Ford captures the extent of said knowledge gap when he argues that all of the approaches have been designed by experts from outside the communities affected, with ‘little input or support’ from locals. He goes on to acknowledge that ‘[a] new way to communicate with locals is necessary if large-scale change is to occur’.⁹⁵ I share Ford’s concern in the sense that while ‘outsiders’ may be vested with the power to decide what course of action to pursue on important issues of international concern, consensus reached through genuine dialogue with all stakeholders, rather than coercion, is necessary for any change in norms to come about or a change in practice to be implemented in an efficient way.

This does not mean that every decision imposed at the community level by high-level international bodies is necessarily bad or poised to arouse resistance. No matter how important intervention on an issue might be, if it is not properly perceived in the context where the change is desired, it can arouse suspicions of ‘cultural imperialism’⁹⁶ among the intended beneficiaries. This could in turn lead to stiff resistance and it could damage an otherwise well-intended initiative.

Over-emphasis of health issues is another unproductive tactic adopted by international bodies.⁹⁷ Linda Morison and her colleagues argue that:

Advocacy against female genital cutting based on damaging health consequences is less controversial in most practicing communities than an approach based on human rights.⁹⁸

This assertion gives a wrong impression that health and human rights are not related, but its meaning is important for our purpose. The authors suggest

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⁹⁵ ibid 183.
⁹⁸ Morison and others (n 65) 651.
using health messages in a tone that does not undermine practicing communities’ cultural values but instead in one that simply helps them to become aware of the facts about FGC in relation to long-term health.

Writing from the point of view of the Sudanese anti-FGC experience, El-Tom warns that over-emphasis on health messages may reduce FGC to a ‘mere set of negative health-related outcomes’.99 This is a thought-provoking argument in that although ‘[o]ne case of health complications resulting from FGC is enough to justify advocacy to end the practice’, health concerns should not be at the core of the campaign. Emphasis on health messages may obscure the real issues — factors which drive FGC — mainly discrimination against women in all spheres of life.

Women must be empowered to understand that FGC is part and parcel of a discriminatory system. Without such an empowerment, they will continue to balance the negative consequences of FGC against the sociocultural benefits they mistakenly perceive themselves to be gaining from it.100 Framing anti-FGC efforts in terms of health issues may not convince mothers — who have themselves undergone FGC — to abandon a cultural practice that has survived for generations. I do not mean to minimise the importance of raising awareness about the potential health dangers of FGC. However, that tactic could work better when women are able to make a connection between FGC and their human rights.

5.2 States’ Responses: Legislation

In 2003 the Inter-African Committee (IAC) declared the 6th of February ‘Zero Tolerance Day’ on FGC. After a conference in Addis Ababa, it appealed to heads of state and their wives to ‘eradicate all forms of harmful traditional practices and adopt a zero tolerance policy on FGM’.101 This kind of rhetoric is not only confrontational, but may be seen as insensitive to practicing communities’ cultural beliefs.

Unlike other human rights violations, FGC is widely accepted and supported by practicing communities. Laws that seek to criminalise its practice run the risk of producing unintended results. Such laws are prone to being perceived as

99 El-Tom (n 22) 169.
attacks on cultural values, which can in turn arouse feelings of resentment. Furthermore, as some commentators in Ghana and Senegal have argued, such laws may force the practice ‘underground’,\(^{102}\) meaning that mothers may resort to procuring the cuttings on their infant babies, rather than waiting until early puberty, as is often the case.\(^{103}\) Gerry Mackie argues that:

[C]riminal law works because thieves and murderers are a minority of the population that the state can afford to pursue with the cooperation of the majority of the population. It is not possible to criminalise an entire population without the methods of mass terror.\(^{104}\)

African states will face difficulties in enforcing anti-FGC laws, due to the wide support that the practice still commands. Furthermore, anti-FGC laws will also fail to achieve their intended goal of abandonment. Criminal laws are not meant to end crime, although this is the wish of many people in society. They may only serve the purpose of deterrence by holding perpetrators to account for their unlawful actions. Conversely, anti-FGC laws are enacted with the intended goal of abandoning the practice altogether. So long as the practice is still widely supported within communities, all that law can achieve is criminalisation without reaching full abandonment.

Gunning has expressed concern about the legitimacy of anti-FGC laws. She inquired whether ‘They are representative of multicultural views or shared values, such that right and wrong assessments are not externally imposed’. Additionally, she goes on to question whether ‘The traditional weapon of law, punishment and forced change, can be consistent with mutual respect’.\(^{105}\) Governments must adopt culturally sensitive approaches when engaging practicing communities. Otherwise, anti-FGC laws will be perceived as ‘imposed law’, not enacted for the benefit of society, as is the case with other criminal laws. Insensitive laws will be seen as ‘violence to existing systems of beliefs, cultural norms, or established modes of behavior’.\(^{106}\)


\(^{103}\) Rosemarie Skaine, Female Genital Mutilation: Legal, Cultural, and Medical Issues (McFarland 2005) 62.

\(^{104}\) Gerry Mackie, ‘Female Genital Cutting: The Beginning of the End’ in Bettina Shell-Duncan and Ylva Hernlund (eds), Female ‘Circumcision’ in Africa: Culture, Controversy, and Change (Lynne Rienner Publishers 2000) 278.

\(^{105}\) Gunning (n 97) 227.

International law and state legislation banning FGC may lend legitimacy to the work of anti-FGC campaigners at the community level. Nonetheless, criminal law, with its traditional purpose of punishing undesired behaviour, is not an appropriate way to end FGC. Sensitising communities using human rights claims crafted in a culturally sensitive language, along with highlighting FGC’s long-term health consequences, will yield better results. As we have seen earlier, criminalisation may drive the practice underground; and, as the next Section will reveal, enforcing anti-FGC laws could prove challenging.

5.3 Challenges with Anti-FGC Laws

Most, if not all, of the African countries where FGC is prevalent may have human rights records that are less desirable. Hence, imposing criminal sanctions on FGC practitioners could exacerbate abuses by state actors against the women who are already victims. If anything, the role of states should be to accompany the efforts of the various non-profit organisations, not only with funds, but most importantly by setting the agenda — bringing the anti-FGC campaign to the public, so as to give it visibility.

Anti-FGC laws in many African states are not only ill-suited for their purpose, they are also weak in many respects. Firstly, they are not uniform. Countries differ in the way their laws ban the practice, or, in some situations, there are simply no such laws. For example, although in many countries the practice is illegal under any circumstances (whether performed on minors or adults, by medical personnel or not), in Mauritania, the practice is illegal only when performed outside government health facilities. Kenya and Tanzania prohibit FGC only when performed on minors, and The Gambia has no anti-FGC laws at all, although President Yahya Jammeh recently announced in November 2015 that he would ban the practice.

The difference in laws between countries is an issue of concern given the fact that most of the countries with reported FGC prevalence are bound geographically. Consequently, people might simply take advantage of the ease

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107 The Tostan model, as will be shown later in this Article, provides an example of anti-FGC campaign at community level.
108 Hernlund and Shell-Duncan (n 101) 40.
109 ibid.
or absence of anti-FGC laws in neighbouring countries and cross borders to have the procedure performed without worrying about breaking the law.112 States within the same region should thus harmonise their laws so as to avoid cross-border practice.

Secondly, lack of infrastructure to implement laws, coupled with the failure of African governments to devote resources towards FGC abandonment, is another issue of concern. For example, it is reported that Tanzanian law enforcement agents lack the necessary mechanisms to deal with victims seeking protection. As a result, they simply return the victims to their families, where they face increased risks of reprisals, including early, forced marriage.113 Consequently, victims are reluctant to report violations to the relevant authorities.114 The problem could be worse considering the fact that the vast majority of FGC cases occur in rural areas, where many African states lack the ability to penetrate and exert their traditional role of maintaining law and order. This may be due to many factors, including inaccessibility caused by lack of adequate roads, instability or even lack of resources. Furthermore, with no proper sensitisation, anti-FGC laws might lack the support of law enforcement officers in rural areas, when they themselves belong to FGC practicing cultures.115

In light of these discussions, the case for invoking human rights law, not with the usual aim of holding perpetrators to account, but for advocacy that takes into consideration the cultural sensitivities around FGC, becomes stronger. The next Section explores possible alternatives to the criminal law model, making a case for a change of approach in all African countries with anti-FGC laws.

VI. ALTERNATIVE APPROACHES TO ELIMINATING FGC

6.1 The Tostan Model

The approach developed by Tostan, an international non-profit organisation based in Senegal, should be considered as an alternative to criminalisation in efforts to end FGC in Africa, even in countries with no reported cases. Tostan’s approach is based on education as a tool to enable participants to become aware

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112 In 2011, Kenya enacted an anti-female genital cutting law with the effect of punishing procedures performed extra-territorially. See Bettina Shell-Duncan and others (n 110) 812.
113 Winterbottom and others (n 67) 56.
115 Mottin-Sylla and Palmieri (n 114).
of their human rights.\textsuperscript{116} Said education does not focus solely on ending FGC but takes a holistic approach that seeks to empower women to reflect on various pressing socioeconomic issues. Tostan’s Community Empowerment Program (CEP) holds classes, where information is shared in a ‘non-judgmental, inclusive’ way in order to stimulate dialogue among participants, who in turn draw their own conclusions about FGC and assume leading roles in their movements for change. Tostan’s CEP encourages participants to speak with friends and family and to travel to other communities to raise awareness using their newly-acquired knowledge. This results in communities making collective decisions to end FGC, some without having directly participated in Tostan’s classes.\textsuperscript{117}

Empowering victims to become aware of their human rights will enable them to adopt measures that promote their social well-being and discard or resist practices that they deem oppressive.\textsuperscript{118} An FGC campaign which does not address other equally important, pressing social issues of interest to African women, like those I have highlighted earlier, will be less efficient. It is my firm view that African women, especially those in rural areas who may also be the most underprivileged, do not need laws that criminalise a practice that they embrace out of coercion. Rather, as with the Tostan program, they must be given tools, such as an education that enables them to understand FGC as an affront to their human rights, to liberate themselves and others, and realise their full potential.

A study conducted in Senegal in communities where the Tostan education program has been implemented has revealed progress in the reduction of child marriages, arranged marriages and domestic violence, as well as an improvement in health and the adoption of family planning.\textsuperscript{119} Progress in FGC abandonment has also been observed,\textsuperscript{120} after participants were encouraged to make public pledges to abandon the practice.\textsuperscript{121} The reported success can be attributed to the fact that participants are not coerced into abandoning the practice, but reach that decision on their own as a result of being made aware of

\textsuperscript{118} ibid.
\textsuperscript{120} Nafissatou J Diop, Amadou Moreau and Hélène Benga, ‘Evaluation of the Long-Term Impact of the TOSTAN Program on the Abandonment of FGM/C and Early Marriage: Results from a qualitative study in Senegal’ (Population Council 2008) 23.
\textsuperscript{121} ‘Tostan Community-led Development’ (n 116) 15.
their human rights through sensitisation. Cooperation on such a sensitive issue as FGC can only be achieved through strategies that are ‘context-sensitive’ and responsive to participants’ own experiences.\footnote{122} It is my view that criminal laws that seek to attack or shame FGC practitioners will only increase resentment and many do not yield their intended results.

In contrast, the Tostan model is context-sensitive and allows participants to take initiative. It should thus be explored elsewhere, as an alternative to criminalisation. Although cultures and communities differ in the types of and rationale behind FGC, the main reason behind the practice remains the same everywhere — structural oppression against women. Furthermore, FGC is only one of the many forms of abuses against women’s human rights in all practicing communities. Therefore, a program such as Tostan’s — one that has a broader impact on women’s human rights — would be suitable for a campaign to end all practices that are discriminatory to women, including FGC.

It is important to note however, that there may be cases of failure that Tostan may not necessarily publicise, for fear of discouraging donors. In-depth research in this domain is therefore warranted in order to enrich the literature on the topic. Nonetheless, the Tostan approach appears plausible and should thus be implemented elsewhere.

The now extinct Chinese custom of foot binding had parallels with FGC. As the next Section will show, it was also part of a system of structural discrimination against girls. A look at the strategies employed to end it may give anti-FGC advocates more tools for their campaign.

### 6.2 The Campaign Against Foot Binding

Foot binding was performed on girls aged between six and eight years old and consisted of bending the four smaller toes under the foot, forcing the sole to the heel and wrapping the foot in a bandage in ‘order to mold a bowed and pointed four-inch-long appendage’.\footnote{123} Like FGC, foot binding underscored structural discrimination and violence against women. Bound feet is said to have been painful and malodorous and resulted in health complications. Yet, they ensured a woman’s virtue and family honour, and were a pre-requisite for marriage.\footnote{124}

\footnote{122} ibid 16.  
\footnote{124} Mackie, ‘Female Genital Cutting: The Beginning of the End’ (n 104) 255.
Communities gradually abandoned this deeply entrenched custom, thanks to a campaign that originated from outside China in the 1800s.\textsuperscript{125} It is reported that raising awareness about the existence of other cultures that did not bind feet, and the advantages of unaltered feet compared to the disadvantages of bound ones, was key to ending foot binding.\textsuperscript{126} Mackie’s research shows that these messages were designed in Chinese cultural terms. This allowed for a necessary level of support amongst local peoples, who in turn were encouraged to make collective pledges not to bind their daughters’ feet and not to allow their sons to marry girls with bound feet.\textsuperscript{127}

As the experience of anti-foot binding campaign shows, sensitivity to the intended audience’s cultural values is essential to elicit cooperation to end an entrenched yet abusive cultural practice. Chinese women bound their daughters’ feet with the mistaken belief that the latter would enjoy the rewards associated with the practice (beauty and marriage) and avoid the ‘punishments’ that would result from having unbound feet (lack of marriageability and family dishonour). However, once said rewards and punishments were no longer relevant as a result of awareness and collective pledges, the practice was eventually abandoned. This shows that rather than criminalising women for procuring genital cutting for their daughters, the anti-FGC campaign will likely have greater effect if it focuses on eliminating the underlying socioeconomic forces that perpetuate the practice.

Most importantly, as was the case with the anti-foot binding campaign, cooperation of all community members will be key to ensuring that uncut women do not face stigma and marginalisation. As Mackie argues ‘Female genital cutting must be abandoned by enough families at once so that their daughters’ futures are secured’.\textsuperscript{128} Once the perceived rewards and punishments associated with FGC (marriageability and stigma, for example) are no longer applicable, mothers will have no incentive to risk their daughters’ health by subjecting them to the practice. However, this can only be possible if, through sensitisation, men are also taught that uncut women are ‘normal’ and encouraged to marry uncut girls.

Another important lesson that can be derived from the anti-foot binding campaign is that the movement to end FGC in Africa does not necessarily have to exclude outsiders, be they westerners or other non-practicing Africans.

\textsuperscript{125} Ann-Marie Wilson, ‘How the Methods Used to Eliminate Footbinding in China can be Employed to Eradicate Female Genital Mutilation’ (2013) 22(1) Journal of Gender Studies 17, 23.

\textsuperscript{126} ibid.

\textsuperscript{127} Mackie, ‘Ending Footbinding and Infibulation: A Convention Account’ (n 123) 1002.

\textsuperscript{128} Mackie, ‘Female Genital Cutting: The Beginning of the End’ (n 104) 255.
Rather, the campaign should encourage knowledge sharing in ways that are respectful and mindful of cultural sensitivities — a factor which will likely attract the cooperation of influential members of communities. As the next Section will show, support from such influential people will be key to ensure FCG abandonment.

6.3 The Way Forward

Intervention to end FGC represents a dilemma, especially when such intervention comes from people outside practicing communities. Given the sensitivity around it, FGC remains an issue that will be better dealt with if those involved in advocacy were respectful and considerate of practicing communities’ cultural values. One way to achieve this would be to identify the right people, among local communities, who could help to bridge the gap between campaigners and their target audience.

I have mentioned earlier that most African states may lack the ability to penetrate rural areas to enforce laws or to exercise other state functions. Consequently, a few personalities, such as tribal and religious leaders, may exert a substantial amount of authority and influence within remote communities. This gives such personalities the ability, and to some extent the authority, to influence behaviour regarding cultural practices within their respective communities. They should thus be the first targets for alliances in the campaign to sensitize community members on abandoning FGC. The influence of Demba Diawara, a Senegalese imam and village chief, on members of his community has been instrumental for Tostan’s success and provides an illustration to this proposition.129

Furthermore, women, especially the elders (including those who perform the cuttings), can be powerful allies in a campaign to end a practice they consider their private domain. They too, must be among the first people to be consulted for any sensitisation campaign to have prospects of success. Nevertheless, for some of the cutters, FGC could be a substantial source of power and income.130 They should thus be allowed to retain similar powers during the campaign, for example, by occupying leading roles, and being trained for alternative income-generating activities. In the African context, especially in rural communities,


consulting with influential people will be key in eliciting trust and lending a degree of legitimacy to the campaign. Legitimacy will come if such consultations, and the human rights claims around which they are formulated, adopt a language that is respectful of practicing communities’ cultural values.

VII. CONCLUSION

FGC constitutes a violation of women’s human rights and continues to be an issue of concern in some parts of Africa. It is a cruel, inhuman and degrading treatment and a potential cause for serious health complications. The practice plays a role in perpetuating a discriminatory system — one which has deprived girls and women of their rights to health, dignity and equal treatment.

Yet, unlike other forms of human rights abuses, which require holding the perpetrators to account, FGC would be better dealt with if treated as a special case. By this, however, I do not mean to adopt the cultural relativism argument to justify its practice. Rather, I have made the case that an effective campaign to end FGC in Africa must be wary of the fact that mothers who procure the cuttings for their daughters, and the women who perform such cuttings, are victims in their own right.

An efficient campaign to end FGC need therefore not invoke international law with the aim of further victimising the women concerned. Rather, it should seek to engage them and all other stakeholders — men, government officials and human rights advocates — in ways that are considerate of their cultural values. Inspired by the Tostan model, such a campaign would be more effective if it takes a holistic approach to women’s human rights — one which does not approach FGC as an isolated case but places it within the context of a broader systemic discrimination against women.

As with the case of the now extinct Chinese foot binding, change is possible if the campaign sensitises the majority of community members into making collective pledges to abandon FGC. Most importantly, with men’s cooperation, the perceived rewards (marriageability) and punishments (stigma and rejection) associated with FGC could be rendered irrelevant — a situation which will eventually lead to FGC abandonment. This is a process that could take up to a generation. Nevertheless, in order to set such a process in motion, African governments should start channelling their efforts away from criminalising FGC, and instead, commit to supporting those groups (such as Tostan) working towards its abandonment.
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