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Female Circumcision
A Case Study

Brian Gibson
The Pursuit of the Rule of Law within a Pluri-Legal Environment

Female Circumcision—A Case Study

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Abstract

In nations where state law is in conflict with traditional or customary law, significant issues can arise regarding the implementation of and adherence to national laws. A thorough understanding of this phenomenon within the context of legal pluralism is likely to reduce some of this conflict and provide new solutions for lawmakers as they attempt to work within a framework in which laws and customs are valued by varying degrees within the population. To explore this issue, the practice of female circumcision is examined in this research effort as a test case. The practice is prohibited by the laws of Tanzania, yet it is practiced frequently amongst many ethnic groups, including the waGogo. This research inquiry uses semi-structured interviews with thirty respondents to gain a better understanding of the justifications for the practice and to extrapolate general findings about the possible coexistence of rule of state law and the enduring quality of customary values. The literature is reviewed regarding legal pluralism, culture, the practice of female circumcision, and the waGogo. The results of the interviews are qualitatively analyzed and connected to the existing literature. Suggestions to address adherence to the state laws prohibiting female circumcision are made, leading into general suggestions regarding the pluri­legal context of rule of law and customary law. Recommendations are made for researchers, lawmakers, and policymakers to address these sorts of pluri-legal issues, including utilizing local authorities, understanding the value of community and customary rites, addressing structural issues, increasing access to resources and education, and considering local sensibilities and participation throughout all stages of the lawmaking, policymaking, and law enforcement processes as well as other interventions.

Keywords: legal pluralism, rule of law, customary law, female circumcision, waGogo, Tanzania
Chapter I

Introduction

As the world becomes increasingly globalized, the political, cultural, and social lenses of different nations and ethnic groups come into contact with one another. As a result, various daily practices and customs are likely to come under scrutiny as they are discovered and interpreted through these different lenses. What may be held as a rite of passage, entrenched custom, or strong belief of one culture or group may be interpreted as a human rights abuse or violation in another culture. One contentious area where this clash occurs is in the treatment of and behaviors toward women. State legal efforts are sometimes put into place to end such treatment, leading at best to disagreements between national law and customary law. At worst, these efforts to reconcile complex situations through diverse legal means are ineffective, culturally insensitive, or misinformed. This presents a variety of risks, including a loss of cultural sovereignty, increased resistance to state law, and potential frictions amongst the workings of a calm and peaceful society. Whether a reform or intervention effort is benign or actively harmful depends largely upon the region and jurisdiction in which such instances occur.

One area in which this phenomenon is particularly evident is the conflict over female circumcision, especially in many regions of Africa. The debate over female circumcision involves the intersection between a woman’s right to make decisions about her own body and the broader community or local group’s right to maintain its cultural or group identity through mandatory practices such as female circumcision (Smith, 1991). The notion of the validity and justiciability of certain collective or group rights has been a hotly debated topic in a number of academic and practical circles and has achieved varying degrees of acceptance. Central to this debate is how to define a “group” and what specific types of rights should be accorded to them.
One of the most comprehensive definitions can be found in the 1989 International Labour Organization’s (ILO) Indigenous and Tribal Peoples Convention (No. 169) (Appendix A), which states that it applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. (Part 1, Article 1).

This document also specifies that:

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law. (Part 1, Article 1).

In addition to setting forth criteria for defining a “people,” ILO 169 provides guidelines for consulting with indigenous and tribal peoples, as well as specifying the specific circumstances under which such consultation is obligatory (Article 7 of ILO 169). Read in conjunction with this definition, the 2007 United National Declaration on the Rights of Indigenous Peoples (Appendix B) lays the legal groundwork for an array of collective economic and social rights, which, once recognized, encompass the right to preserve one’s culture and way
of life. The challenge, as has been and will be noted, is reaching agreement of exactly what culture is.

This debate has been especially evident with respect to Africa, as the continent has by far the largest number of ethno-linguistic groups, including the waGogo, which would generally meet the above criteria. Despite certain historical and political conditions which have caused African states to be especially resistant to recognizing such rights, there has been a growing recognition and acceptance of such rights in recent years (Nyamnjoh & Englund, 2004). In Tanzania, specifically, despite the fact that the Constitution of the Republic of Tanzania of 1977 does not provide for separate group rights per se, such protections are referenced in a number of international and national frameworks of which Tanzania has become a part. The main instrument is the International Covenant on Economic, Social and Cultural Rights of 1966, which Tanzania ratified in 1976. In addition, there are a number of other relevant international human rights instruments which specifically provide for the economic, social, and cultural rights of indigenous groups. These include: the Universal Declaration on Cultural Diversity of 2001; Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005; Convention for the Safeguarding of the Intangible Cultural Heritage of 2003; Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972; Convention on Biological Diversity of 1992; and the UN Declaration on the Rights of Indigenous Peoples of 2007.

Tanzania is also one the first member states to ratify the African Charter on Human and Peoples’ Rights (the Banjul Charter). Although there has been a lively debate about the meaning of “peoples” under the Banjul Charter, the African Commission of Human and Peoples’ Rights (the Commission), which is charged with the task of overseeing and interpreting the Banjul
Charter, has increasing been gravitating to the school of thought that the term “peoples” refers to identifiable groups based on roughly similar criteria set forth in the ILO’s Convention and the 2007 Declaration on the Rights of Indigenous Peoples. In one of its landmark decisions, Katangese Peoples Congress v. Zaire, the Commission recognized the inalienable right to a certain level of autonomy for such groups. Whether the waGogo of Tanzania completely meet the full set of criteria as a “people” is debatable; however, the established principle has been established and can therefore serve as a basis for rights claiming on the part of the waGogo and/or similarly situated groups (Nyamnjoh & Englund, 2004).

This inquiry will explore the potential benefits and drawbacks of a larger tribal identity, but will make every effort to remain objective regarding the nature of the debate itself. In addition to conflict between broader group and individual rights, female circumcision involves the conflict between the national laws that are imposed upon these tribal groups and the empirical autonomy of the members of the tribal groups themselves—including the women who are members.

Despite documented adverse health repercussions, considerable Western opposition, and some local outcry against the practice, female circumcision remains widespread in many regions of Africa. While it occurs in other parts of the world as well, Africa is the place in which it has the strongest hold in and among many ethnic groups, and occurs most frequently. Lundquist (2004) found that two million African women each year undergo female circumcision procedures. One of the African ethnic groups that practices female circumcision in very large numbers is the waGogo ethnic group of Tanzania, or the “Gogo,” as they are most commonly referred to, and will be referred to throughout this research inquiry. Estimates of the prevalence
of female circumcision amongst the Gogo are typically upwards of 90%, indicating the strong belief in the practice among the people (28 Too Many, 2013).

Legal efforts undertaken by national governments and international organizations to limit or ban the practice have done little to curtail it in many areas, or have served only to drive the practice underground, often making it even less safe for the women and girls who undergo it (WHO, 2011). These efforts are buttressed by Western cultural norms, religion, national laws, and international laws, but have difficulty penetrating the thick curtain of local tradition. This is due largely to the cultural significance of circumcision in many African societies, especially as it relates to sexuality, marriage, and gender roles. Those who engage in female circumcision typically hold traditional views of marriage and femininity, including the views that women have strict obligations to the tribe and family, that an uncircumcised woman is undesirable, and that circumcision is cleaner and more aesthetically appealing for both men and women (WHO, 2012).

These traditional views and associated beliefs regarding female circumcision are motivating factors for the continuation of the practice despite the efforts of modern African and Western legal interventions to reduce or eliminate the practice.

Activists, scholars, and politicians who approach female circumcision from a legal viewpoint may find the resistance to state laws confounding. Negative reactions to female circumcision can be highly ethnocentric, representing not a desire to ethically stop women from undergoing an unwanted practice, but rather representing a desire to impose Western morals and standards upon a local group (Gruenbaum, 1996). This argument may be unsettling to many Western readers, as it highlights the difficulties of cultural relativism when exploring heated issues such as this. Western interventions are somewhat paradoxical; in an attempt to bring rights and equality to people in developing countries, such interventions often overrule or diminish the
rights that already exist, and attention to this paradox is likely to cause discomfort among well-intentioned intervening parties. The concept of “cultural relativism” that Gruenbaum discusses highlights the importance of a given practice within a culture; viewing practices from a culturally relative perspective attempts to guard against local practice being negatively qualified on the basis of Western universalizing values. Simply citing “tradition” as the reason why female circumcision still exists “overlook[s] the complexity of decision-making processes within a culture and the competing demands on individuals” (Gruenbaum, 1996, p. 456). On the other hand, efforts to eliminate the practice through education can be viewed as condescending and ineffective. Finally, advancing the notion that the practice continues due to cultural factors and in contrast to widespread condemnation may further racist views of the Third World and incite rancor and international disagreement. This strategy is likely to add further to prejudice while doing little to actually eliminate female circumcision.

Legal pluralism, a situation in which more than one legal system operates in one political unit (Pimentel, 2011) provides a good setting to explore this conflict due to the often contentious relationship between local custom, national law, and international norms on certain issues. A pluri-legal environment is essentially a setting within which there is significant opportunity for state laws and local customs to intersect in such a way that practices from one domain may operate independent of those from another domain. This means that state laws operate independent of customary law; likewise, customary law is at times able to operate independent of state law (Pimentel, 2011). While multiple legal orders are likely to influence one another, the structure of parallel legal systems allows for certain issues that are seemingly resistant to change to continue over time and in spite of other changing legal mandates. Legal pluralism has both positive and negative implications for law, and its existence could potentially satisfy functions
that current legal systems do not provide; for example, bridging the gap between vastly different state and customary laws. Pluralism arises naturally due to the circumstances of conflicting forms of law, and using it to meet community needs and solve problems that occur between the two shows promise in addressing much of this conflict (Tamahana, 2012). Especially considering the extremely sensitive, personal, and culturally ingrained nature of female circumcision, any attempt to reform or otherwise impact the practice must be conducted with consideration of the pluralistic environment, especially taking into account the local and customary law.

Given the ingrained social and cultural roots of female circumcision in many African countries, any examination of formal legislation and state legal practice must take into account the role that local law plays in African society. Examining the practice through a perspective of legal pluralism allows researchers and lawmakers to better understand the areas in which such formal laws interact with, as well as clash with, social- and tradition-based laws, as well as the positive and negative repercussions of this clash (Pimentel, 2011). For this purpose, an examination of female circumcision can best be served by including those academic fields historically more concerned with social and cultural practices, including sociology, anthropology, women’s studies, medicine, and cultural studies (Geertz, 2001). Anthropology proves especially useful in exploring the law in this area due to its focus on collective human experience and the nature of social and communal living. Legal pluralism provides a setting that includes multiple legal frameworks, which can include important anthropologic insights into gender identity, women’s rights, and marriage in African society.

The practice of female circumcision can still be documented despite laws forbidding the practice. This lack of adherence to state law in specific locations indicates that legislative efforts have failed due to cultural and social traditions. By exploring one particular aspect of a conflict
that researchers in other disciplines have explored, and by granting special attention to the environment of legal pluralism in which the conflict occurs, it is hoped that this study will bring new and valuable information and ideas to light regarding the conflicts created by the interaction of African customary laws and those imposed by the modern nation-state.

**Purpose of Investigation**

This research inquiry examines the ways in which traditional views of the importance of the practice of female circumcision supersede or impede national and international laws, exploring the ways in which tradition and law coexist in a pluri-legal environment. Through research into the existing literature on the subjects of law, African legal history, female circumcision as practiced in Africa, customary law, and the Gogo of Tanzania, a background is established to understand the practice. Interviews with Gogo key informants and community members provide insight into the issue of female circumcision as a case study of how to understand the clash between customary law and national law.

This investigation seeks answers to the following questions:

1. Why are certain modern nations ineffectual in their efforts to legally circumscribe certain behaviors?
2. What role do the values of custom and community have on these behaviors?
3. Using female circumcision amongst the Gogo people of Tanzania as a case example, how can researchers, lawmakers, and law enforcers better understand the conflict between customary law and national law?
4. What recommendations can be made to address conflicts between customary and national law, not only in the specific example of female circumcision, but in issues of legal pluralism in general?
Theoretical Framework

Law shapes the way we see the world (van Rossum, 2012). Further, law can be considered to be an essential part of culture, with the two factors mutually influencing one another (Mezey, 2001). In almost every interaction that a person has with the world and with others, the importance of both law and culture can be seen. Law both produces and is produced by culture, a relationship that is described by Mezey (2001) as “dynamic, interactive, and dialectical” (p. 46). Regardless of these facts, there are often times when state law and culture come into conflict. This is especially true in issues of strongly-held traditional beliefs, customary values, and issues regarding human rights. The nature of the coexistence of national law and customary law presents some paradigmatic differences, and evidence shows that customary justice is likely to be more effective in multiplex societies (Harper, 2011). As such, even when customary law is not supported by state law, and even when it is expressly forbidden by state law, the practice of customary law is often not only more effective, but more embraced by the members of the ethnic group in question. Four billion people are estimated to be excluded from traditional rule of law, making customary law not only important, but vital to the survival of many communities (Hellum, 2013). The nature of the interaction between state and customary law is a key framework for this research inquiry, as is the nature of the conflict between them.

For the researcher, precisely defining the meaning of the phrase “rule of law” can be a challenging undertaking, as the phrase can signify different things in various contexts. For instance, the Oxford English dictionary (Stevenson, 2010) defines it as:

the authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.
For analytical purposes, the various meanings associated with the term must be discussed in order to clarify and establish the precise way in which the term is being used. In practical use, “rule of law” is used in three different ways, all of which are generally accepted in different contexts. First, the term can mean a rule or action, according to law, whereby the state cannot order an individual or group to suffer a civil loss or criminal penalty except in strict accordance with well-established and clearly defined laws and procedures. In another sense, the term can mean a rule, under law, where no organ of the state is above the law and no public official may act arbitrarily or unilaterally outside the law. Finally, the term can refer to a rule, according to a separate set of legal norms or law, that prevents the state enforcement of written laws unless those laws coincide with unwritten, locally accepted principles of fairness, morality, and justice (Tamanaha, 2002; Tamahana, 2004; Bingham, 2010). This sense of “rule of law” transcends modern, formal, legal systems. This inquiry will be rooted in this last, less common notion of the rule of law.

In addition to state and customary law, this inquiry will take into consideration what is referred to as “project law.” This type of law can be defined as the rules and procedures that are used by bilateral and multilateral agencies, in addition to transnational NGOs and advocacy groups. These rules and procedures have either evolved on their own, or interested parties have derived them from national legal systems (Randeria, 2008). Some examples of project law efforts include efforts to promote the interests or purposes of international organizations, human rights organizations, and development agencies. This concept will be further elaborated upon in Chapter II.

In addition to being a framework for how we see the world and enact culture, law can be used by lawmakers, governments, and organizations in two different ways. The first uses law as
a tool or instrument that is developed in order to alter behavior or to get a certain result from citizens. In this example, law is seen to act upon its subjects, demanding certain actions and punishing or rewarding accordingly. A second perspective of law sees it as more than a tool, focusing instead on the way in which citizens imagine and order their societies. This perspective views law as a way of reimagining society, creating changes in the structure and maintenance of everyday living. This second perspective appears more complicated, but it is likely to have greater relevance to the communities in which it is practiced (Mautner, 2001). Geertz (1983) rejects the concept of law as a tool, instead viewing it as a means of resolving disputes and a way in which society can respond to needs. He argues that law should be viewed as a system of meaning, not just as a means to enforce goals.

It is this second view of law that this research inquiry uses as a framework to address the case example of female circumcision. The intention of this research inquiry is neither to promote nor curtail the practice of female circumcision itself; rather, the issue is used as a means of exploring the influence and importance of legal pluralism and rule of law with respect to a strongly debated and contentious topic. As female circumcision is banned in most countries, but still continues to be practiced at very high rates in some areas, it is a relevant subject through which to examine these issues. This research was conducted to understand the reasons why national law is often ineffective when it conflicts with customary law. Information was gathered in the interest not only of understanding the conflict, but with goals of providing insights and recommendations regarding what to consider in addressing this and similar conflicts, as well as the advisability of attempting to align national laws with customary law, while taking culture and community values into account.
In the style of Geertz (2001), this inquiry is conducted in a manner that is simultaneously descriptive, explanatory, and interpretive. Culture is “a construct both of the participants and of the ethnographer” (van Binsbergen, 2003, p. 519), as such, there was an effort throughout the research and documentation process to be aware not only of the culture of the respondents, but of the culture of the researcher and the effects that may have had. In the case example, the issue of female circumcision will be described thoroughly, including its prevalence, justifications, and associations with community values. The importance of the practice to those people who value it will be explained, as well as the importance of curtailing the practice from a human rights and medical perspective. Additionally, the efforts that have been undertaken to eliminate the practice will be discussed in order to more fully describe it. The interviews in this inquiry, conducted with people in communities that practice female circumcision, will be used to highlight these explanations and draw more conclusions about the practice. Based upon this thorough understanding, interpretations will be drawn about the continuing importance of the practice and how to reduce it. From this case example, the larger legal issue of legal pluralism and the clash between state and customary law will be similarly described, explained, and interpreted. Law is “a system of meaning,” according to Geertz (1983); as such, it will be addressed as such in this research inquiry.

**Structure of This Inquiry**

Chapters II, III, IV, and V comprise a review of the literature relevant to the issues addressed in this research inquiry. Chapter II focuses on legal pluralism, customary law in Africa, project law, and the history of law and legal interventions in Africa. In addition to expanding upon the theoretical legal framework developed in this introduction, Chapter II introduces the concepts of culture and community. Through an examination of the colonial
period in Africa, the relationship between the West and African states is presented, providing background for the interaction and conflict between Western cultures and legal systems and traditional African values. To provide full context, examples of customary law in other nations are discussed as well.

Chapter III focuses on the practice of female circumcision, including a history of the practice as well as current rates of prevalence. Different types of circumcision are outlined, as well as potential health risks and geographic locations that are involved. It is made clear that female circumcision is not simply one practice that is performed blindly across Africa; rather, it constitutes an array of practices performed by many specific cultural and ethnic groups in particular areas of Africa. Qualitative responses from women who have undergone the practice are used to present the potential benefits and drawbacks associated with the practice. Reasons for supporting the practice are discussed, and specific examples from various countries are used to demonstrate the cultural significance of the practice.

Chapter IV explores and documents the legal efforts to curtail female circumcision, both within Africa and within the international community. Specific case examples from multiple African nations are discussed, and the role of legal pluralism is considered. International efforts by non-governmental organizations are considered, and the influence of project law is addressed. Cultural relativism is suggested as a lens through which to view the practice, and the benefits of female circumcision for those who practice it are discussed. The importance of community is established, leading into the discussion of the case study example in Chapter V.

The Gogo ethnic group of Tanzania is discussed in-depth in Chapter V. This chapter includes a thorough history of the people and touches upon some of the most salient values and customs that they practice. Particular attention is paid to issues of marriage, gender, and female
circumcision, as these issues are relevant to the case study example of female circumcision. Similarly, issues of colonization and community values are discussed in order to establish the nature of law and community within the Gogo.

Chapter VI presents the methodology of this research effort, including the theoretical framework, study design, participant selection, and issues of consent and confidentiality.

Chapter VII presents the results and analysis of the research conducted for this inquiry. The major themes that emerged from the survey data are discussed and connected to the relevant literature. Quotes and case examples illustrate the perspective of the Gogo people on female circumcision, and similarities to and differences from the existing literature are discussed.

Chapter VIII discusses recommendations to improve adherence amongst the Gogo people of Tanzania to the national law banning the practice of female circumcision. These recommendations are based upon the results of the study, detailed in Chapter VII.

Based upon the findings developed and discussed in Chapter VIII regarding female circumcision and its practice in Tanzania, Chapter IX expands these recommendations to general challenges of addressing such issues within a pluri-legal environment. Finally, this chapter provides a summary of the study and addresses recommendations for future study.

As established, female circumcision exists in the midst of a complex system encompassing tradition, culture, law, and personal identity. Consequently, efforts to explore the issue of female circumcision specifically, and legal pluralism more broadly, must incorporate multiple viewpoints as referenced above. This research inquiry will make an effort to be unbiased; presenting the data as it is collected, giving weight and deference to all perspectives. As mentioned, a truly objective standpoint is implausible; thus, every effort will be made to draw on primary sources and first-person accounts. If one of the essential elements of law is an effort
to mediate conflict through an appeal to truth and equity, this inquiry will attempt to make that appeal in its examination of the highly charged case of female circumcision.
Chapter II

Literature Review: Legal Pluralism and Customary Law in Africa

This chapter presents an introduction to legal pluralism and female circumcision. Subsequent chapters will expand upon these concepts, providing a framework to support and interpret the research that was conducted with members of the Gogo ethnic group of Tanzania for this inquiry. The issue of female circumcision will serve as a case study to demonstrate the inadequacy of state and international laws in changing customary law, and the phenomenon of legal pluralism will be explored, as that will be the environment in which a potential solution or resolution must be found. To orient the reader and begin the study, the chapter will begin by exploring a series of crucial concepts. Next, a sketch of the history of Africa will be presented, including the current status of law and legal interventions, with emphasis on the plurality of legal orders and the interactions and clashes between them. Finally, the impact of this pluri-legal situation on matters including property ownership, communal land tenure, marriage, and the role of women will be discussed relative to female circumcision.

Green & Lim (1998) believe that equitably examining female circumcision from within a setting of cultural pluralism is not so much a question of looking at the practice overall, but specifically examining Western views and discussions of the topic. The way in which the practice is represented by many in the West in turn influences lobbying efforts, project law, and advocacy groups, with those in the West focusing on negative repercussions. An alternative focus on tradition and culture is more supportive of the practice. From a perspective of cultural pluralism, the underlying intent of the international arena’s efforts to pass laws regarding female circumcision is called into question—do critics truly want to improve conditions for women in Africa, or are they seeking to expand the dominant sphere of their own worldview? The very
notion of a pluralistic viewpoint is one that is difficult to earnestly maintain, particularly within the legal arena. Accordingly, examining female circumcision while considering both cultural and legal pluralism demands a high degree of self-awareness, and a thorough analysis must deeply investigate the subjective nature of law while remaining as objective as possible.

**Legal Pluralism**

Legal pluralism and interdisciplinary analysis can provide context for addressing and exploring the complex issue of female circumcision. Legal pluralism “describe[s] multiple layers of law, usually with different sources of legitimacy, that exist within a single state or society” (Clark, 2007, p. 1116). Within any particular geographic or cultural location, formal legal order exists alongside equally powerful norms that may undermine or conflict with governmental laws. This may foster communities that resist formal legal enactments. In situations where established legal authority conflicts with local practices, state law lacks the power to be the “exclusive, neutral, effective and widely recognized arbiter” in conflict situations (Hoekema, 2014, p. 158). Groups maintain allegiance to beliefs and practices regardless of their status within the dominant governmental, state, or legal sphere. This creates challenges in establishing and enforcing state laws as well as fostering unity between the cultural group and the state that attempts to maintain formal rules of law. The addition of outside entities or groups—whether foreign governments, NGOs, or human rights organizations—can further complicate matters (Cotterrell, 2012).

When nations gain independence, customary law may be written into the official code of the land. Customary law in a sense is co-opted by state law, losing the traditional flexibility and accessibility. Proponents of customary law in the emerging African independent states have pointed to the legal histories of France, the Roman Republic, Germany, and England, and their various experiences recognizing, codifying, and restating customary law into formal state legal
frameworks and structures as a template for Africa (Salman, 2006). Many have suggested that the best answer to the potential conflict with customary law is codification or incorporation. Such efforts have generally been recognized as official or formal legal pluralism. Official or formal legal pluralism should not be confused with the non-recognized, de facto set of rules or practices for administering and enforcing implicit norms. For the purpose of this inquiry, the non-official form of legal pluralism will be referred to as “empirical” legal pluralism (Salman, 2006).

**Customary Law**

Customary laws and traditional institutions in Africa constitute comprehensive legal systems that regulate the entire spectrum of life activities. Once the sole source of law, customary rules now exist in the pluralist legal system alongside domestic constitutional law, statutory law, and international human rights treaties (Fenrich, Galizzi & Higgins, 2011). Direct observation of the rules of custom as they function in actual life is a complicated activity. This observation is especially complicated in circumstances of change, conflict, and imposition, times when customary norms are contested and the rights and duties of those in power come into the debate. Struggles and negotiations provide opportunities to study these legal transactions. Outcomes of these contestations are determined by the various resources at the disposal of the parties, one of which includes customary norms. Further complicating matters, these norms are often not explicitly referred to, and ideas about them differ between groups.

Recorded, codified, and formal systems do not account for the entirety of legal systems. There are many systems in which established patterns of behavior can be verified and validated; systems where claims are brought forth in defense of what has always been done and accepted by the community. Such notions can be likened to the common law concept of prescription; a right
claimed through long custom rather than positive law. Some have noted that this type of law exists as the nexus of (a) where a certain legal practice is observed; and (b) where the relevant actors consider it to be law or *opinio juris* (Fenrich, Galizzi & Higgins, 2011). Collectively, these laws represent standards of community that have been long-established in a given locale and constitute customary law. The term “customary law” is somewhat debated. It attempts to define a sort of law that is not formally codified or enforced, but has strong roots in tradition and community (Salman, 2006). While the Western term of “customs,” referring to traditions and ways of life, does play into the definition of customary law, it is more than tradition or habit. The term “traditional law” is used, but tends to represent a static, historically-rooted set of actions; on the other hand, “customary law” is capable of dynamic change, evolution, and modification over time. Some refer to the concept as “local law” (Hoekema, 2013), however, in areas where a formal local legal system exists in addition to state law, the “local law” term becomes confusing.

A final point to consider is that the term “customary law” evokes the idea of one unified system; rather, “customary law” represents a diverse set of individual laws for specific groups of people (Salman, 2006). For the purposes of this inquiry, the term “customary law” will represent the rules of society that are associated with the customs of a particular group of people, but that are not officially codified in that area.

Furthermore, what is generally understood to be customary can and does vary widely depending on the local context. For instance, African customary law can be distinguished from other recognized forms and systems of local or customary law around the world. Even within the realm of what is described as African customary law, as is the case with law in general; the same challenges of identification and definition confront the scholar. Directly addressing this point, C.M.N White writes:
There is no single definition of customary law agreed by lawyers, jurists, social anthropologists and others who may be concerned with it. This in itself is not surprising for both “custom” and “law” may be used in a number of differing senses depending upon the requirements of a writer's approach. The fact that these terms may mean different things to different persons in different contexts is not in itself important. But the place of customary law in the developing legal systems of new African states is a matter of some considerable contemporary importance, which calls for some precise definition in this immediate respect… Some of the divergences of view on the concept and definition of customary law may be lessened however if it is recognized that a diachronic approach may clarify part of the disputed field. (1965, p. 86)

White was sensitive to the fluid nature of customary law systems, particularly in Africa, and the high probability that they will change over time in response to internal and external factors.

**Community**

Embedded within conceptions of “law” and “customary law” is the recurring reference to community (Bix, 2000; Fenster, 2003; Luban, 2001), which requires further exploration, as it is at the core of this inquiry. It should be acknowledged that “community” has a variety of meanings and connotations. For example, one conception is biological in nature and views a community as a group of interactive social organisms sharing a populated environment. With the advent of the World Wide Web and social media, the notion of community has escaped geographical limitations as members are increasingly able to virtually “gather” to share interests and concerns, regardless of physical location. Communities can be based on social relations, affective ties, shared environments, and location. Further, the different types of community are likely to require different regulations, needs, and problems depending on the social bonds
associated. This is especially important given that an individual can belong to multiple communities simultaneously (Cotterell, 2012).

The most basic and recognized understanding of community refers to a social unit, often small but inclusive of any size, that shares common values. It is this second, social science-based conception which has served as the theoretical basis for many legal scholars (Bix, 2000; Fenster, 2003; Luban, 2001). In addition, shared values, needs, beliefs, risks, preferences, and other factors are typically present in human communities around the world, affecting the identity of the members and the cohesion of the community. This understanding of community will be used throughout this research inquiry with the understanding that collapsing the individual variation and preferences of an entire ethnic group into one community may overshadow some of the specific differences that arise within the group. As this inquiry addresses a very small sample of Gogo men and women, it is highly improbable that these few respondents echo the beliefs of the entire Gogo community. Such a limited inquiry is likely to present a view of cross-section data—namely, it is likely that it is representative of the specific group and village where the respondents of this inquiry live. Further, as Cotterell observes, “‘community’ should be thought of not in terms of bounded entities, but of often flexible and fluid social relations” (2012, p. 26). This issue is somewhat parallel to the issue of culture and how it can be defined, especially considering the significant changes that occur within and between cultural groups over time (van Binsbergen, 2003). As such, the views of the Gogo community, in as much as they can be represented by a small sample from a single group of villages and homesteads, are likely more varied and widely contested than this inquiry could capture, and are subject to change.

**Property Ownership, Family Responsibility, and Personality**

An inclusive understanding of the customary nature of ownership in Africa must take into
account the communal nature of the society and the implications of this communal nature on land ownership, personal property, and familial relations. While some of these relationships, such as communal land tenure, are backed by legal mandates, others are a function of social customs and obligations. Resources are scarce amongst groups inhabiting desert, scrub, or semi-arid regions such as the Gogo-dominated Dodoma region (Elias, 1956). As such, the pooling of community resources is vital for survival. However, this can create a situation in which people have limited ability to own or control things that have a significant impact on many parts of their lives. A typical individual cannot decide to sell or trade communal land, and may have little say in what to grow on it. Ownership of communal goods is often passed down through the clan or tribe with whom the goods are affiliated, removing the ability of any one person to own those resources (Kauzeni, Shechambo, & Juma, 1998). The relationship between property ownership and community is one that is difficult for many Westerners to understand. The Western free market does not provide an easy comparison for a communal society such as that observed in Tanzania and prevalent in many parts of the world (Hoekema, 2001).

Since individual ownership is uncommon, a central component in the concept of ownership within many cultures in Africa is that of personality. Whether referring to family, land, or other assets, what belongs to an individual is seen as an extension of the individual’s personality. This “extended personality theory” is prevalent in many African customs (Elias, 1956, p. 170). Ownership is so important to personality that physical possessions of an individual are buried with him upon death, and failing to do so is thought to risk fracturing his personality, making the soul unable to rest (Elias, 1956). This practice stems from African tribal custom, illustrating the way in which tribal beliefs influence modern understanding of property in Africa. “Property law in tribal society defines not so much rights of persons over things, as obligations
owed between persons in respect of things” (Gluckman, 1968, p. 262). Due to the relative scarcity of tangible goods, property rights tend to be more related to relationships that are established through either mutual obligation or transfer of limited tangible goods, for example, cattle.

In the same way as cattle are exchanged at the beginning of a relationship between a man and woman, gifts are also exchanged when relationships are formed with superiors. “In tribal society these gifts are believed to recognize and validate the new relationship of giver and recipient” (Gluckman, 1968, p. 263). In this sense, a bride is not being “purchased,” as the term “bride-price” may suggest; rather, the future husband is establishing a relationship with the bride’s family and demonstrating his acceptance of his obligations toward his wife. While there is some sentiment of possession, especially in the way such exchanges are spoken and written about, what is more accurate is to speak of the relationship as one of mutual responsibility toward each other. Those things that are considered to “belong” to a person, or for which a man claims responsibility for, including wife and children, are reflections of who he is as a person. On a larger scale, these associations reflect upon the family, and, in some cases, on the clan or tribe as a whole.

**Implications for Female Circumcision**

While many opponents of female circumcision characterize it as a women’s issue, the fact is that men are largely responsible for the decision-making process. When presented with the question of who is involved in the decision to cut girls, 89% of men and 88% of women who were interviewed indicated that the father was involved; 46% of men and 38% of women indicated that the mother was involved (Population Council/Africa OR/TA, 1999). The decision of whether to circumcise a girl or not is a major issue for families that live in communities where
the practice is embraced. The decision reflects very strongly on the father, when the girl is young and on her husband once she is married. While it is the body of the girl or woman that is being altered, the social status and personality of the men in her life may be affected as well. As such, a wife or daughter who is uncircumcised reflects poorly on a man, indicating that he rejects social norms or is not taking responsibility for his family (Elias & Akinjide, 1988). Likewise, a woman’s actions reflect on her family of origin and the family she marries into.

**Project Law**

A term known as “project law” has emerged as a result of the increase in international investment in nations across the globe. Project law can be defined as the rules and procedures that are used by both bilateral and multilateral agencies, and works within the rule of law, religious law, and territorial or customary law to create a multilayered legal system. Two meanings have been applied to project law: a planning instrument and an implementing tool. As a planning instrument, the rules that guide the phases of a development project are taken into consideration, shaping policy objectives and reasoning. As an implementing tool, the legal rules formed during implementation are considered as well as interaction with target groups.

Project law is distinguished from state law, which is based on a near-monopoly on violence by the state, coupled with social legitimacy that most governments enjoy (Rosel & von Trotha, 1999). Project law is not customary law, as it is not based on a shared sense of community. It is interest- or purpose-driven, with development agencies, multinationals, and NGOs as important legal pluralistic actors. Weilenmann, a lead researcher of project law, states that development agencies are “global players… increasingly regarded as important legal pluralistic actors in a cumulatively fragmented field of competing normative systems” (2009b, p. 157). These players bring a new set of challenges and demands to an already complicated legal
system, often importing the values of the Western world.

Project law encourages “worldwide” norms; however, these norms are often based on Western perspectives. “Because each project has its corresponding legal body, various law bodies in any one setting might also clash in different ways with local customary, religious, or state law” (Weilenmann, 2009b, p. 39). In project law, international aid is bureaucratically governed through an administrative setup. Africa has been particularly touched by this practice. Project law is limited, as it relies largely on an underlying framework for its legitimacy and enforcement. As Cotterrell notes: “All law is voluntas (the expression of coercive authority) as well as ratio (negotiated, elaborated reason or principle). Most law is imposed by the regulators through force or pressure of some kind, as well as consented to or at least acquiesced in by those it regulates” (2012, p. 13). Project law would likely not exist outside of a pluri-legal context, as the spaces in which project law operates would be clearly governed by a universal state law.

Within developing nations, development projects have assumed a political character. Some are structured to achieve a status similar to that of a nation-state through sponsorship of programs that extend beyond the boundaries of business. These programs may be geared toward the promotion of justice, good governance, or human rights (Griffiths, 2009). Global capitalism and liberal democratic norms are being imposed worldwide, echoing colonialism (Tamahana, 2011).

Project law is a fundamental part of the overall effort to ensure the coexistence of governmental, humanitarian, individual, and business issues. It enables international aid organizations to exert influence on the societies they are endeavoring to help. The agencies and organizations sponsoring international development projects can witness positive change (Griffiths 2009), sometimes resulting in positive socio-economic change, such as decrease in migration and the return of some individuals who left (Adepoju, 2008).
Assumption of full legal and territorial control of a development program in a foreign country is a unilateral action that can have a negative impact upon the local population. While project managers have largely relied upon the use of local actors as tools for enforcement (Muriithi & Crawford, 2003), establishment of project law largely denies local actors the capacity to exert control over or participate in the initial stages of development. Funding and strategy are controlled by the organizations running the project. The social and cultural fabric of the area may not be taken into account, and project aid may not be tailored to the local environment (Griffiths, 2009). Euro-American behavioral demands play a large part in the execution of project law; likewise, Western demands have considerable effect on the politics and social lives of people in developing countries.

The governance of many African nations is made up of a combination of customary law and project law, in addition to the somewhat limited reach of state law (Meinzen-Dick & Nkonya, 2007). Randeria encourages the view of ambivalence of law as “both a tool of domination but also of empowerment” (2008, p. 42). Transnationalism and legal pluralism are changing the concept of law from a coherent body of knowledge to a decentralized force that is enmeshed with corporate law firms, private arbitrators, and NGOs. Randeria suggests a connection between current project law status and colonial times, emphasizing that the British East India Company was a private trading company before colonizing much of India. In newly independent states such as Tanzania, this form of colonial influence may undermine state authority, creating a controlling body similar to colonizers.

Project law is a function of modern, national law. As communities and legal interests become increasingly integrated under state legal systems, project law often attempts to smooth the gaps that occur between traditional systems and national law. It has the potential to function
harmoniously alongside other forms of law in a pluri-legal environment. However, those who advocate for and espouse project law often devote more attention to the status of law on the national level, overlooking effect on local communities. This can create significant conflict and disagreement between interest groups, development agencies, and the local population. Despite good intentions, implementation of project law may undermine the authority of the state and the influence and importance of customary law (Randeria, 2008). A complete understanding of the local agents who are affected by such laws is necessary for sensitive and inclusive legal development.

**African State vs. Customary Law**

Difference between African state and customary law has garnered considerable attention (Elias & Akinjide, 1988; Kang’ara, 2012; Robbins, 2009). The development potential of Africa has been of considerable interest to a number of international bodies such as the World Bank, the United Nations, foreign governments, transnational corporations, and others (Bashir, 1995; Muriithi, 2003). Policy-making institutions have taken interest in Africa due to its substantial potential. The state and customary law dichotomy on the continent has not gone entirely unnoticed by outside interests. In an effort to maximize Africa’s development and investment potential, these outside interests have learned to take advantage of customary law, capitalizing upon the ability to facilitate change when state laws are less desirable or capable of doing so (Akuffo, 2009). As opposed to their record in the economic and investment sphere, foreign actors, most notably NGOs and advocacy groups, have been less effective in leveraging customary law and customary legal structures to impact social practices and behavior (Fenrich, 2012). The UN only mentions customary law in passing (Tamahana, 2011). These actors have relied on the strategy of attempting to influence state power to impact such activities.
Consequently, the extent to which these foreign actors have been successful has largely been a function of the effectiveness of state law and the African state.

Smith (1991) looked at the implications of African customary laws as they relate directly to female circumcision. In instances where there was documentable local individual and community conflict, the core issue revolved around the question of choice. Smith found that it was often the individual’s, most always the woman’s, paucity of choices that rendered the broader community or customary view controlling. Smith further found that each of the stakeholders existed within the larger context of state law, adding complexity to this dynamic. The state’s capacity, right, and ability to intervene, either independently or spurred on by foreign actors in a project law-type context, was a function of the relationship between the state and local community as well as between the state and individuals (Fenrich, 2012; Smith, 1991). Some African nations incorporate customary laws into their fabric of their formal legal order, sometimes with substantial complications. The presence of legal pluralism is an accepted fact in many governments in Africa, although the results are not always optimal. Because they are rooted in oral tradition rather than the written word, the lack of clarity in customary laws makes them difficult to enforce within the context of modern state-based legal systems (Pimentel, 2011). The lack of written law should not be interpreted as a lack of established or effective law; customary law is fluid and adaptable to changing conditions (Elías, 1956). Sierra Leone’s legal system provides an example of the complexity of the interplay between state and customary laws in Africa.

**Sierra Leone**

Upon achieving independence from colonial rule, the dual system of customary laws and formal courts came into effect in Sierra Leone, introducing a system of formal legal pluralism.
These local courts were officially incorporated and empowered to enforce customary laws that were largely uncodified and unwritten. The 1991 Sierra Leone constitution established that its national law was comprised of both customary laws and the penal code. Customary laws were dictated by custom; thus, their rules were applicable to particular communities within the nation. Given a basis in tradition, these laws varied widely. The institution of this dual system afforded the local courts a substantial degree of power to enforce largely unwritten laws, granting the courts freedom in how such laws were interpreted. The local courts that administer customary laws can regulate marriage and divorce, adjudicate minor criminal cases, and deal with land disputes. The 288 local courts in Sierra Leone currently handle a substantial portion of the nation’s minor criminal cases (Robins, 2009).

The legal structure of Sierra Leone may seem to be a relatively organized expression of legal plurality; however, it has proven to be lacking in functionality. The local court system is currently experiencing a decrease in efficacy as result of failing state subsidies. Corruption and the misallocation of resources are largely to blame for the decline. This decrease in state funding has resulted in reduced salaries of court employees and administration. In addition, political interference by corrupt elites and politicians has further complicated the Sierra Leone court system. Many local courts that dispense customary legal justice have experienced a decrease in their ability to handle cases efficiently, while others have closed altogether. Through state and political involvement, the chiefs and community heads have been replaced by officials who have no knowledge of the local system. Since customary laws are not grounded in a written code, it has been difficult for newly appointed officials to enforce them. This situation has led to decreased respect for appointed officials, resulting in the courts increasingly relying on fines and other unofficial practices for funding (Robins, 2009). The presence of formal legal pluralism has
enabled the state to exert a substantial degree of power over both official and customary laws, opening the door for practices that are not beneficial for the majority of people.

**Law and Culture**

Cultural anthropologist Geertz states that law is simply “not a bounded set of norms, rules, principles, values, or whatever from which jural responses to distilled events can be drawn, but part of a distinctive manner of imagining the real” (1983, p. 173). Law is “local knowledge” and this local knowledge subsumes assumptions and explanations that are considered “common sense” in the society. Once a norm is officially recognized and applied, it becomes “positivized,” becoming law once it is recognized by state actors (Tamahana, 2002).

**Culture**

When cultural practices such as female circumcision are viewed as “maladaptive,” it can lead to static, inaccurate views of African culture (Gruenbaum, 1996). This can cause “a huge social problem: it takes for granted, and even rejoices, in the presumed absolute difference alleged to exist between a plurality of positions, and hence freezes the public space to a snake-pit of absolute contradictions” (van Binsbergen, 1999, p. 42). In order to examine female circumcision from within a setting of legal pluralism, it is essential to explore what “culture” means, who controls the viewpoint and dialogue, and the impact that viewpoint has on law and legal pluralism.

Culture, defined in 1871 by Tylor in *Primitive Culture*, is “that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by a man as a member of society” (as cited in van Binsbergen, 2003, p. 465). The very title of this classic book sheds light on the views of the time—culture was a way in which to describe the “primitive,” non-European people who were the topic of study (Merry, 2013). Van
Binsbergen describes the social view of culture as having “taken root as a key concept in our contemporary social experience…somewhat comparable to time, space, causality and substance,” (2003, p. 460). This concept colors much of the research that has been done and is currently being undertaken, especially in many social science fields. However, there exists some debate over whether “culture” actually exists. Culture can be defined as a combination of “totality, unicity, integration, boundedness, and non-performativity” (van Binsbergen, 2003, p. 461), something that each person belongs to and is exclusively a member of. Culture can function as a definition of the ways in which an individual’s multiple identities and social roles can become part of a hierarchical framework, allowing for presumed differences to become taken for granted instead of examined closely and individually.

Culture as a concept, as addressed above, has “come under siege (Merry, 2013, p. 575). This leads to a contrasting view. Merry suggests that, in light of the change in view of culture, there should be an equal change in the relationship between law and culture—namely, that the view should be “more complex, contested, and historically located” (Merry, 2013, p. 575). She calls for an understanding of the relationship between law and culture that challenges the notion of culture as integrated and bounded, cautioning against exploitative cultural appropriation.

Culture is constructed and reconstructed over history, connected to power, economics, and meaning within those areas. Merry argues that culture is not a stable, unchanging concept, but rather something that is continuously produced, contributing to the maintenance or overthrow of power relations. Van Binsbergen (2003) acknowledges what he refers to as “virtuality”; essentially, despite arguments regarding whether culture exists, it is undeniably a social concept that has been adopted by media, educational institutions, and the public mind. Regardless of the scientific existence or nonexistence of culture, public conception accepts it and makes decisions,
judgments, and evaluations based upon the concept.

Van Binsbergen (2003) suggests a reframing of the concept of culture to instead be “cultural orientation,” allowing for distinct and characteristic interactions, while at the same time downplaying the strict separations and differentiations between what is commonly referred to as “culture.” Further, he stresses that, through membership in multiple groups, the way in which a given individual may express his or her culture may be different from others; similarly, it may be the same as how an individual from another culture expresses the same thing, thus eliminating the uniqueness of that specific act. Merry (2013) emphasizes the sameness of people throughout cultures; she points to the emphasis on difference as a way to separate the “civilized” researchers of the nineteenth- and early-twentieth-century from the people who were being studied in their imperialistic endeavors. Further, she suggests viewing culture as “arenas of contest among competing cultural logics in which variously situated actors seize and appropriate cultural practices… in multiple places reflecting the movement of peoples, capital, and symbolic systems” (Merry, 2013, p. 583). Local community leaders may adopt some Westernized notions of human rights, adapting their ways to these notions in order to resist the interference by the dominant state as well as to take advantage of the benefits such notions may afford them.

If the definition of law includes culture at all, it is most often included as the unavoidable social context of an otherwise legal question. Merry states that “law is a cultural system that can be imposed on other cultural systems” (2013, p. 578). As such, it can become problematic when one society or culture attempts to impose laws upon another. Law and culture are conceptualized as dissimilar areas of action that are only slightly related to one another. However, law is simply one of the telling practices that encompass culture and, in spite of its best efforts, cannot be separated from culture. Nor, for that matter, can culture be separated from law. “To recognize
that law has meaning-making power, then, is to see that social practices are not logically separable from the laws that shape them and that social practices are unintelligible apart from the legal norms that give rise to them” (Mezey, 2001, p. 46). As noted earlier, the connection between culture and law is always dynamic, interactive, and dialectical—law is both a producer of culture and an object of culture. Law shapes individual and group identity, social practices, and cultural symbols; simultaneously, these things shape law by changing what is socially desirable, politically feasible, and legally legitimate.

**Law as Constitutive of Culture**

Law as constitutive of culture suggests that the law of the state constitutes the culture of the state. Likewise, local law constitutes the culture of the local communities. Law can achieve this function by facilitating the realization of human vocation, preserving worthy human values, creating continuity and stability with regard to such values, creating institutions for cooperative action, and allowing people to overcome haphazard and unexpected events in their lives. Law creates meaning in the minds of people (Mautner, 2010). The constitutive approach sees law as acting upon society in a profound way. From this perspective, law is not distinct from society; it is entrenched in and inseparable from the social relations it constitutes. Conflict or agreement between local and state law, and by definition, local and state culture, are inseparable from the area and actors involved. Once law establishes social relations, they become natural and self-evident. For those who participate, no alternatives can possibly be suggested (Mautner, 2010).

In the constitutive approach, law arises under conditions of inequality between social groups. Law allocates different kinds and quantities of power that different groups employ in their social relations. This constitutive role of local law becomes apparent in interviews with the Gogo people; local law defines huge differences in equality and power between men and women.
throughout many domains of life. Law fixates in people’s minds hierarchies of class, gender, race, and ethnicity. Law is an important instrument of social control: creating and preserving inequality between individuals and social groups. The constitutive approach contributes the insight that law can be viewed as constitutive of social life in general, not necessarily the interests of any particular group (Mautner, 2010).

The constitutive power of law can be exemplified in many ways. One is the sexual harassment doctrine that creates a novel legal category—sexual harassment—for conceptualizing social situations between women and men. In countries where this doctrine is law, women in the workplace or universities are protected by the doctrine. Interactions are colored by the knowledge that sexual harassment has legal consequence. As such, the relations of women and men substantially differ in these countries from those in countries that do not recognize the sexual harassment doctrine. If the doctrine manages to overcome the power discrepancy, a new generation will interact in line with the imperatives of the doctrine not because of any particular awareness of it, but because they will have been born into a culture that complies with the imperatives. At this point, people will have internalized the contents and practices of that culture.

Another example is family law, which allocates rights to husbands and wives in the course of marriage. Should the marriage end, family law allocates rules regarding custody, distribution of family property, and so forth. Family law constitutes relations between husbands and wives. Imagine the daily life of a husband and wife in the context of a law that allows the husband to unilaterally terminate the marriage and retain exclusive custody of the couple’s children and possessions, leaving the wife without any property. Now imagine the daily life of a husband and wife in the context of a legal regime premised on equality. The nature of the daily interactions between married people substantially varies for those living under the sway of these
two very different legal systems. This situation is exemplified in the responses of the Gogo subjects, who discuss ways in which customary law and family rules define the relations between men and women.

The constitutive approach sees law as constitutive of social relations not only when it actively regulates social interaction, but also when regulations become internalized and culturally embedded. The clash between state law and local law implies a struggle between the basic notion of a desirable life and a potential attack on tradition and culture, as discussed in Chapter VII. If one is to make progress in understanding legal studies as cultural studies and legal practice as cultural practice, an explanation of the vague concept of culture is an important threshold question (Mezey, 2001).

Green and Lim (1998) recognize the complexity of the debate surrounding female circumcision, pointing out that the discussion can dismiss cultural complexity, creating situations that inherently default to and reaffirm the Western viewpoint. The authors write, “The choice of the word ‘traditional’ widens the distance between Them and Us: it is They who have ‘traditions,’ who are primitive or barbaric in Their social behavior” (Green & Lim, 1998, p. 369). They highlight the fact that the discussion of female circumcision shrouds the variety of practices and emphasizes the more brutal, “primitive” aspects that reaffirm the Western opinion of obvious human rights violation. This bolsters state efforts to curtail the practice, rather than opening up an equitable dialogue. The myopic lens through which the practice is examined is a carry-over from colonial times, conjuring up an imaginary cultural geography of “Africa” which serves to engender further divisions based on race, class, nationality, and gender. These issues make the West’s position all the more rigid and difficult to examine.
History of Law and Legal Interventions in Africa

Throughout its centuries-long history, the continent of Africa has experienced substantial adversity. Ongoing periods of conquest began with Africa’s colonization by Mediterranean nations such as the Roman conquest of Egypt and the founding of the Phoenician cities of Sidonia and Tyria in Northern Africa. Arabs moved across the continent over the course of Africa’s history, as did Portuguese, Spanish, Dutch, British, French, Belgian, and German invaders (Johnston, 2011). Much of the foundation for the modern exploitative conditions within Africa was established through the interaction between the British and the African continent. The initial periods of colonization in Africa were characterized by foreign investment and profit built atop political instability, inefficient governmental policies, and social inequality (Asiedu, 2006). Modern Africa continues to be characterized by significant attention and intervention from other nations. Additionally, Africa’s abundance of natural and human resources makes the continent a prime target for foreign intervention (Johnston, 2011). This history of international intervention has resulted in conflict between local and foreign customs and laws.

Since 1950, the African continent has experienced ongoing conflict. Disputes regarding national borders and central authority have resulted in military coup d’états in many African nations, bringing into question the real reach of state authority (Sweet, 2009). The instability of Africa is further characterized by large-scale investment, land acquisition, and business interests driven by economic interests of the outside world. In many instances, the implantation of these activities has served to destabilize African countries in the process (Wily, 2011). Much of the conflict that has resulted is related to the fact that governments, not citizens, are the organizers and beneficiaries of the encounters. In globalization, at least theoretically, boundaries disappear while countries retain their identity and sovereignty. However, in reality, this does not often
occur. Africa provides an example of how this process can be fraught with problems, especially when globalization is more closely linked to transnational corporatism than anything else (Precious, 2010). The West’s contributing role in Africa’s instability and slow economic growth has been noted by a number of observers (Precious, 2010; Sweet, 2009; Wily, 2011). Analyzing the interaction between local and foreign custom is important to understanding the broader conflicting landscapes and to understanding other issues around which there is conflict within a pluri-legal environment.

Thirty-four of the poorest nations in the world are located in Africa. Additionally, 24 of the 32 nations ranked lowest in human development are located in Africa. The findings of the World Bank are that the HIV/AIDS epidemic annually costs the continent one percentage point of per capita growth (Akuffo, 2009). Despite substantial human and natural resources, Africa’s development has not proceeded at a rate comparable to similarly situated regions (Asiedu, 2006, Akuffo, 2009). Ineffective governmental control, corruption, and general instability have hampered the capacity of Africa’s countries to effectively develop and grow into modern and stable nation-states (Asiedu, 2006). In addition, state, customary, and international law are often at odds with one another. These conflicting legal orders have further contributed to instability in Africa and highlight the potential negative consequences of such interactions (Akuffo, 2009). One example of such conflict is female circumcision. This cultural practice has been established and upheld through tradition, but recent foreign intervention has led to legal restrictions against it (WHO, 2011). While the laws may have some effect due to the strong message that is sent by the ruling body, the messages that are sent by customary laws are far more influential.

**Western Law and Local Custom: Rules of Exploitation**

While the West’s involvement in Africa has had many repercussions in the political,
social, and economic landscapes, the current situation is not solely attributable to the presence of the West. Inequitable relations within and among African communities have persisted throughout Africa’s history and remain firmly entrenched. These inequities preface more recent Western involvement (Wily, 2011). Much of the disadvantageous development that has been experienced due to Western investment was facilitated by the weak legal protections afforded by African governments, a legacy and consequence of the colonial period. Many African countries remained subject to other nations well into the mid-20th century. While the West participated in the exploitation of the African continent throughout the colonial era, the African elite continued that exploitation into the post-colonial period. New urban elites, with affiliations to or origins in the new economic orders created in the wake of colonization, have to varying degrees subordinated the rural populations, the vast majority throughout the continent (Bennett, 2004).

Continued poverty and deprivation in Africa must be viewed within the proper context. While many are quick to blame Western involvement for this state of affairs, the persistent conditions are greatly affected by domestic activities and interests. Through the consolidation of power among the urban elite, institutionalized poverty became widespread in the rural areas. In African urban centers, the relatively small elite population has grown reliant upon foreign technology, imports, and other support. In rural areas, a subsistence economy has been established that lacks the most basic necessities. Consequently, modern and traditional institutions catering to differing interests and communities have developed (Bennett, 2004). While Western involvement has been exploitative in nature, even in some rural areas, the reach of the new modern structure was sometimes extended by building atop existing customary institutions, such as co-opting local leadership. The unilateral activities of the elite at the expense of the broader community are somewhat responsible for the division and conflict within many
African countries. Further, these colonial era patterns and practices have continued within modern, legal African frameworks though national laws (Wily, 2011). Many of the problems resulting from Western and African interactions, such as detachment and lack of legitimacy, are symptomatic of contention between traditional local and modern state law, including the conflict regarding female circumcision.

**Customary Law Evolution**

Customary laws within the nations of Africa serve to regulate the rights, liabilities, and duties of various ethnic groups. These laws were the traditional means employed to settle disputes within the confines of pre-colonial Africa. Customary laws were administered by the tribal chiefs and male leaders of the various ethnic groups. They vary widely and are based upon tribal allegiance rather than upon geographical location (Robins, 2009). Based upon these laws, initial treaties and trade agreements were established between foreign governments and local chieftains and leaders, allowing for the use of customary law as a means to facilitate exploitative foreign commerce and laws.

Over the course of Africa’s colonial history, state laws have been taken advantage of in order to produce gains for outsiders. Throughout the British colonial era, efforts were made by the colonizers to institute and formalize systems of customary laws. The degree of this involvement in traditional law preceded the interaction with and influence of Western laws upon customary practices (Wily, 2011). When the British arrived in Africa in the 17th century (Huber, 1999), they applied English law in those areas directly under their rule. Areas deemed to be under indirect control were allowed to govern themselves pursuant to traditional customary laws (Huber, 1999). For example, in Southern Rhodesia, or modern Zimbabwe, the British South Africa Company signed an agreement in 1888 with “King Lobengula,” allowing British
settlement in the area. The position of the “King” was reduced to “chief” when he was subordinated to British authorities, and while he was permitted to continue administering the customary laws, commercial laws came under the sphere of the British (Elias & Akinjide, 1988). Further, British advisers were appointed to the native courts to provide guidance, suggesting that these native courts were not fully respected, but were instead incorporated into and overshadowed by the British colonial judicial system.

The British recognized customary laws within the non-commercial realm through the presence of “native courts,” which existed within most British African colonies (Robins, 2009). The use of native courts and customary laws was often an effort by the Western leaders of the African colonies to maintain power and control over some portion of their legal system (Joireman, 2001). This practice was initially established by the British in areas of Northern Africa (Crowder, 1964). In 1920, the Governor of Sierra Leone stated, “Nine-tenths of the people enjoy autonomy under their own elected chiefs… European officers are the technical advisers, and helpers of the tribal authority” (Lugard, 2010).

Sally Falk Moore describes the process of customary law in British colonies as one in which the British explained, prescribed, and instructed the local authorities based on British laws, making no attempt to consider African rationale, describing local courts as “a vehicle for remolding the native systems” with an outward appearance of being African institutions (1992, p. 16). British law was transmitted as knowledge, and resistance to or rejection of the laws was framed as a lack of such knowledge. This sentiment is echoed in modern attempts to educate local Africans about laws and health risks of practices such as female circumcision without taking into consideration the reasoning behind the continuation of the practices.

Under the dual administrations of the colonial period, legal and political authority was
complex and difficult to apply. Customary laws were recognized as a parallel legal system and were administered by indigenous leaders, while British law was applied only in those areas under direct British control. Throughout the process of decolonization, authority has returned to the African states. Currently, traditional authorities deal with 80% or more of cases in their jurisdiction (Tamahana, 2011); still, these local authorities are not granted the same power as national authorities. While they are granted power in their jurisdiction, it is only for certain legal issues, and rulings may be contested with a higher national authority. Contention exists regarding whether to erect a dual system, as was previously in place, or attempt to unify customary and formal English law into a single system (Robins, 2009).

**Women’s Rights**

Women’s rights on the continent of Africa have been influenced by the Western world in many ways, especially regarding female circumcision. This issue sparks debate in many areas, largely those of gender equality, cultural autonomy, and human rights (Boyle, 2005). During the colonial period in Africa, a number of powers passed laws banning female circumcision. In Meru, an administrative district on Mt. Kenya, a law banning clitoridectomies was instituted by an officially sanctioned local council of leaders in 1956. The people of Meru felt the practice was a part of their culture that should be preserved. Over three years, more than 2,400 individuals were charged with defying the law (Thomas, 2000). The colonizing European nations considered the practice barbaric, alongside a number of customary practices including male circumcision (Thomas, 2000). A review of the literature did not reveal a ban on, or prohibition of, the practice of male circumcision in Europe at that time. The passage of laws against female circumcision did little to actually curtail the practice in Africa, as the capacity of the colonial powers to regulate customs and customary laws was limited, and native communities were often unwilling to
enforce outside laws attempting to govern their internal cultural traditions (Wasunna, 2000). Non-colonial powers, such as the U.S., enacted similar prohibitions against circumcision during the 19th century. At the time, circumcision of women occurred within the asylums of the U.S. (Bashir, 1995). These laws were rarely enforced (Wasunna, 2000).

After the colonial era, Western influence persisted. Despite attempts to establish what some indigenous advocates would argue was a more progressive ideology, many African countries continued to follow traditional practices and customs. The pluri-legal environment inherent within many African nations enabled customary practices, such as circumcision, to persist in contravention of state and international efforts to combat them (Pimentel, 2011). The efforts of international organizations, such as WHO or UNICEF, are meant to bridge the gap between official mandates and local practical tradition. When state laws do not or cannot protect vulnerable populations, international organizations play an important role in providing a means for doing so. Such organizations have endeavored to establish education programs targeted at eradicating the custom by attempting to foster change without the use of formal or informal legal systems (Wasunna, 2000). International mandates and rules that lack local support, and which international organizations have no authority to enforce, often prove insufficient to accomplish their goals, highlighting the importance of local involvement and support in effecting change (Pimentel, 2011).

**The Need for an Integrative Concept of Law**

Geertz (2001) advances the notion that society as a whole is becoming more pluralistic, and suggests that culturally-specific issues are best understood through an integration of multiple social science and legal fields, for example, anthropology, sociology, psychology, and law. Integrating multiple perspectives, as opposed to pitting them against one another, is likely to
create sentiments of suspicion, especially in legal fields (Benda-Beckmann, 2002). However, consideration of pluralism is especially important in areas where this phenomenon has developed naturally, such as African customary law and state law. In the style of Geertz, von Benda-Beckmann (2002) emphasizes that the concept of legal pluralism is not a theory or explanation of actions, but characterizes a way of looking at complex laws and human interactions.

From a pluri-legal perspective, positive state law fails to deliver a complete description of the laws that serve to regulate the people of many African nations. Geertz’s (2001) approach suggests that local culture and local law transcend any positive universalizing tendencies that legal analysis based on positive state law may have. Historic and contemporary legal analyses are situation-specific. Whether these observations are of individuals, social practices, or events within the context that is important to the observer, legal knowledge and judicial decisions are constructed based on these observations. Overshadowing this context are generalized norms and practices that permeate legal culture.

An integrative concept of law is particularly useful when analyzing states with a plurality of legal orders. The foundation of new societies and states has seen the extension of state authority and jurisdiction across the territory, but informal and customary legal orders continue to have traction within local populations. These customary orders interact with one another as well as state legal orders and authority (Karsten, 2002). Lauren Benton (2002) calls the historical comparative and interpretive study of these processes and conflicts the study of “jurisdictional politics.” For Benton, jurisdictional politics refers to “conflicts over the preservation, creation, nature, and the extent of different legal forums and authorities” (2002, p. 10).

**History of Legal Pluralism in Africa**

Legal pluralism has long been a part of situations where one culture or government has
taken over another, which is particularly true in post-colonial Africa. The end of the colonial era, most notably the British, in Africa resulted in a number of new countries technically being released from British rule and British law (Robins, 2009). As newly independent countries came to terms with independence, many made some effort to preserve the cultural heritage that thrived within customary norms and institutions (Pimentel, 2011). The constitutions adopted in the newly independent African nations reflected a desire to maintain local culture within the construction of new legal systems. Some of these constitutions incorporated elements of legal pluralism in a transparent fashion, while others did so more indirectly. With any given legal issue, several factors interact, including state, customary, religious, project, and local laws. It is within pluri-legal environments such as these that interaction and clashes between and among legal orders take place. The remainder of this section provides brief examples of recent developments that are further complicating the pluri-legal situation in Africa.

When the goal is to pursue natural resources, as is often true in Africa, the multiplicity of legal frameworks provides a considerable degree of freedom on which project stakeholders may capitalize (Meinzen-Dick & Pradhan, 2002). Stakeholders and actors such as multinationals and foreign governments can go “law or authority shopping” within the legal pluralistic environment, seeking out the laws, customs, or authorities that support their goals. With enough support, some customary laws have even been codified into state constitutions. However, this inclusion may be lacking in clarity due to the absence of written records (Pimentel, 2011). Manipulation of customary and state law through a lack of written transparency can lead to confusion in the interpretation and implementation of customary law within new legal frameworks, further complicating legal pluralism in Africa.
The formation of customary law has changed as technological advances facilitate international state communications (International Law Association, 2000). The state—whether local or in the international arena, as dictated by developed nations—can make its position known on a broader scale than ever before, influencing customary law in new ways. International human rights laws regarding female circumcision, such as the protocols passed in Africa, clash with and influence customary law more quickly and pervasively than before. This increases the need to understand these interactions and the pluralistic role of legal processes in Africa. Awareness of how Western legal notions reflexively influence customary laws is necessary for full understanding.

Pimentel suggests that legal pluralism can promote respect for the cultural traditions of local groups, especially as global and international politics are able to exercise more authority over local customs. The international legal structure as a whole is largely pluralistic in nature and is complicated by the absence of an international juridical hierarchy. The ways in which constitutionally organized states and international regimes such as the EU or WTO interact are difficult to frame, given this lack of juridical hierarchy (Sweet, 2009). When states are further subdivided into tribes and ethnic groups, each with their own customary laws, interaction with international regimes, norms, and values becomes even more complicated. This complexity has ramifications for reform efforts as well as the ability to maintain local custom while simultaneously conforming to international standards and rules.

**Human Rights**

A large component of legal pluralism, relative to female circumcision, is a question of human rights versus local customs. Proponents of legal efforts to end female circumcision take a clear stance on the issue: the practice violates women’s rights and local customs that support it
deny the rights of women. Pimentel describes the way in which this occurs, and promotes legal pluralism with limits on both sides:

> Pimentel describes the way in which this occurs, and promotes legal pluralism with limits on both sides:

> [P]luralism inherently compromises [human] rights, particularly of women, because it perpetuates and strengthens traditional patriarchal regimes… The conflict over human rights in this context is complex, pitting the collective right of a community to draw on its own cultural values and to apply its own customary law, against the rights of the individual within that group who may suffer under the traditional regime. If justice is to be done in a pluri-legal system, there must be some limits to the respect for and deference to indigenous culture. (p. 9)

This statement harkens back to the argument made by Green and Lim (1998) regarding the dialogue related to human and women’s rights. The question of who ultimately determines the definitions of justice, respect, and human rights, as well as how such ideals are enforced is the deciding question in legal pluralism.

Pimentel strongly espouses an “equal dignity” doctrine, which seeks to “empower and dignify” customary law (2011, p. 23). By suggesting limits on the customary side without a countervailing measure on the state side, it might be a challenge to truly achieve this “equal dignity.” In instances such as female circumcision, traditional practices based on customary law persist despite modern state law and perspective. Respect for customary law and human rights must include the avoidance of state laws that box in customary laws. It is also important to avoid injecting purely Western ideas in a way that causes customary law to be limited, misguided, or eliminated.

In addition to the equal dignity approach, Pimentel addresses human rights by suggesting that the following is true:

> African customary law is likely to evolve [in the direction of human rights] if women are allowed to advocate for themselves within that culture. Colonialism, however, impaired their ability to do so… the oral tradition typical of customary law is marked for its flexibility and adaptability, which evolves easily to embrace a stronger recognition of the rights of women. (2011, p. 10)
The separation of statutory and customary courts as seen in legal pluralism would allow customary courts to maintain the flexibility and evolution inherent in preserving legal pluralism and human rights. Pimentel notes, however, that flexibility opens the door for human rights abuses perpetuated by customary laws and courts in addition to being somewhat impractical to implement.

These arguments have been cited as evidence against the practice of legal pluralism. A notable case occurred in Mozambique, where “repugnancy clauses” in British law allowed for the overturning of customary laws deemed morally distasteful to the colonizers (Pimentel, 2011). This approach reflects the West’s sense of cultural superiority over that of the very people and customs it is purportedly seeking to engage. While colonialism may no longer be present in Africa in a concrete way, the colonial perspective continues through a sense of “state superiority” over customary laws and local governments. Pimentel posits that, as nations establish their own internal states, they will rush to codify customary law in writing as part of state law. Local leaders may attempt to use such codification of laws to gain and consolidate power, further separating the law from the people. The West’s viewpoint may be adopted, making it easier to continue the practice of near-colonialism. Pimentel states that this calcification is especially pertinent in relation to human rights.

**Legal Pluralism and Property Issues**

Given the history of colonization, Africa has experienced substantial disorder as a result of land- and property-related issues. The concept of land ownership within the context of African customary law has been a factor in the unprecedented degree of instability and impoverishment in modern Africa (Akuffo, 2009). Legal pluralism adds a dynamic character to property rights
and law, as the multiple legal frameworks influence one another and change at varying rates over time. This lack of clarity results in decreased security of property rights. Those who experience this insecurity most acutely often lack education and social contacts that facilitate opportunity (Meinzen-Dick & Pradhan, 2002). Over the last century, citizens’ lands have been seized through the capitalist transformation process. The justness of such land acquisitions, often by or on behalf of Western interests, has been called into question. However, actions undertaken by Western companies and organizations are not solely to blame for the disordered investment and land acquisition in Africa; some of the blame is also attributable to native laws (Wily, 2011).

Governments in Africa have been able to take undue liberties with respect to the land of their people because there exists no clarity in property rights and laws. There is a lack of adequate legal protection, particularly among the rural poor (Wily, 2011). The virtual absence of legal protection, compounded by a rise in investment, has exacerbated exploitation issues and underscored the consequences of legal pluralism. For instance, communal land is common in rural Africa, but rights to such land often suffer due to ineffective or inadequate legal protection. The absence of laws that establish solid legal status results in such land being vulnerable to outside investment or acquisition. Land that has been unfarmed and held historically through tradition rather than formal legal possession has been targeted by questionable actors (Wily, 2011). In Mozambique, for example, customary property laws were disrupted after the Civil War due to substantial displacement and resettlement. The state lost control over property rights, resulting in many disputes over land ownership. While the disputes were settled through an appeal to cultural-ecological, physical, and social evidence, they remained a major disruption (Unruh, 2001). Customary control of land has limited the ability of project law and legal pluralism to infringe upon these rights (Akuffo, 2009).
The diminishment of many land rights in Africa stems from international investment, but is largely the result of abusive state laws. Majority land rights in Africa are those that relate to indigenous peoples and the ways in which these lands were shared in the past. However, there is no clarity as to the definition of indigenous peoples. In addition, modern national land laws do not recognize customary land rights as equivalent to real property laws, further diminishing customary majority land rights. The ability of the Western world to take advantage of these laws is facilitated by domestic customs and inadequate legal protections (Wily, 2011). In this context, the pluri-legal situation in Africa provides an opportunity for exploitation. Traditional and customary law occupies a distinct space separate from state law and international law, thereby creating an overlap. This overlap is also experienced in relation to human rights issues such as female circumcision.

**Legal Pluralism and Female Circumcision**

The presence of legal pluralism within a given state complicates the issue of human rights considerably. Colonization shifted the nature of African customary law, as the attitudes and values of the colonizers influenced local customs and legal proceedings. It has been posited that British values had a lasting impact on African customs. The British practice of denying women the right to be involved in the construction of the laws is echoed in African customary laws. The subjugation of women in Africa has roots in customary law and tradition, but was informed by the gender distinctions introduced by the British (Pimentel, 2011). The British tended to strengthen the existing power structure as a mechanism to spread and maintain colonial power. The variation in the rights of men and women in the British society that dominated Africa served to reaffirm the African practice of unequal rights.

While gender inequality pre-existed colonialism, colonialism reinforced the custom and
practice. Inequality in Africa can be understood as part of a process of class formation and state-building that has origins in the economic institutions of the early colonial state. The colonial state institutions were not accountable or responsive to African populations, and were unlikely to improve the welfare of the majority of the population. In addition, the limited nature of African colonialism, due in large part to fiscal exigencies, created the conditions for the emergence of substantial spatial inequalities that persist to this day. Colonialism favored certain indigenous groups that often inherited the state at independence. Insofar as political power has often been used to gain economic advantages during the post-colonial era, inequality has changed little over the course of the last forty years (van de Walle, 2008).

Lacking the capacity to be involved in their own legal system, African women were denied the opportunity to advocate for themselves, which contributes to the persistence of female circumcision (Pimentel, 2011). Female circumcision can be viewed as an extension of national tradition and custom, not a specific act to target African women. Female circumcision is in no way linked to political or geographic boundaries; it is linked solely to ethnic practice (Wasunna, 2000). Customary law is the foundation upon which the practice of female circumcision is built.

Legal pluralism often encourages the maintenance of customary law, allows static traditional customary law to be sealed, and allows outmoded practices to be incorporated into the modern era. As a result, the legal pluralism of various African nations has served to reinforce rather than to discourage certain customary laws and practices (Pimentel, 2011). While one solution appears to be the application of international law to stop what many view as a human rights abuse, Wasunna (2000) offers another path. The author recommends aggressive education of people in African nations who practice female circumcision as well as immigrants from these nations in order to understand the cultural and customary basis for female circumcision, rather
than simply continuing to implement laws that will be minimally effective. Nevertheless, tradition, customary laws, and modern legal institutions are still considered to be essential to highlighting the importance of the issue in order to ultimately produce a solution.

**Communal Tenure Institutions**

Communal land practices have substantial implications for the future of Africa, and are comparable to the issues faced by African women in that both rely on customary law. The nature of a communal society frames the way in which people view their relationships. Many of the same principles that apply to land ownership are similar to those that apply to marriage within the African patriarchal system (Beninger, 2010). Due to the status of women as assets, the link between customary law and communal land tenure, and related ownership disputes, communal land and marriage are afforded similar treatment within customary courts. Studying the way in which communal land is addressed within the customary courts parallels the way in which women are treated and the effectiveness or ineffectiveness of governance over this issue. Both issues exemplify the ways in which customary law directly opposes contemporary law.

**Reactions to legalization attempts**

Former land tenure systems in much of Africa are being forced to change to the modern, legally pluralistic form. The Communal Land Rights Act of 2004 of South Africa has been particularly controversial, given its shortcomings with respect to clarification on the issue of land tenure (Cousins, 2007). Customary and communal forms of land ownership are not being afforded the designation of real property, in that ownership exists for property worked and lived upon, precluding much communal land from state legal protection. As the state moves toward a system of registered titling and individual land ownership, those who work and survive off of communal land run the risk of losing their claim to this land. While legal protections for communal land
tenure exist, there is danger of these protections being eliminated or changed in the process. Those who work the land do not own it, creating a risk of exploitation, in that valuable land may be bureaucratically captured by government or interest groups, leading to relocation for the former tenant (Meinzen-Dick & Pradhan, 2002).

Considering marriage as a correlate of land ownership, the polygamous nature of many relationships in Africa has led to a lack of recognition of marriage. When a man has more than one wife, the marriage is considered not to be a marriage of sole ownership, and thus the relationship is not afforded the legal protections that would be applied to traditional marriages (Herbst & du Plessis, 2008). Both communal land ownership and polygamous marriages are based upon customary law and are conveniently used in modern law to support exploitation through the removal of official recognition. This tradition of exploitation of both natural resources and people extends back to colonial times, when local interests were considered only in light of their usefulness to the colonizers and their ability to rule and profit from the land.

It has been recommended that legitimate occupation and use rights be established. In order to establish effective institutional frameworks for the administration of land-related issues, legal recognition of property rights must be clarified (Cousins, 2007). Such decisions have been relegated to customary laws and local courts, thus, the issue of communal tenure has become even more complicated (Robins, 2009). In Tanzania, land laws that formally recognize communal land tenure have been recently introduced. However, the way in which these laws have been introduced is rather complicated, resulting in confusion among many citizens and courts. It is expected that many court cases will arise from these new laws, addressing the many unclear aspects of the new land laws (Hoekema, 2010). While customary law is supposed to provide a flexible, evolving way to deal with land disputes, the newly codified systems lacks this
flexibility, especially in complex situations. The difficulties faced by individuals endeavoring to clarify communal land ownership are similar to those faced by women endeavoring to advance their rights in the court of law; the gray area between customary and contemporary law allows for the rights of the woman, or the landowner, to be lost in translation.

**Customary Role of Women**

Within the tradition of many ethnic groups in Africa, marriage is viewed as a mutual responsibility between two families to interact and provide for one another in part of a greater trade agreement between families. When a daughter is married, the fathers of both the daughter and the suitor negotiate the terms of the contract, which may include the element of trade. When the woman leaves her family and becomes a part of her husband’s family, she enters into this negotiation, fulfilling duties as a wife and mother. Cattle are generally offered as a part of the marriage dowry, with the in-laws on either side receiving gifts, a practice labeled “cowry” (Elias, 1956, p. 151). The exchange creates a relationship built around debt and liability. The transfer of livestock associated with the marriage is considered not only a debt, but also a security. If the husband finds legitimate reason to demand a refund, the relationship is considered to be broken, and the woman’s family must repay a value equivalent to the original exchange (Elias, 1956).

Commoditization of marriage risks objectifying the woman and solidifying the foundation for practices such as female circumcision. A woman must not only be in prime physical condition in order to be married at all, but to be married by a successful man.

Regardless of status, it is important to recognize the role of women. As few resources as a man may control in a communal society, a woman has even fewer. The most important assets a woman has are herself, her body, and her reputation. A woman is capable of increasing or decreasing her worth through the choices she makes. Coyne & Mathers (2009) refer to this as
“economic identity,” and use it as a way of understanding women’s commitment to female circumcision. By committing to the circumcision ritual, a woman is actively embracing a change in not only her identity, but also her value to herself, her future husband, and to her community. In a society where it is difficult for a woman to increase her value through education, land ownership, or employment, enhancing her physical appearance, identity within the community, and sense of belonging may be the strongest way for her to develop her own value.

**Historical View of Marriage as Property Exchange**

The status of the wife in customary African law was defined in the 1917 Kenyan case of *Rex v. Amkeyo*. The issue was spousal privilege in relation to the law of evidence, whether an African “wife” was legally qualified as such, and therefore could deny testifying against a spouse. The presiding justice found that since the African practice of “wife purchase” did not meet the legal qualification for “wife,” spousal privilege was ineffective. Defining a married woman as less than a wife defined her as an asset, not a person. Marriage was a transaction between the groom’s family and the bride’s (Kang’ara, 2012). The transfer of wealth was effectively a debt, creating an obligation on behalf of the woman to fulfill responsibilities. Failing that, the groom might demand a refund (Elias 1956).

Initially, marriage in Africa was governed solely through customary law, which defined the woman more as property than as a person. A negotiated value of wealth was transferred from the husband to the wife’s family to generate the marriage. During the British colonial period, customary marriages were often invalid since they were not directly parallel to British marriage. The business nature, as opposed to moral or religious nature, was used by the British to undermine both African marriage and African land ownership, as one was polygamous and the other communal. In the twentieth century, a system was in place in which customary and British
marriages were recognized by colonial powers (Kang’ara, 2012). The denial of the legal, official recognition of marriage served to deny African women legal status in court for many years, and effects can still be seen today.

**Adultery in African Marriage**

Men are the only parties who are actively addressed regarding adultery within an African marriage. If a wife cheats on her husband in Sierra Leone, the situation ends in a transaction between the husband and the other man. The husband confirms whether the adultery occurred, provides the other man a chance to admit his transgression, and the two men come to a mutually agreeable resolution—often some form of payment. The wife is not involved, the husband usually forgives the other man, and there is no lingering animosity (Alie, 2012). If the other man denies participation, the elders are engaged. An objective medicine man from a distant village is brought in to administer a potent medicine thought to encourage truth-telling. Should this process become necessary, and if the man is found guilty, he must pay for the medicine man’s services, and must also pay the husband for “woman damage” (Alie, 2012, p. 103).

This resolution is often cited as an example of the commoditization of women, who are viewed not as participants in the affair, but rather as belongings that have been used without permission. The legal recognition of the term “woman damage” is indicative of the position of the courts. A woman is viewed largely as an asset to her husband and family. Although Sierra Leone passed Gender Acts in 2007 to guarantee women additional rights in relation to court proceedings involving marriage, these practices still underscore the entrenched ideology (Alie, 2012). The treatment of women in many African countries is reinforced through the practices of the legal system, with both customary and state law hampering modern notions of equality for women.
Customary Legal Support for Criminal Marriage Acts

Customary law not only lays the groundwork for the exploitation of women, it affirms some practices that would otherwise be perceived as criminal. For example, some African customary law systems support the practice of abducting women, known as *ukuthwala*. A girl may be abducted by another household to force her family into granting permission for marriage. In many cases it is uncertain whether or not the girl agreed to the abduction, although a marriage often results (Herbst & du Plessis, 2008).

*Lobolo*, meaning the assets transferred from the husband’s family to the wife’s family, may include cash, animals, or property. This element of the marriage agreement supports the commoditization of the bride. Despite ongoing opposition, as recently as 1995, in Thibela v. Minister van Wet en Orde, courts have confirmed the legality of the practice (Herbst & du Plessis, 2008). Legal support of practices such as *ukuthwala* and *lobolo* objectify the bride and place monetary value on her, encouraging procedures such as female circumcision.

Dissolution of Marriage

Another means of clarifying the legal role of women in Africa is the way in which marriages may be dissolved. Within African customary law, husbands are provided with many more legal avenues through which a marriage may be dissolved than wives. For example, if a woman flees her husband’s household to escape ill treatment, the husband may simply pay a fee for the return of his wife. Should the wife refuse to return to his household, he can demand a refund on his *lobolo* (Herbst & du Plessis, 2008). Abuse of a wife is insufficient grounds for her to end marriage. Alternatively, if a man decides his wife is failing in her duties, he may send her back to her father, similar to returning a purchased item. If the wife initiates the divorce, her father must repay her former husband the *lobolo*. When wives leave husbands, they are entitled
only to personal property, not family property. They are also obligated to raise any children from 
the marriage at their own expense in their father’s household (Herbst & du Plessis, 2008).

In order for a woman to receive a legal divorce, an irretrievable breakdown, such as 
insanity or death, must be demonstrated. Until 2000, women in South Africa who were married 
by customary law were legally regarded as perpetual minors, not as adults, and were considered 
to be under the guardianship of their father, husband, or brother, enabling further exploitation 
(Beninger, 2010; Elias, 1956). The Recognition of Customary Marriages Act has legally 
legitimized customary marriages, although tradition still prevents equality for many African 
women, particularly in rural areas (Herbst & du Plessis, 2008).

**Ownership and Inheritance**

Under many customary law regimes, women are often not allowed to inherit, own, or 
acquire any property. Women are also afforded unequal treatment in relation to inheritance. 
Upon the death of a husband or father, usually only a male can legally be an heir, denying 
women rights and access to their family’s wealth. This persists into the modern era, particularly 
in relation to land tenure rights. Many customary law regimes make it difficult for women to 
own property or land. This patriarchal view contributes to the enduring status and legal power of 
men greatly exceeding that of women, potentially limiting the options that women have for 
themselves and their daughters (Beninger, 2010; Elias, 1956).

**Dynamics of Power**

As had been noted earlier in this chapter, much of the history of the modern state in many 
parts of the world, especially in Africa, has been characterized by an emphasis on achieving 
national cohesion, often at the expense of local communities. This emphasis on the “center” 
effectively placed a premium on concentrating power at the national level by attempting to deny,
undermine or co-opt local authorities (Ribot, 2002). However, in the ensuing half-century of post-colonial African history, there has been a gradual recognition of the validity of local and customary interests. How various countries have dealt with this recognition has varied widely and will be further discussed with respect to the subject of female circumcision. Adding to this rich complexity is the fact that the shifting power dynamics go well beyond the national/local divide but are equally complex on the local level (Ribot, 2002).

**Conclusion**

Law is multifaceted and complex, especially when multiple forms of law are interacting and making demands on behavior with respect to a single issue; in the case of this research inquiry, female circumcision. This chapter provided a background into the topics of legal pluralism, the different types of law, the history of law and legal interventions in Africa, and the way in which the legal process of Africa has been shaped by legal pluralism. Concepts of culture, community, and exploitation were introduced, as relevant to this research inquiry. Subsequent chapters will further expand upon these concepts as they relate to the research inquiry and interviews with members of the Gogo ethnic group of Tanzania.
Chapter III

Literature Review: Female Circumcision in Africa

An Overview of Female Circumcision

Female circumcision is defined as a surgical procedure that removes all or part of a woman’s genitalia (Smith, 2011). The practice is widespread in Africa, and occurs worldwide amongst African immigrants. The practice is also described by certain advocacy groups as “female genital mutilation,” however, this term is inflammatory and conveys a judgment upon the practice (van den Brink & Tigchelaar, 2012); for the purposes of this investigation, the traditional and less biased term of female circumcision will be used. The World Health Organization (WHO) estimates that 92 million African girls over the age of ten have undergone this procedure (2012). The percentage of women who have undergone the procedure varies by country, ranging from 5% in Zaire and Uganda, to 98% in Djibouti and Somalia (Wasunna, 2000). Female circumcision has been shown to result in a wide range of negative repercussions including urinary tract infections, infertility, cysts, and problems during childbirth (Smith, 2011).

Efforts have been made at national and international levels to address the issue, limiting the practice or making it illegal, with a variety of fines and other deterrents (Smith, 2011). Regardless of these attempts, the practice remains pervasive. While the degree of consequences caused by various iterations of female circumcision may vary, the practice is undeniably illegal from an international standpoint (WHO, 2012). Further, many espouse the idea that the practice is immoral and unethical. However, traditional and cultural ideas of women, marriage, and sexuality inhibit the effectiveness of laws against female circumcision.
The age at which the procedure is carried out varies widely, and precise figures are difficult to determine. Reliable data indicates that most procedures take place when a girl is between the ages of four and twelve (Althaus, 1997). There are three main methods of circumcision: (a) clitoridectomy, in which the clitoris is partially or totally removed; (b) excision, which involves partial or total removal of the clitoris and labia minora, which can also include excision of the labia majora; (c) infibulation, which involves narrowing the vaginal opening after the clitoris and labia minora are removed by cutting and repositioning the labia majora (Althaus, 1997; WHO, 2012). Infibulation is most often observed in Somalia and parts of East Africa, while clitoridectomy and excision are commonly practiced in West Africa (Fleuhr-Jobban, 2004). The practice of female circumcision has not been documented at all in South Africa or in the Arabic-speaking nations of North Africa, with the exception of Egypt (Althaus, 1997). Researchers note, however, that these prevalence figures should be interpreted with caution. The prevalence of female circumcision as practiced in Africa is shown in Figure 1.
Although these procedures are often performed by traditional birth attendants, recent research shows that more than 18% of female circumcisions are being carried out by health care providers (WHO, 2012). Regardless of the setting in which the surgery is performed, female circumcision can have negative health repercussions. The initial procedure can cause pain, shock, bleeding, and sepsis, and there can be long-lasting negative effects as well (WHO, 2011). Excision can damage nerve endings and lead to pain long after the wound has healed, and infibulation can lead to reproductive and urinary tract infections, secondary infections, and sterility due to the inhibition of menstrual flow caused by the narrowed vaginal opening (Althaus, 1997). Pain, tearing, and bleeding are likely to occur during sexual intercourse for
women who have undergone infibulation, leading to a reduction of sexual pleasure for both women and men (WHO, 2011). Studies have found that these adverse effects can lead to dissolution of marriages due to the combination of difficulties during intercourse and lower fertility rates for women who have undergone the more extreme forms of female circumcision (Gosselin, 2000).

In a study of the excision method, Gosselin (2000) considered the demographic makeup of the women excised. The average age was found to be just over six; between 9% and 23% of the procedures were performed by a medical professional, depending upon the hometown of the respondents. Women of all castes were found to undergo excision, although to a lesser degree among the higher caste. Rates of excision were found to be increasing due to a traditionalist movement. Many of the more skilled women who performed excisions came from the poor classes. While the more skilled women were capable of causing less damage, many had stopped performing excisions due to activist efforts to expose the potentially damaging nature of the procedure. As a result, non-traditionally trained nurses are increasingly performing excisions, leading to a greater rate of failure and injury (WHO, 2011). In this case, legal and activist efforts to stop female circumcision actually caused more damage to women (Gosselin, 2000). The implications of such data are important to consider: by intervening in ways that are not appropriate or appreciated, there is a significant risk of causing further harm in addition to the harmful practices that are already being carried out.

**Legal Efforts to End Female Circumcision**

There are no documented health benefits to undergoing female circumcision of any form, and the potential health risks have been widely documented (WHO, 2012). As such, there have been many legal efforts to limit the practice. These efforts have been spearheaded by national
organizations and governments, as well as local movements in the areas where the practice occurs. In 1997, WHO, the United Nations Children’s Fund (UNICEF), and the United Nations Population Fund (UNFPA) released a statement decrying female circumcision and calling for a global end to its practice (WHO, 2011). This statement created global awareness of female circumcision and its ramifications for girls and women and spurred widespread efforts to legislate against it.

Currently, numerous international treaties exist denouncing the practice, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Covenant on Civil and Political Rights; the Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the Convention Relating to the Status of Refugees and its Protocol Relating to the Status of Refugees (WHO, 2008). Many countries across the world have banned the practice and international organizations have banded together to educate people about the harmful repercussions of female circumcision. The Center for Reproductive Rights reports:

Twelve industrialized countries that receive immigrants from countries where FGM [female genital mutilation] is practiced—Australia, Belgium, Canada, Cyprus, Denmark, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom, and United States—have passed laws criminalizing the practice. In Australia, six out of eight states have passed laws against FGM. In the United States, the federal government and 17 states have criminalized the practice.

One country—France—has relied on existing criminal legislation to prosecute both practitioners of FGM and parents procuring the service for their daughters. (Center for Reproductive Rights, 2008, para. 8)

In addition, legal efforts to end female circumcision have included declarations, enactment of criminal laws, child protection laws, civil laws, and immigration regulations (WHO, 2008).
In Africa, the African Union’s Solemn Declaration on Gender Equality in Africa and the African Union’s Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Appendix C) are considered to have made major inroads in addressing female circumcision at the legislative level (WHO, 2008). Another treaty, the African Treaty on the Rights and Welfare of the Child, has also asserted the need to end female circumcision (WHO, 2008). Today, 21 countries in Africa have laws against female circumcision (WHO, 2011), with penalties ranging from three months to life in prison and monetary fines. There have been documented cases of prosecutions and arrests in Burkina Faso, Egypt, Ghana, Senegal, and Sierra Leone (WHO, 2011).

Despite these government-enacted laws, female circumcision continues to be widely practiced. WHO (2008) notes that efforts to end female circumcision must be community-led and emphasizes that the practice must be abandoned on a large scale to ensure that no single girl or family is retaliated against or socially ostracized for non-adherence (Center for Reproductive Rights, 2008). WHO (2008) writes of policy and legal efforts to end female circumcision:

The effectiveness of any law depends, however, on the extent to which it is linked to the broader process of social change. Legal measures are important to make explicit the government’s disapproval of female genital mutilation, to support those who have abandoned the practice or wish to do so, and to act as a deterrent. However, imposing sanctions alone runs the risk of driving the practice underground and having a very limited impact on behavior. (p. 17)

This statement highlights the difficulties faced by policymakers when they attempt to legislate against female circumcision. Social and cultural support for the practice can impede the effective implementation of such laws.
Social and Cultural Support for Female Circumcision

Medical ethicist Ellen Gruenbaum (1996) writes that, despite the potential negative health repercussions of female circumcision, there is positive value for the practice in relation to social and familial cohesion and women’s sense of gender identity. Female circumcision has long held social value in African nations as a rite of initiation. The practice maintains traditional notions of sexuality that are valued within the culture, initiating girls into the world of women and securing their commitment to their community’s ideals. In addition to being a ritual of womanhood and community membership, the practice enables families to charge higher prices for their daughters when they become brides (Althaus, 1997; Gruenbaum, 1996; Koso-Thomas, 2008; Sala & Manara, 2002). Figure 2 illustrates a few of the many intersecting reasons for the continuation of female circumcision.

Figure 2. Reasons for continuing female circumcision (Mohamud, Ali, & Yinger, 1999).
One particular cultural justification for female circumcision is rooted in the notion of property rights in traditional African marriages. While Western mores and laws deem women to be primarily independent, many other cultures view women as subservient to their husbands, to men generally, and to the community as a whole. Thus, calls to end female circumcision based on Western notions of individuality and bodily autonomy clash with locally held African beliefs, not only of how women should be treated specifically related to female circumcision, but how women should be treated with regard to their status as belonging to the community (Kang’ara, 2012).

Given the potential negative health effects of female circumcision, the question is raised as to why certain cultures continue to promote the practice. When national governments and international organizations attempt to impose laws regarding female circumcision, many communities continue to adhere to traditions based on cultural beliefs and values, causing conflict with and violation of the laws. Circumcision is a major rite of passage for women and girls in many African and Egyptian cultures. Althaus (1997) notes:

Girls’ desire to conform to peer norms may make them eager to undergo circumcision, since those who remain uncut may be teased and looked down on by their age mates. In addition, the ritual cutting is often embedded in ceremonies in which the girls are feted and showered with presents and their families are honored. (p. 132)

Gruenbaum (1996) also noted that social pressure and taunting were directed at girls who were not circumcised, often leading them to pressure their parents into allowing them to be circumcised despite their parents’ beliefs regarding the dangers. Sala and Manara (2001) write:

It is impossible for a member of a tribe or area that practices [female circumcision] to imagine an initiation without [it] because this is the tribal symbol of the spirit of community and inner cohesion of the group. Individuals belonging to ethnic groups practicing these forms of mutilation are “signed” in their sexual identity as members of it. (p. 248)
As can be seen from the above-quoted passages, circumcision plays an integral role in certain cultures that cannot be undone simply by changing state or international laws. Abusharaf (1998) cites the idea of symbolic interaction in discussing female circumcision, suggesting that the act is given meaning through the social interactions that accompany it or stem from it. While there are obvious physical changes that occur, the symbolic interactionist perspective emphasizes the importance of the meaning of the practice, the social symbols associated with it, and the emphasis on celebration, rite of passage, and community involvement. Despite potential negative repercussions that may result from the practice, “the positive meanings associated with circumcision are learned” (Abusharaf, 1998, p. 22). This makes female circumcision an important part of African cultural life despite the health risks. Efforts to curtail the practice or reduce the potential for physical harm must take into account its cultural significance. Likewise, activists and legal reformers must seek to interact with community leaders through practical and respectful social dialogue.

An additional justification for female circumcision is the belief that it is more sanitary and promotes enhanced cleanliness, despite evidence indicating that this is not the case (Abusharaf, 1998). In addition to myths about cleanliness, it is also believed that female circumcision reduces mental health disorders such as depression and epilepsy, thereby promoting mental well-being and better physical hygiene. Again, there is no evidence indicating that this is the case (Abusharaf, 1998). The contrary has been found to be true; women who undergo circumcision, especially those who have health complications such as reduced fertility, are more likely to experience mental health disorders as a consequence (Wasunna, 2000). Many advocates
also say that female circumcision is more aesthetically pleasing (WHO, 2012), paralleling some of the justifications for male circumcision.

Specific, strongly held beliefs that support female circumcision are very pertinent to this inquiry, among them the ties of female circumcision to patriarchal notions of female sexuality. Circumcision reduces the libido and has the potential to cause pain during intercourse in girls or women who have undergone infibulation; thus, the practice is meant to discourage “illicit” sexual practices (WHO, 2012). Because female circumcision lessens women’s sexual pleasure, it is believed to promote chastity and preserve virginity until marriage (Koso-Thomas, 2004). Circumcising a girl before she is of marriageable age can confirm her status as a virgin, allowing her to be seen as a more valuable bride and, in some cases, ensuring that she is eligible for marriage at all (Althaus, 1997). A girl’s family and the families of potential suitors may inspect her body prior to agreeing to a marriage, ensuring that she is circumcised, and that the circumcision remains intact. This process creates an added incentive to maintain the integrity of the procedure by avoiding premarital sexual contact. Being able to ensure that a girl is a virgin prior to marriage can yield a higher price for a bride, which will benefit the circumcised girl’s family (Gruenbaum, 1996; Koso-Thomas, 2004).

The importance of marriage eligibility is high in many African cultures, having repercussions for the financial and social status of the entire family. Unlike the Western view, a woman’s body belongs to her family and community. As such, a woman’s body affects the group as a whole, not just the woman as an individual (Gruenbaum, 1996). Interviews with women living in countries where circumcisions are performed fear reprisal regarding marriage, even with educational and legal efforts to end female circumcision. This fear encourages them to undergo the procedure (Gruenbaum, 1996; Sala & Manara, 2001). These researchers also found
that men were far less likely to marry a woman who was not a virgin, or who refuses
infibulation, a specific form of circumcision which some cultures perceive as affording
heightened sexual pleasure to a woman’s future husband. Given that much social standing
depends on successfully negotiated marriages, many women willingly continue the practice. The
researchers also found that women felt pride regarding their circumcisions, citing that sex was
more satisfying for both parties and that the women enjoyed participating in the cultural tradition
and social standing related to the practice. Such reports are subjective and dependent upon the
logic employed by the respondents. These findings highlight the connection between beliefs
regarding marriage and a woman’s body as property and the difficulty of enforcing laws to
eliminate circumcision.

While justifications for female circumcision will be explored in greater detail later in this
inquiry, the basic justifications have been established. It is important to note that various cultures
and social groups practice and perform female circumcision using different methods and for
many reasons, making any overall exploration of the practice inherently incomplete. Female
circumcision must be viewed through a flexible lens that encompasses a multiplicity of views,
for example, an environment of legal pluralism. The exploration of legal pluralism as it relates to
this topic will serve not only to cast light on the nature and continuation of female circumcision,
but will draw attention to the inadequacy of state and international law in prohibiting or even
reducing such a culturally ingrained practice.

Worldwide, an estimated 140 million women have undergone circumcision; the majority
of these women are from 26 nations, mostly in East and West Africa (Assaad, 1980; Gele,
Johansen, & Sundby, 2012). Female circumcision in Africa is based upon historical and cultural
traditions. The practice has become a public health issue, given its prevalence and possible
serious health consequences (Kouba & Muasher, 1985). Such traditions have been brought to light and have taken root in international rights discourse as a result of Western involvement in the continent of Africa (Wily, 2011). Involved in the process is the overthrow of many African governments, which has altered the composition of authority. Traditional and customary laws now contrast with international and modern laws, creating an overlap in which practices such as female circumcision are able to continue (Sweet, 2009).

The split between customary practices and laws and modern international law have created a split in the perspective toward female circumcision that occurs between Africa and the West, and within nations of Africa (Merry, 2003). The interplay between customary law and international law has created gaps between and among legal regimes in which traditional practices persist despite being questioned from an international human rights perspective (Wily, 2011). In order to understand the way in which female circumcision functions in an environment of legal pluralism, a thorough understanding of the practice itself is necessary.

**Female Circumcision Practices**

Female circumcision is a practice that has increasingly been the target of criticism from a variety of sources including the news media, legislators, health practitioners, feminist organizations, and human rights organizations. While original challenges to female circumcision employed a moral perspective, opposition to the practice in the modern era has more to do with women’s health and empowerment and human rights issues (Shell-Duncan, Wander, Hernlund, & Moreau, 2011). The process of female circumcision has many variations and associated practices.

**Types of Female Circumcision**

The World Health Organization (WHO) uses the term female genital mutilation (FGM) to
describe nearly all forms of female circumcision. According to the WHO, there are four types of FGM. Type I involves the partial or total removal of the clitoris and/or prepuce. Type II involves the partial or total removal of the labia minora and clitoris. Type III includes the partial or total removal of the external genitalia and the sealing of the vaginal opening. This seal is made small enough so that only urine and menstrual blood may pass through, with or without cutting the clitoris. Type IV covers all other harmful procedures to the female genitalia that are not conducted for medical reasons (Gele, Johansen, & Sundby, 2012).

While the WHO has defined four different types of female circumcision, others have estimated that there are up to eight different variations. The most common practice is the removal of all or part of the clitoris and the clitoral prepuce (Shell-Duncan, Wander, Hernlund, & Moreau, 2011). In the Sudan, this particular practice involves the removal of only the top half of the clitoris. Clitoridectomy is the term used to describe procedures that involve the partial or total removal of the clitoris, parallel in nature to Type I. Type II is also known as excision, in which the labia minora and part or all of the clitoris are removed (Shell-Duncan, Wander, Hernlund, & Moreau, 2011).

Those authors describe the most radical form of female circumcision, infibulation or pharaonic circumcision, in which a clasp or fibula is fastened through the labia majora. The practice is thought to prevent women from having extramarital sex, and also involves the full removal of the clitoris, labia minora, and labia majora. The cut edges are then stitched together, allowing only urine and menstrual blood to pass through; this parallels Type III as described by WHO. Women who experience infibulation undergo a process known as de-infibulation, where the closure is opened for sexual intercourse or childbirth. These women again undergo infibulation after a birth, as do women who are divorced or widowed (Shell-Duncan, Wander,
Historical Practices

Africa is not the only continent where female circumcision is a common practice. In addition to East and West Africa, some areas of the Arabian Peninsula utilize the practice. In Egypt, for example, female circumcision was a traditional practice linked to Islam (Assaad, 1980). Historically, the practice is thought to have occurred in many Mediterranean nations. Mummified remains found by Greek historian Herodotus provide evidence of the occurrence of this practice as early as 163 B.C. (Kouba & Muasher, 1985).

The Greek geographer Strabo reported in 25 B.C. that the circumcision of girls was a custom when he visited Egypt. In the late 1700s, the German traveler Carsten Niebuhr reported that the female circumcision operation was common in Arabia, Egypt, and Syria. Other writings cite that the operation was performed in these areas as late as the 1800s (Elias, 1956). However common female circumcision may have been historically, it is not typical in the world today. Of the nations that currently practice female circumcision, nearly all are within Africa. Further, the practice has been classified as a public health problem due to a shift in the perspective surrounding the practice (Kouba & Muasher, 1985).

Changing Perspectives

The perspective of those nations that practice female circumcision is that it is a traditional and basic element of their culture. In the modern era, the practice has been recast as a human rights violation. The descriptive term itself has been changed to reflect this shift, changing from “female circumcision” to “female genital mutilation” (Shell-Duncan, Wander, Hernlund, & Moreau, 2011, p. 1275). The issues surrounding female circumcision involve discourses on international human rights, cultural relativism, patriarchal oppression of women, medicalization,
sexuality, racism, and Western imperialism (Shell-Duncan, Wander, Hernlund, & Moreau, 2011).

Western nations have become involved in Africa, exerting an active effort to eliminate female circumcision. Critics have faulted the Western world for interference, believing that African nations should be the only nations responsible for their traditional practices. The Western world has begun to exert pressure upon African communities, individuals, and governments to end the practice of “female genital mutilation,” as it is perceived by these Western nations. According to Fuambai Ahmadu, a scholar in the field, protecting the rights of the minority of African women who oppose the practice is a legitimate cause, although “mounting an international campaign to coerce 80 million adult African women to give up their tradition is unjustified” (Shell-Duncan, Wander, Hernlund, & Moreau, 2011, p. 1276).

Even within nations in Africa, the perspective regarding female circumcision is changing. Internationally, the practice is now largely recognized as a public health concern. Given the number of nations in Africa that participate in female circumcision, the practice affects a large population of individuals. The various complications that may result are the primary focus of criticisms; however, given the culturally sensitive nature of the practice, many women may be reluctant, or may refuse, to pursue serious medical attention (Kouba & Muasher, 1985). Despite the persistence of the practice, change and stability are not mutually exclusive. The evidence that suggests that it is changing is consistent with literature that indicates that both change and stability of customs over time is to be expected. Inglehart and Baker (2000) examined three waves of the World Values Surveys, which represent 75 percent of the world’s population across 65 societies. Based on their examination, they discovered that there is evidence for both cultural change and the persistence of cultural traditions. Religious and cultural traditions leave imprints
on enduring values. Industrialization has been found to increase occupational specialization, education, and income, however, many traditional values stay in place. The researchers found that distinctive cultural zones persisted; while there was change, change was similar amongst that cultural zone and distinctively different from change in other zones. With the significant issues related to health or human rights that are involved in the issue of female circumcision, it is necessary to clarify the variations within the practice to be able to quantify the related risks.

**Western recognition.** An element of the discourse surrounding female circumcision is concerned with the presence of the practice in the West. Traditional female circumcision is at times practiced by African expatriates living abroad. African immigrant or refugee communities in Western countries may also practice female circumcision, drawing international attention. In accordance with the United Nations Decade for Women, it was recommended that Western teachers be educated about female circumcision so they would be able to identify the practice (Dorkenoo & Elworthy, 1992). Teachers were trained in health promotion and counseling against female genital circumcision for students and parents. While these interventions are well-intentioned, they further reinforce the Western notion that the practice is negative and to be educated against (Dorkenoo & Elworthy, 1992).

**African Nations’ Female Circumcision Practices**

In Africa, female circumcision has been conducted on more than 80 million adult women in practices that remove a portion or all of the external genitalia for nonmedical reasons. The process occurs at varying stages in life, depending upon the culture (Gele, Johansen & Sundby, 2012). These stages include infancy, before puberty, at puberty, with or without initiation rites, upon contracting marriage, in the seventh month of the first pregnancy, or after the birth of the first child (Shell-Duncan, Wander, Hernlund, & Moreau, 2011). The practices in specific
countries where this procedure is the most prominent are discussed below. To facilitate understanding of the areas in which the practice is most commonly observed, Figure 3 below displays the percentage of circumcised women and girls across the continent.

![Figure 3. Prevalence of female circumcision in Africa (28 Too Many, 2013).](image)

**The Sudan**

The nation of Sudan has a unique practice termed *matwasat*, or intermediate circumcision. This form of female circumcision, a modified form of infibulation, involves a comparable amount of cutting, although the stitching is performed differently. Only the anterior two-thirds of the outer labia are stitched, leaving a larger posterior opening (Shell-Duncan, Wander, Hernlund, & Moreau, 2011). This technique is thought to have begun in the Sudan as a means of getting around a 1946 ban on infibulation. A recent survey, however, found that fewer than 2% of Sudanese women had undergone an intermediate infibulations (Gele, Johansen &
Sundby, 2012).

**West Africa**

In West Africa, a modified intermediate infibulation is practiced, what the WHO describes as the Type III form of female circumcision, or sealing. A slightly altered form of sealing is common, not actually accomplished by stitching, but rather using stitching to allow the blood to coagulate; forming what is effectively an artificial hymen (Shell-Duncan, Wander, Hernlund, & Moreau, 2011).

**Tanzania and East Africa**

In Tanzania and most other Eastern and Southern African countries, female circumcisions are performed outside of formal healthcare settings. The purpose of the procedure in most of these areas is a rite of passage into adulthood (Brewer, Potterat, Roberts, & Brody, 2007). While female circumcision is officially banned under the nation’s Sexual Offences Special Provisions Act, 1998 (Appendix D), the practice remains hugely popular in some areas. Particularly in the Northeastern part of Tanzania, the majority of women are circumcised (28 Too Many, 2013).

**Somalia**

The nation of Somalia has shown a progressive stance on female circumcision. According to information from the Water for Life project, between 1996 and 1998 nearly 1,000 Somalian girls underwent a procedure best defined as a symbolic infibulations (Shell-Duncan, Wander, Hernlund, & Moreau, 2011). Members of a medical team administer anesthesia, then make a small nick on the clitoris, causing a few drops of blood to form. Following this, the girl lies with her legs bound, thereby symbolizing infibulation. In the United States, immigrant women from Somali have requested symbolic infibulation in hospitals as a transitional means with which they can replace the traditional procedure. If the procedure was not possible to obtain
in America, it would require a return trip to Somalia, or an operation by Somali midwives in a nonmedical setting in the United States (Shell-Duncan, Wander, Hernlund, & Moreau, 2011).

**Medical Complications**

The potential side effects of female circumcision are an important component of the perspectives toward the practice. The most common complications include hemorrhaging, urinary retention, and infection. Women who undergo circumcision often experience immediate as well as later complications.

To explore the impact of female circumcision, there was a study of a population of 290 Somali women between the ages of 18 and 54 (Dirie & Lindmark, 1992). Most of the women interviewed reported suffering as a result of the procedure. The researchers emphasized a potential lack of candid symptom reporting due to embarrassment on the part of the respondents, and the researchers indicated a likely underestimation of suffering. Of this population, 39% had experienced significant complications following circumcision. Also, of 290 women surveyed, 37% experienced later complications from the procedure, including a dermoid cyst at the site of the amputated clitoris, urinary problems, dribbling urine incontinence, and poor urinary flow. These reported medical conditions represent a major cause of concern within the medical field, and likely decrease the quality of life for those women who suffer from them. Should these figures truly be underestimated, they may be even more detrimental to the overall health of women.

**Infectious disease concerns.** In addition to the immediate and late-onset medical complications that may occur as a result of the female circumcision surgery, infectious diseases are related to the practice, furthering international concern. A positive correlation has been found between HIV-positive status and having been circumcised. Women who are virgins and have
been circumcised are more likely than non-circumcised females to be HIV-positive. In both Africa and the Middle East, female circumcision is also associated with hepatitis B and C infections, in both adolescents and adults. The practice often involves the use of shared, contaminated cutting instruments, resulting in many contaminated blood exposures (Brewer, Potterat, Roberts, & Brody, 2007). Given the risks of complication and disease, the qualitative perception of women who have experienced traditional nonmedical female circumcision provides an interesting perspective.

**Qualitative Response: Circumcised Females’ Perspectives**

The discourse surrounding female circumcision has expanded beyond the borders of Africa. Surgical practices that are based upon tradition may have substantial cultural and social meanings symbolic of ethnic identity or religion, and are often related to women’s sexuality, their reproductive role in society, and the cultural meaning (Toubia, 1994). The three nations with the highest female circumcision rates are: Somalia (98%), Djibouti (95-98%), and Mali (90-94%). The three practicing nations with the lowest rates are: Tanzania (10%), Uganda (5%), and Zaire (5%) (Gruenbaum, 2001).

The prevalence of the practice underlines its social and psychological effects on women from the African continent. The subjective cultural value of the practice can better contextualize the international response. Nations across the world, mostly in the West, have mobilized in opposition to the mostly African practices of female circumcision. While the perspectives of governmental stakeholders and those concerned with human rights have been explored extensively (Gruenbaum, 2001), the perspectives of the women upon whom the procedures have been conducted have not. The qualitative perspective of African women provides first-hand knowledge about female circumcision from those for whom it is a cultural norm, and from those
who have most likely experienced the process.

**Somalia**

Gele, Johansen, & Sundby (2012) studied female circumcision from the perspective of a sample of Somali women who were current residents of Oslo, Norway. Using qualitative structured interviews, the perspectives of the participants were collected. The study, conducted between April and June of 2011, found that 70% of the Somalis interviewed supported the discontinuation of all forms of female circumcision. Most of those women who supported the practice had arrived in Norway less than four years prior to the interview. The study concluded that when Somalis leave their country for Norway, they might abandon the practice.

**Nigeria**

Qualitative research was conducted to determine the perspective of Nigerian women toward the practice of female circumcision (Anuforo, Oyedele, & Pacquiao, 2004). The sample population came from three Nigerian tribes, with individuals living in three sites in Nigeria as well as in the US cities of Newark, Irvington, and East Orange, New Jersey. Men and women were included in the study. The researchers found that the procedure is rooted in cultural beliefs, meanings, and practices amongst the native tribes. Whether the interviewees had a positive or negative perspective of the practice, their beliefs were influenced by their occupation, education, and religion. The presence of government-sponsored public education regarding the topic of female circumcision and the impact of the media also determined the awareness of the respondents to the potential complications of the procedure. The study concluded that attitudes toward female circumcision amongst Nigerians of the Ibadan, Lagos, and Owerri tribes are shifting from positive to negative.
Sudan

Toubia (1994) placed the researcher and colleagues in direct contact with many women in the Sudan who had experienced female circumcision. Given the relative lack of literature on the subject, the researchers endeavored to assess the physical and psychological impacts of the procedure. Toubia found that communities attribute high social value, as well as high psychological worth, to the practice of female circumcision. Girls often submit to the procedure despite fear, trauma, and potential after-effects in an effort to please their parents, to comply with cultural and peer pressure, and to advance their social status.

Further, several cases of psychopathologic disorders have been directly attributed to female circumcision in the Sudan. Women who had been circumcised exhibited many psychological side effects, including a syndrome of chronic anxiety and depression thought to be rooted in worry over the state of their genitals, the fear of infertility, and intractable dysmenorrhea. Egyptian psychologists found that a woman’s sexuality, defined as the degree to which a respondent is interested in sexual relations, is impacted in proportion to the extent of the operation. In addition, other factors such as inability to orgasm or a sense of disconnection from one’s body are also internalized and may inhibit sexual expression (Toubia, 1994). Based upon this evidence, it appears that circumcision is exerting a strong, negative effect on women in the Sudan.

Conclusion

Nonmedical female circumcision is ritually performed on an estimated 140 million women around the world and in 26 African nations, especially in East and West Africa. The Sudan, Somalia, and some regions of Tanzania are areas where the practice appears to be commonplace and enduring. Especially among the Dodoma region of Tanzania, rates of
circumcision are among some of the highest in the world. The literature indicates that the procedure is in keeping with traditional and historical customs and ideas about women, marriage, and property. In countries where it is practiced, female circumcision continues despite opposition from Western countries, where it is viewed as a public health and women’s rights issue, and despite national efforts to outlaw and suppress the practice.
Chapter IV

Literature Review: Efforts to Curtail Female Circumcision

Previous chapters have demonstrated the efforts to end the practice of female circumcision within Africa and across the globe. These efforts originate from a variety of sources within and outside of the African nations that practice female circumcision. Human rights organizations, medical practitioners, and other related stakeholders have drawn attention to the issue. The legal element is central to the potential success of these endeavors to end female circumcision as a practice.

This chapter will explore the various legal efforts to curtail the practice of female circumcision, including local African initiatives as well as those undertaken by human rights organizations and other third-party stakeholders. In an effort to contextualize the contrasting perspectives, the Western perspective toward female circumcision will be considered, including the ways in which the West has influenced the legal steps against female circumcision. The progress of these efforts will be highlighted, and further steps toward achieving greater success will be recommended, taking legal pluralism into consideration and using it as a means to satisfy both state and customary laws.

The United Nations and the Western Perspective

Many efforts have been undertaken by international organizations such as the United Nations to end female circumcision. Some consider the UN to be a force of neutrality across the globe, while others think the UN represents only Western cultural beliefs. Further, critics assert that the UN forces compliance with rules that go against cultural values (Bowman, 2005).
**Stereotyped Positioning**

The United Nations refers to female circumcision as female genital mutilation, a culturally relative and inflammatory term. The UN reports that young women are “subjected to female genital mutilation/cutting,” with 53% of women aged 45-49 having undergone the procedure, and just 26% of girls and women 15-29 having undergone the procedure (UN, 2013). Despite this reduction, the UN continues to combat the practice. An example of efforts to eliminate the practice includes the establishment of an International Day of Zero Tolerance to FGM/C, observed on February sixth. The UN views the reduction as a step toward eliminating the practice altogether throughout Africa. According to Anthony Lake, the Executive Director of UNICEF, “FGM/C is not only deeply wrong, we can and must end it to help millions of girls and women lead healthier lives” (UN, 2013, para. 4).

**Framing of Female Circumcision**

Some authors point out that the way in which female circumcision is framed sets the practice up for biased interventions. Van den Brink & Tigchelar (2012), for example, emphasize the similarities between the physical practices of male and female circumcision, and compare the legal efforts to end both practices. Specifically, they draw attention to the fact that, in order to consider circumcision at large a human rights issue, it must apply equally to both genders. However, most efforts to “end circumcision” focus on the specific ending of female circumcision, with no mention of male circumcision despite the parallels between the two practices, especially the most restricted types of female circumcision. The authors argue that issues of bodily integrity, unnecessary medical practices, and personal autonomy apply equally to both male and female circumcision.

Similarly, van Rossum (2012) emphasizes the difference between the older health risk
frame that used to be used very frequently in addressing the issue of female circumcision, and the newer human or women’s rights frame. From a health frame, it would be appropriate to reduce the health risks of the circumcision practice, provide appropriate anesthesia and medical care, and ensure sterility of environments and instruments. Similarly, it would be appropriate to ensure that the specific type of circumcision practiced on women and girls was one of the less invasive types that have not been shown to significantly increase the risk of injuries such as urinary incontinence, infection, or difficulties with childbirth. However, this is not the case, and initiatives to improve the health and safety of the practice are often criticized. Instead, the issue is now regarded as a human rights issue. Van Rossum emphasizes that this framework, especially when it emphasizes a view of non-Western cultures as backwards and victimizing women and children, sets the stage for viewing social questions in terms of human rights violations. Van Rossum states that this sort of legal framing divides society into groups of “us” and “them,” and often backfires against the minority groups who uphold these traditions.

Örnek (2007), comments on globalization, emphasizing that a sort of backlash occurs—namely, there is awareness that local cultural identity and diversity must be protected. This has the potential to create clashes between state governments and local customs, between authorities and people’s day-to-day lives. Alternatively, some literature has shown that, at times, modernization can actually serve to strengthen traditional values. For example, when reformist groups in Algeria attempted to use Islam to gain the support of local people, there was a strong backlash amongst religious fundamentalists (Inglehart & Baker, 2000).

**Opposition: Culturally Irrelevant**

African stakeholders believe that the opposition of the UN to female circumcision is merely a representation of the Western perspective toward the practice. This perspective fails to
account for the cultural value of the practice in Africa, instead attempting to overlay Western values (Bowman, 2005). The one-sided position of the United Nations is reflected in its practices and behaviors. According to the UN, female circumcision is recognized globally as a violation of human rights, has no health benefits, has severe and immediate long-term health consequences, and causes intense pain (UN, 2013). There is no mention or explanation of the cultural underpinnings of female circumcision or the traditional value assigned to it.

Bourdieu (1984) suggests the concept of “habitus,” an idea that essentially states that people seek out those things that their environment and social upbringing has made available to them. This means that alternatives are not only unattainable, but often unthinkable—people gravitate toward what they know, not what could be possible. Bourdieu also discusses the concept of “symbolic violence,” the social threats and judgments made that help to shape and organize behavior. While women are not forced to get circumcised, and few accounts mention any physical harm occurring to a woman for not being so, there are significant social repercussions. Those who are in the majority have a form of social or cultural capital that those who have not been circumcised lack. Through the circumcision ritual, a girl “deals with the inscribing, into the body and through the body, of a socially constructed and mediated personal identity which implies, as an aspect of habitus, a total cosmology, a system of causation, an eminently self-evident way of positioning one’s self in the natural and social world” (van Binsbergen, 1998, p. 893). Regardless of conditions, politics, and economics, this desire to reproduce culture and tradition continues on.

The United Nations has sought to address female circumcision within the confines of human rights and health, all but ignoring culture. In December 2012, the UN adopted a General Assembly Resolution that called on all member states to increase their level of efforts to
eliminate female circumcision completely. Following this call, some 1,775 communities across the African continent declared their opposition to the practice. The Executive Director of UNFPA, Babatunde Osotimehin, stated that the efforts of the UN should be rooted not only in human rights, but also in culturally sensitive approaches (UN, 2013).

**Female Empowerment**

An additional element of the United Nations’ efforts to eliminate the practice of female circumcision revolves around the empowerment of women. The UN considers female circumcision to be a violation of women’s health and well-being, and female empowerment is thought to be an important step in assisting women to overcome cultural traditions. Through empowerment, the UN hopes that women will place their health and well-being first. According to Babatunde Osotimehin, “Empowered women and girls are key to breaking the cycle of discrimination and violence and for the promotion and protection of human rights, including sexual and reproductive health and reproductive rights” (UN, 2013, para. 8). Through the support of female empowerment, the UN hopes to enable women to oppose the cultural practice of female circumcision and, in turn, come into alignment with the beliefs of the UN and its various stakeholders.

**Cultural Relativism and Female Circumcision**

Western efforts against female circumcision have been framed through a variety of perspectives. Some consider the efforts culturally relativist, others base them on the concept of universal human rights. Even the discourse surrounding cultural relativism and Universalist approaches are commonly associated with the Western perspective (Bowman, 2005). From the perspective of cultural relativism, rules and regulations that pertain to human rights law should be dependent upon the cultural context in which they are imposed (Desai, 1999). To frame the
context in which such decisions are made, it is thereby necessary to consider not only universal human rights, but the cultural reality that surrounds their expression.

The Misperception of Culture

An understanding of the meaning of culture is vital to understanding issues deeply rooted in cultural practices, such as female circumcision. Further, the historical connotations of culture and how this concept has been understood provide important insights into modern affairs throughout the continent. “The classic anthropological image of ‘the’ African culture as holistic, self-contained, locally anchored, effectively to be subsumed under an ethnic name, was deliberately constructed so as to constitute a local universe of meaning—the opposite of virtuality” (van Binsbergen, 1998, p. 882). Culture was thought to be integrated and united, and all parts, or, rather, all nations, were assumed to demonstrate a vast level of coherence, providing an illusion of meaningfulness to the outside observer. Even today, African societies display vast differences in terms of demographic and political makeup. While there is some effect from outside societies, many of the ethnic and cultural groups of Africa have a coherent sense of worldview, symbolism, and ritual that serves to conceal internal contradictions. In a sense, the differences within many African cultural groups are downplayed, while emphasizing the similarity and closeness of the groups. The meaning of local culture is a network of relations in which an element or tradition is conceptualized as belonging to a greater order. This meaning “produces a sense of proper placement, connectivity and coherence, recognition, identity as a person and as a group, aesthetics, bodily comfort and even healing” (van Binsbergen, 1998, p. 883).

Despite the local meaning of practices such as female circumcision, this meaning is often ignored, overlooked, or aggressively rejected by outside intervening parties. As the attention
given to the practice of female circumcision has increased in the West, so has opposition to the practice. Some have argued that such opinions are often misinformed or underinformed, ignoring the importance of culture. Western anthropologists, health officials, and policymakers have issued warnings against applying blind judgments to the practice, as blind judgments hinder progress (Corbett, 2008). Instead, well-informed participants recommend taking culture into account, facilitating change through engagement and cooperation with local leaders and opinion-makers. The goal of this approach is to shift the public discussion related to female circumcision. Rather than focusing upon the benefits of the practice, it is important to focus upon the negatives while also advocating the positives of associated rituals. Cultural belief in a practice is relative; many women who support female circumcision believe that they are doing something positive (Corbett, 2008). The importance of pursuing culturally relevant means to achieve one’s objectives is essential to reduce the occurrence of female circumcision.

Cultural relativists are often in disagreement over the definition of universal human rights. They argue that the human rights agenda established by international organizations is influenced by the West, making it insufficient to provide for “universal” human rights (Bowman, 2005). Further, since Westerners have injected their perspectives and beliefs into international law related to human rights, those rights and rules are inherently prejudiced (Corbett, 2008). Precious (2010) points out that culture is learned and dynamic, occurring gradually and continuously. He emphasized that culture, and, by extension, individual rights, is not a universal concept, but one that is based upon society and geographic location, and it is a concept that changes constantly. The rapid spread of market economies, communication methods, and technology, influenced by Western multinationals, impedes local culture. Values such as individualism, material, and consumerism are overtaking local values.
The Bridging of Cultural Gaps

Cultural relativism allows for the dismissal of international human rights initiatives. Whether the initiatives are imposed directly by Western nations or by those organizations thought to be aligned with them, such initiatives are not readily adopted. Similarly, intergovernmental agencies such as the UN are also ignored. Each culture is viewed as holding its own beliefs and views that are correct within the confines of the culture. Thus, the imposition of cultural values from a different culture or an international organization is a violation of cultural belief and tradition (Bowman, 2005). From the relativist perspective, cultures should have the capacity to set their own rules and regulations, and should not be forced by international organizations outside their culture to adopt outside rules and values (Desai, 1999).

In addition to whether cultures or ethnic groups “should” be forced to adopt outside rules or values, there is also the question about the success of such endeavors. Much of the literature indicates that an attempt to impose outside beliefs on a group will likely be met with resistance, creating more problems than solutions over time. “No matter how much globalization challenges the authorities of the states, and even if it changes the nationalistic awareness of people, the truth is that, the roots of the identities of societies and cultures will not change very much” (Örnek, 2007, p. 88). Therefore, as globalization increases, the struggle for identification at the local level increases correspondingly, although somewhat paradoxically.

The Universalist Argument about Female Circumcision

Cultural relativists dismiss international human rights on the basis that beliefs stem from culture; thus, organizations endeavoring to enforce beliefs are influenced by culture. When there is conflict between the culture of the enforcing agency and the culture of the party that is being changed, such efforts are seen as unacceptable from a cultural relativist perspective. The
Universalist perspective uses a similar logic in dismissing other opinions (Bowman, 2005). This perspective advances the notion that human rights apply to all individuals, regardless of culture (Desai, 1999). This counters the cultural relativist argument, emphasizing the presence of human rights despite cultural differences.

There is significant difficulty when one attempts to determine how to effectively define human rights as universal. While universalists advance this idea, it is necessary to consider how much structural support exists for this perspective. The United Nations is the largest international organization that endorses the presence of universal human rights, but it is often viewed as a mirror of the Western perspective. In order to sidestep prejudices against international bodies such as the UN, human rights initiatives must be established through local as well as national means (Bowman, 2005).

**Perspectives: Western Advocates and Advocacy Groups**

**Female Genital Cutting Education and Networking Project**

The FGC Education and Networking Project exists to disseminate educational material to the world in relation to the practice of female circumcision. The organization has established an online clearinghouse in addition to an international community of activists, attorneys, researchers, and health practitioners, all of whom are involved in educating the world about the practice and striving to end it. The organization not only translates and publishes materials internationally; it has established the FGM Asylum Network (The FGC Education and Networking Project, 2003).

**UNFPA-UNICEF Joint Programme on FGM/C**

This particular program endeavors to end the practice of female genital mutilation/cutting on a global basis. The program is involved in many nations, including Kenya, where the
UNFPA-UNICEF Joint Programme on FGM/C works alongside the Kenya Women’s Parliamentary Association. Some members of that group are also members of the Kenyan government and have the capacity to enact legislative action against the practice to coincide with their advocacy-based efforts. Studies by the UNFPA-UNICEF Joint Programme found that information regarding the laws against female circumcision is often insufficiently dispersed. Because of this lack of knowledge, those who should be held accountable for the laws are unable to effectively enforce them (UNFPA, n.d.).

The UNFPA-UNICEF Joint Programme on FGM/C seeks to establish awareness of the dangers of the procedure within the population of Kenya. The group recognizes that, however successful lobbying the government to change laws may be, it is still up to citizens themselves to follow the law. Advocacy groups do not face a lack of laws against female genital cutting, but rather a lack of social support. According to Florence Gachanja, the UNFPA’s National Programme Officer in Kenya, “For me, the law alone will not prevent the practice, but if people understand why they should stop it and why the law is there, then they will succeed” (UNFPA, n.d., A Strong Policy to Back up the Law, para. 1). Female circumcision is often endorsed by social, cultural, religious, or traditional factors, or some combination thereof. Effective education about the dangers of the practice is more likely to influence these factors, making law more likely to be followed (UNFPA, n.d.).

Kenya. The positive impact of the UNFPA-UNICEF advocacy group against female circumcision has been noticeable in the nation of Kenya. The group supported the drafting of the comprehensive National Policy for the Abandonment of Female Genital Mutilation in Kenya. A national study on the practice of female circumcision found it was common for the procedure to be conducted on young girls. This fact was used by UNFPA-UNICEF to align stakeholders in the
Kenyan government on the side of a bill that would prohibit female circumcision through the passage of new laws (UNFPA, n.d.).

**Equality Now**

Equality Now is an American organization based in New York that opposes female circumcision. It finances numerous African women’s organizations, including Womankind, that fight the practice. Such community groups engage women, children, and even circumcisers, endeavoring to educate them about the dangers of the practice. Beyond the medical issues that may be encountered, the organization also works toward engaging religious and clerical leaders in the dialogue. By engaging religious officials to explain how the practice is actually not rooted in religion, greater legitimacy is achieved (Rosenberg, 2004).

Equality Now says that, through its efforts, as well as those of other concerned parties, the perspective applied to female circumcision in Africa is shifting toward opposition. This shift is being experienced at a greater rate than for other human rights problems (Rosenberg, 2004). Through the efforts of Equality Now and the various local organizations it supports, the practice of female circumcision in Africa is being targeted from social, cultural, religious, and legal perspectives, thereby addressing the problem from multiple angles to maximize results.

**African Women’s Health Practice—Brigham and Women’s Hospital**

At Boston’s Brigham and Women’s Hospital, the African Women’s Health Practice clinic was established by Nawal M. Nour in the obstetrics and gynecology department. Nour was born in the Sudan and has been a strong opponent of female circumcision for many years. She founded the clinic to provide assistance to women who have undergone female circumcision. Half-American and half-Sudanese, Nour’s cultural background is a mix of one culture that practices female circumcision and another that vehemently opposes it (Dreifus, 2000).
Nour’s work in assisting circumcised women gained her a reputation amongst the African immigrant community in Boston as the “African woman doctor.” As she treated more of this population, she began querying them about their desires. Nour established the clinic to provide targeted assistance to the African immigrant community in dealing with female circumcision-related medical issues. Nour’s advocacy of African women has served to increase the dialogue on the subject (Dreifus, 2000).

Nour’s perspective is informed by her experiences with a native culture that supports and practices female circumcision, and the Western culture in which she practices that actively opposes female circumcision. Nour is endeavoring to increase awareness of female circumcision amongst American healthcare providers in order to further discussion and understanding. Treatment for those who have been circumcised may be facilitated through this awareness, as well as opposition to the continuation of the practice amongst the African immigrant community. In Boston alone, there are some 12,000 Somalis; large African populations also reside in Portland, Oregon, Washington, D.C., Seattle, Washington, New York City, and elsewhere. As such, this sort of advocacy is important and increasingly necessary (Dreifus, 2000).

**The Western Perspective**

The Western view of female circumcision is best exemplified by the term that is applied to the practice. As opposed to referring to the practice by its traditional term, female circumcision, the West primarily refers to it as female genital cutting. This is the term used to describe the practice in many Western-influenced organizations, including the UN and the World Health Organization (Bowman, 2005).

Referring to the act as cutting, as opposed to circumcision, implies that the act is violent and causes damage. The West commonly portrays female circumcision as a form of torture. The
feminist Western perspective is particularly in line with this viewpoint, advancing that female circumcision is a torturous practice imposed upon women and children against their will, due to patriarchal laws that fail to protect or account for women (Bowman, 2005). The Western perspective toward female circumcision is in sharp contrast with the perspective applied by Africans and members of other cultures for whom the practice is traditional.

**Misinformation and the Western Perspective**

One individual who has extensively studied the first-hand experience and perspective of women in relation to female circumcision is Kirsten Bowman. In a comment exploring the practice, Bowman (2005) describes an invitation she had received to speak on the Oprah Winfrey television show. Bowman had experienced the female circumcision practice of infibulation, and expected to discuss her experience on the show. Instead, she was asked to discuss maintaining one’s spirit. On the same segment, the white American actress Calista Flockhart was asked to interview women in Africa about female circumcision. This gave Bowman first-hand experience with the largely uninformed Western perspective regarding female circumcision.

Experiences such as the above have lead many advocates for curtailment to maintain that what has been characterized as “the Western perspective” is often incorrect or only partially informed. This was highlighted by the decision of Oprah Winfrey to use an American white woman to serve as a resource on female circumcision rather than an African woman who had experienced it. As one of the more powerful women in America and American media, Oprah Winfrey’s decisions carry weight and influence the American public. Western women are noted for speaking out about female circumcision despite a lack of cultural knowledge or understanding of the practice. To be outspoken against an activity without having complete knowledge of it produces a jilted and incomplete opinion (Bowman, 2005). From the perspective
of women who have experienced circumcision, as Bowman has, the Western understanding is both incorrect and aggressive. Those for whom female circumcision is a traditional practice believe that the West is ideologically attacking their traditions with intrusive initiatives to end the practice. Many believe that the West is attempting to force its cultural values upon non-Western cultures.

**The American Perspective**

The United States government has also become involved in the ongoing practice of female circumcision in Tanzania, largely through the collection of data. The U.S. Department of State found that clitoridectomy, the least severe iteration of female circumcision, was the most common form practiced within Tanzania (US Department of State, 2007). This contrasts with information from an advocacy group, the Female Genital Cutting Education and Networking Project, which found that the two most severe forms of female genital cutting were practiced in Tanzania (Immigration and Refugee Board of Canada, 2008). The US reports also examined the inability of the Tanzanian government to enforce laws against female circumcision. The first reason cited is a lack of knowledge concerning the laws. This factor is exacerbated by insufficient police resources and local leaders being bribed by practitioners eager to avoid prosecution. Those who have undergone the procedure are often reluctant to testify due to social reasons and fear of reprisal from female circumcision practitioners.

The Legal and Human Rights Center, another non-governmental advocacy group, found that many cases that do make it to court are dismissed, either due to a lack of evidence or the failure of witnesses to appear in court (Immigration and Refugee Board of Canada, 2008). From the Western perspective of both governmental and non-governmental agencies, Tanzania’s law enforcement officials are failing to effectively enforce the elimination of the practice of female
American Asylum Law and Female Circumcision

In the United States, asylum is a form of relief that may be granted by the Secretary of Homeland Security or the Attorney General, based on their discretion of whether the applicant qualifies as a refugee. Refugee status is defined by Section 101(a) (42) of the Immigration and Nationality Act (INA). To qualify, an individual must demonstrate a well-founded fear of persecution in their home country due to their religion, race, nationality, political opinion, or membership in a social group (Kim, 2008).

Asylum claims are divided into three segments. The first is proof of persecution, or proof of a well-founded fear of persecution. The second is proof of membership in a race, nationality, religion, social group, or proof of belief in a political opinion. The third is proof that the well-founded fear of persecution is due to the applicant’s membership in a protected class of individuals. It has been determined that women who are subjected to female circumcision based solely upon their gender do not have sufficient proof to achieve asylum (Kim, 2008). To achieve asylum based on female circumcision, a woman must first demonstrate that she is in fact female, and that she belongs to an ethnic group that practices female circumcision, or female genital cutting, as it is described in American legalese. Depending upon the case and the agency interpreting the definition of female circumcision, asylum laws may or may not apply (Kim, 2008).

Female Circumcision as Grounds for Asylum

Modern efforts to eliminate the practice of female circumcision have assumed an international character. The practice has been declared an international human rights violation, and has been decried by many organizations and governments (Bowman, 2005). The use of an
asylum claim has recently become an issue of contention in the United States, bringing up issues of whether female circumcision is a form of persecution. The Board of Immigration Appeals (BIA) defines female circumcision as “sexual oppression… to ensure male dominance and exploitation [practiced in order to] overcome sexual characteristics of young women… who have not been, and do not wish to be, subjected to FGM” (Kim, 2008, p. 3).

The Threat of Circumcision

In the United States, the BIA and federal courts have disagreed about the application of asylum law to the practice of female circumcision. The BIA defines female circumcision as a form of persecution. While the threat of female circumcision is sufficient to achieve asylum, there is disagreement between the federal courts and the BIA when the procedure has already been conducted. According to US federal courts, individuals who have been subjected to the persecution of female circumcision may apply and achieve asylum. However, since the BIA considers female circumcision to be a one-time procedure, and since there is no potential for the applicant to undergo the procedure again, women may not use it as a basis for an asylum application (Kim, 2008).

Children and Threat

Asylum cases based upon female circumcision have become more and more prevalent. As the volume of such cases has increased, the degree of detail related to the practices has also been expanded. The delineation of the threat that female circumcision poses has been considered not only in relation to mothers, but also to their daughters. Mothers have been able to win asylum cases based upon the assertion that their daughters face the threat of persecution upon return to their native land. However, women who have not had children have been denied asylum based upon the potential of persecution for their future daughters. The BIA finds this reason
excessively speculative and not founded on fact (Kim, 2008). The recognition of female circumcision as persecution of sufficient nature to meet the grounds for an asylum case clearly communicates the Western perspective on the issue.

**African Law and Female Circumcision**

The practice of female circumcision has been outlawed in most of the 28 countries on the continent of Africa (28 Too Many, 2013). Despite the illegality, these laws are rarely enforced. Attempts at enforcement have failed because of the large amount of resistance (Bowman, 2005).

Sudan is a prime example of this resistance. Despite the fact that the female circumcision practice of infibulation was made illegal in 1946, an estimated 80% of women have been infibulated (Dillon, 2000). Similarly, a ban on female circumcision was issued in Kenya by then-President Daniel arap Moi in 1982; by 1991, 100% of Kenyan women over the age of fifty and 78% of adolescent women had been circumcised (Chelala, 1998).

Efforts to eliminate female circumcision have also been made on a continental basis. The African Charter on Human Rights was established to address many human rights-related issues, including the rights of women and children (Bowman, 2005). The charter itself states that “appropriate measures can be taken in order to eradicate traditional practices and customs which are prejudicial to the child” (Bowman, 2005, p. 141). The practice of female circumcision has been deemed prejudicial to children, as the practice often occurs well before the child herself can make decisions for her own health and wellbeing. Despite the fact that many nations in Africa have adopted and ratified the African Charter on Human Rights (Cardenas, 1999), the practice continues without any noted reduction.

In their study of international laws against female circumcision, Ibrahim, Oyeyemi, & Ekine (2013) reported on the African Union’s efforts to this end. In 2003, the African Union
adopted the Maputo Protocol, within which women’s rights were promoted and the end of the practice of female circumcision was encouraged. The Protocol officially went into force in November 2005. By July 2010, an estimated 25 nations had ratified the Maputo Protocol. Despite such legal agreements, female circumcision still remains prevalent within the same African nations that agreed to end the practice altogether.

**Egypt and Female Circumcision**

Female circumcision recently became an issue in Egypt, drawing attention to the intersection between human rights, culture, and law. In the nation of Egypt, the common religion is Islam, and many of Egypt's inherent cultural practices are based upon Islamic concepts. While the law of Islam rarely comes into contrast with judicial law or the judicial implementation of human rights, there is conflict regarding female circumcision (Balz, 1997).

**The Intersection of Law and Religion**

In Egypt, the rule of law is strongly respected, even in the presence of an unfavorable political environment (Brown, 1997). Despite this fact, there is contention over how the law is to be applied and interpreted, particularly in relation to religion and freedom of expression. The practice of female circumcision is a practice in which conflict between Islamic law and human rights issues have emerged (Balz, 1997).

In the mid-1990s, an estimated 97% of females in Egypt were circumcised. The practice is traditional from the perspective of Islamic law. However, from the perspective of critics, female circumcision has been termed a mutilation conducted in the name of Allah (Aldeeb Abu-Sahlieh, 1994). Additional critics consider the practice to be inhumane and thereby a violation of human rights. The death of a 14-year-old girl in 1996 sparked international outrage, generating legal action against the practice (Balz, 1997). As a result, the Egyptian Minister of Health
decreed that the female circumcision operation was prohibited in public and private clinics as well as in hospitals. The practice was only to be allowed in cases of illness, requiring approval from the Director of the Gynaecological Department of the hospital. Any non-physician performing the operation would be tried in accordance with current laws and ordinances. The decree, however, did not hold up well against the beliefs of Islamists (Balz, 1997).

As such, the decree was overlooked by many Islamists. Further, it was challenged by the Cairo Administrative Court, asserting that the decree violated the principles of Islamic law. In accordance with the second article of Egypt’s Constitution, Islamic law was cited as the major source of legislation. Anything favored under Islamic law was considered to be protected from worldly rulers, and thus the disagreement proceeded, based on the split between traditional Islamic law’s customs and modern judicial law. Ultimately, the court would determine that its interpretation of Islamic law would be applied to the issue (Balz, 1997).

Defining the Practice

To effectively combat the practice of female circumcision, the Egyptian legislature first had to determine how to translate Islamic law so as not to be in violation of the second article of the Constitution by disobeying or disregarding Islamic law. The scope of bodily integrity had to be determined, as this is an element within legal protection, unless a there is a legitimizing reason or cause of justification. Legally, operations must be conducted with the intention to heal; therefore, female circumcision was allowed only in the event of illness. Utilizing this logic, the practice was determined to be illegal and not protected under the law. In deference to Islamic law, the court successfully shifted the perspective applied to female circumcision, emphasizing that Islamic law mandates that individuals do no damage (Balz, 1997). The Egyptian case is of value and application to Africa as a whole, because it shows how a traditional practice such as
female circumcision that is reinforced through religion and culture can be successfully combated through the combination of modern law and respectful consideration of religious goals.

**Governmental Support for Female Circumcision**

The national position of Egypt against female circumcision is growing stronger, largely due to the efforts of the UN’s program to end it (28 Too Many, 2013). Despite this, Azza Garf, a member of Egypt’s Parliament, opposes the ban on female circumcision. Garf is one of nine women elected to the Egyptian Parliament of nearly 500 representatives. She is a member of the Muslim Brotherhood Party, which believes in a strict interpretation of Islam (Khetani, 2012). Garf’s position is interesting, as it provides cultural insight into the issue as viewed from within a country in which female circumcision is a cultural norm, as opposed to Western stakeholders’ perspectives.

Azza Garf has exhibited support for women’s rights in the past and currently supports increased female participation in politics. In sharp contrast, she supports the tightening of laws that provide help for women to get divorced. Garf recently stated to *Foreign Policy* magazine regarding the ideal Egyptian woman “She should be developed in all aspects: health, economic, and education… It [female circumcision] is a personal decision and each woman can decide based on her needs. If she needs it, she can go to a doctor” (Khetani, 2012, para. 4). The fact that a female member of the Egyptian government feels the ban on female circumcision goes against freedom of choice is an interesting cultural-insider’s perspective. While the perspective seems to be the exact opposite of the Western perspective on the practice, it is in line with feminist emphasis on freedom of choice for women.

**Ethiopia and Female Circumcision**

Boyden (2012) has studied the practice of female circumcision in Ethiopia in depth and
found that it is declining, despite still being prevalent. Efforts to eliminate the practice in the nation are relatively prevalent. Within the Criminal Code, there are legal provisions restricting the practice of “female genital cutting.” This code has been insufficient to eliminate female circumcision; while it is restrictive of the practice, it does not ban it altogether (Spencer, 2012).

**Ethiopian Efforts to Eliminate Female Circumcision**

Andarge, van Riet, and Martins (2012) found that efforts to reduce and eliminate female circumcision in Ethiopia have existed for about 25 years. Despite this persistent effort, substantial progress has yet to be made toward eliminating the practice completely, blamed in large part on a lack of understanding of the true dangers. In some communities in Ethiopia, the rate of women who have been circumcised remains between 80% and 100%. The Afar Women Support Project (AWSP) was implemented by the Ethiopian NGO Action for Integrated Sustainable Development Association (AISDA) with a goal of effectively training medical personnel in proper procedures, while simultaneously educating them against traditional but potentially harmful procedures such as female circumcision (Andarge, van Riet, & Martins, 2012). The legal and social efforts on behalf of the nation of Ethiopia have been insufficient to eliminate or even markedly reduce the practice of female circumcision.

**Iraq and Female Circumcision**

Africa is not the only region that practices female circumcision. Islamic nations such as Egypt, mentioned above, also participate in the practice. Female circumcision is practiced in Iraq, although the country opposes the practice. The practice is based upon religion and custom, defying international human rights laws. In Iraq, 8% of women aged 15-49 experienced some form of genital cutting when they were children. Of this population, a large majority lives within the northern governorates of Kirkuk, Sulaimaniyah, and Erbil (UN, 2013).
News released by the UN Assistance Mission for Iraq (UNAMI) indicates that progress is being made toward combating the practice of female cutting in Iraq. Jacqueline Babcock, Deputy Special Representative of the Secretary-General in Iraq, states, “There is no justification for causing harm to a child. Female genital mutilation is a violation of the fundamental rights of girls that threatens their health and future opportunities, including giving birth later in life” (UN, 2013, para. 10). Babcock issued a call to the Government of Iraq and the Kurdistan regional government to address and eliminate the practice of female circumcision (UN, 2013).

**Kenya and Female Circumcision: Efforts toward Reduction**

Within the nation of Kenya, the practice of female circumcision decreased between the years 2000 and 2010. However, 27% of women in Kenya were still subjected to the procedure as of 2008. The decrease during 2000-2010 in Kenya contrasted with other African nations where the prevalence of FC remained largely unchanged (Oloo, Wanjiru, & Newell-Jones, 2011).

Community efforts in Kenya have been supported by private organizations and human rights advocates. Alternative rites of passage, or “ARPs,” have been established in many of these places. ARPs provide a substitute for the procedure that is similar in social nature, but does not include invasive surgery. Community- and socially-based measures alone have proven ineffective in ending the practice, highlighting the importance of mobilizing policymakers. To address the need of policy changes, in 1999, the Ministry of Health in Kenya issued the National Plan of Action for the Elimination of FGM (1999-2019). This was not a legal initiative, but rather an outline of intentions and desires. The initiative included proposed strategies, indicators, and targets of the initiative, all with the goal of reducing female circumcision (Oloo, Wanjiru, & Newell-Jones, 2011).

In 2001, Kenya adopted the Children’s Act, criminalizing female circumcision for all
girls under the age of eighteen. Under Kenyan law, the penalty for any individual who subjects a child to female circumcision was a fine of up to fifty thousand shillings, or $600 US, and/or up to one year in prison. Regardless, there were few successful legal actions on record against the practice. The country has been criticized for having no laws in place against female circumcision for women over the age of eighteen (Olool, Wanjiru, & Newell-Jones, 2011).

In 2010, additional legal initiatives were introduced against female circumcision in Kenya. As a result of earlier efforts through UNFPA-UNICEF, the practice declined significantly. From 1998-2003, female circumcision rates in Kenya dropped from 38% to 32%. By 2009, this number was 27%, indicating the success of ongoing efforts (UNFPA, n.d.).

**2010 Prohibition of FGM/C Law**

In 2010, an additional law was passed by the Kenyan government that substantially reinforced laws against female circumcision. The bill was drafted by the Kenya Women’s Parliamentary Association with support from the UNFPA-UNICEF Joint Programme on FGM/C (UNFPA, n.d.). It was the first time that the practice was fully criminalized in Kenya without exception. According to the law, any individual who participates can be convicted, including doctors, nurses, parents, the supplier of the knife, or the supplier of the location. Imprisonment of three to seven years in addition to a fine of 500,000 Kenyan shillings is mandatory. A medical practitioner who is found guilty of performing the procedure will have his or her license to practice medicine revoked in addition to receiving a prison sentence and fine. If the procedure results in death, the penalty may include life imprisonment (UNFPA, n.d.).

The establishment of laws against the cultural and traditional practice of female circumcision has, in many instances, been found insufficient to alter the perspective toward it (UNFPA, n.d.). This underlines the importance of finding alternative means through which
perspectives may be changed. It is possible that Kenya has been more successful than other countries in this effort as a result of the inclusion of both establishment of laws and community efforts.

**Mali and Female Circumcision**

The nation of Mali is an example of the ongoing shifts in the perspective applied to female circumcision and the efforts directed against it. International effort groups have notified medical personnel that the traditional practice known as female circumcision is now to be referred to as female genital mutilation. Regardless, the practice is prevalent, an estimated 90% of girls in Mali have been circumcised (Rosenberg, 2004).

**Local Opposition**

A women’s group in Mali has been advocating for an end to female circumcision since 1988. Mariam Bagayoko, a woman whose sole occupation was once the circumcising of local women, provides an example of the cultural shift. Citing the influence of talks with Kadidia Sidibe of the women’s group, Bagayoko decided to cease her practice in 1995. Following that, she established a group of former circumcisers who dispense anti-female circumcision education at prenatal care clinics, markets, and schools (Rosenberg, 2004).

**Local Support**

**Anti-Western perspective.** While individuals such as Bagayoko have turned against female circumcision and actively oppose the practice, cultural resistance remains. Bagayoko has reported that she has been persecuted for her stand and accused of betraying her culture. Critics insist that she is trading her culture for Western money, and point out that her refusal to perform female circumcisions may in turn deny Mali women the chance to marry. An inability to marry can result in poverty for women; thus, the refusal to perform female circumcisions is viewed by
some as promoting female impoverishment (Rosenberg, 2004). The perceived relationship between Western ideology and opposition to female circumcision is the basis of much of the reactionary support for female circumcision that is emerging in Mali. Local stakeholders oppose the efforts of women’s organizations such as Womankind that endeavor to end female circumcision, since these organizations are funded by the West. Many think that such organizations are merely attempting to channel Western beliefs into the country (Rosenberg, 2004).

**Cultural perspective.** Beyond opposition to Western ideology, local customs of Mali undermine efforts to eliminate female circumcision. The common cultural belief is that women who have not been circumcised are dirty. Women who have not undergone circumcision are capable of feeling sexual pleasure; as a result, they are considered to be impossible to control, and, as a result, unmarriageable (Rosenberg, 2004). Given the importance of marriage, female circumcision is highly supported in the culture. Families that have decided against the practice must keep their decision secret in order to avoid social shunning. Despite the fact that Islamic clerics in Mali have communicated that female circumcision is not rooted in Islam, the common cultural belief is the opposite (Rosenberg, 2004). Cultural interpretation of religion, marriage, and a woman’s value forms the basis of continued support for female circumcision.

**Nigeria and Female Circumcision**

The nation of Nigeria, like the other nations within Africa, is one in which female circumcision is widely practiced. Snow, Slanger, Okonofua, Oronsaye, and Wacker (2002) gathered information from three perinatal clinics and three family planning clinics in the southwest region of Nigeria to study the prevalence, social determinants, and validity of self-reporting female circumcision. Amongst a total population of 1,709 women, it was found that
45.9% had undergone some form of genital cutting. Based upon WHO classifications, 32.6% had Type I cuts, 11.5% Type II, and 1.9% Types III or IV. The self-reported status of the women was valid in 79% of the population.

**Mitigating Factors**

Snow et al. (2002) found that four factors particularly influenced the practice of female circumcision: ethnicity, age, religious affiliation, and education. Illiyasu, Abubakar, Galadanci, Haruna, and Aliyu (2012) found that there is significant awareness and disapproval of female circumcision in Nigeria. The researchers found that 96% of female university students surveyed in Kano, Nigeria, reported awareness, while 91% reported opposition. This is in contrast to the 45.9% of women who had undergone the procedure. In explanation, the researchers concluded that, to act upon this level of disapproval, a comprehensive legal and educational framework is necessary in addition to the support of civil society, government, and development partners.

**Nigerian Legal Initiatives against FC**

Ibrahim, Oyeyemi, and Ekine (2013) found that, in the state of Bayelsa in Nigeria, female circumcision has been officially outlawed. Despite this fact, the practice persists. To investigate the efficacy of the law, the researchers assessed the perspectives of doctors, nurses, and midwives in the area to determine their positions toward the practice and its prevalence. The justifications included culture (96.6%), religion (12.7%), beautification (3.4%), and hygiene (2.5%). Still, 73.7% of the respondents agreed that the practice should be criminalized (Ibrahim, Oyeyemi, & Ekine, 2013).

Nigeria first initiated legal efforts against female circumcision in 1994, when the nation joined the 47th World Health Assembly to resolve and eliminate female circumcision. Thus far, a multisectorial technical working group on harmful traditional practices has been established.
Studies have been conducted in conjunction with national surveys. National policy has been approved by the Federal Executive Council for the elimination of female circumcision in Nigeria. However, legal frameworks to support elimination are largely lacking. A social effort has been undertaken to support the elimination of the practice through the “Say NO” campaign (Okeke, Anyaehie, & Ezenyeaku, 2012).

**Sierra Leone and Female Circumcision**

Sierra Leone is currently experiencing issues related to the intersection between traditional culture and modern values, specifically relevant to the practice of female circumcision. The newspaper in Freetown, the capital of the nation, was the target of a hostile protest movement following the publication of a series of articles against the practice. The expression of opposition by the newspaper awakened conservative groups in Sierra Leone to support the practice. Many of these conservative groups are women-led, and a frequently cited position is that opposition to female circumcision represents the imposition of alien values (French, 1997).

According to Claudia Anthony, a reporter at the Freetown newspaper, “Almost nothing is happening to stop circumcision… No one wants to speak out. People are afraid of taking unpopular measures” (French, 1997, Defenders of the Ancient, para. 2). A United Nations official in Sierra Leone asked, “When are we going to see some Sierra Leonean women, articulate people who have undergone this experience themselves, step forward and condemn it?” (French, 1997, Defenders of the Ancient, para. 3). According to Zainab Bangura, a women’s rights advocate in Sierra Leone, opposition is being conducted in an ineffective fashion. Western approaches that lecture individuals about their customs are the primary interventions; however, these interventions generate more resistance than support to end the practice (French, 1997). In
fact, these interventions are more likely to produce support. Bangura has advanced that it is necessary to better understand the rituals surrounding the practice, as contextualization of female circumcision within these rituals is essential. Proving that the ritual carries more importance than the circumcision itself may provide an opening to reduce the cultural importance. Advocates have expressed concerns that cultural and religious traditions may be too deep-seated in the area. Indeed, despite centuries of contact, and ultimately intervention, by Western partners (including significant protestant and catholic missionary) many local groups have been largely unaffected (French, 1997).

**Somalia and Female Circumcision**

Within the country of Somalia, a shift has been noted in the perception of female circumcision. According to recent data released by the United Nations Children’s Agency, female circumcision has been declining amongst children in Northern Somalia. While 99% of women of all ages had undergone female circumcision in the regions assessed, just 25% of girls aged one to fourteen had been circumcised (Straziuso, 2013). This is a substantial reduction in the practice.

The changes in the rates of female circumcision in Somalia are attributed to the efforts of UNICEF and the UN in the area. These agencies have been working with community and religious leaders in Northern Somalia. The purpose of this cooperative effort is to reduce the overall prevalence of the practice through a change in the attitudes of Somalis toward the practice. This has been largely successful, according to Sheema Sen Gupta, Chief of Child Protection for UNICEF in Somalia. Gupta stated that 28 communities throughout Somaliland have declared that they have ceased the practice, with UNICEF expecting this number to reach 60 by the end of 2013 (Straziuso, 2013).
The Somali Perspective

In an attempt to frame the most effective means to end female circumcision in Somalia, the perspectives of the citizens have been sought out. According to Sheema Sen Gupta, “If you ask the average Somali woman why she practices FGM now, she will tell you it’s for religious reasons. But it’s not religious, because FGM predates Islam” (Straziuso, 2013, para. 4). This observation is significant, spurring efforts on behalf of the UN to target religious leaders (Straziuso, 2013). It is perceived that the practice itself is rooted in religion, and so women are bound and willing to participate. The fact that the practice is not rooted in religion, but is rather a tradition that predates the existing religion, opens a door to changing public opinion. The UN has encouraged religious leaders to stand against the practice and affirm its lack of religious history (Straziuso, 2013). By working with religious leaders, people’s perceptions may be influenced.

Beyond the religious reasons for female circumcision, there is also cultural support. According to research conducted by the UN, Somali women often say they choose to have female circumcision performed on their daughters for social reasons, stating that circumcision makes their daughters eligible for marriage. In Somalia, and within the diaspora population, an uncircumcised female may be unable to find a husband due to the value placed upon the practice. Despite knowledge of the potential dangers, social pressure is strong enough to encourage women to undergo the practice (Straziuso, 2013). Even educated Somali immigrants to the UK report having their daughters circumcised in order to conform. However, when Somali men were questioned about why women were circumcised, most said only that Somali women think it is necessary. Despite these perspectives, Somalia established a national ban against female circumcision in 2012. Al-Shabab, the militant group that controls large territories in south central Somalia, also banned the practice. UNICEF and the UN state that progress is being made against
female circumcision in Somali (Straziuso, 2013).

**The Sudan and Female Circumcision**

Female circumcision, traditional within the Sudan, has been studied and researched since the 1960s. It is estimated that 89% of Sudanese women between the ages of 15 and 49 from the northern region of the country have undergone circumcision. Nationwide, surveys indicate that 91% of rural women and 89% of urban women had undergone circumcision. Religion, culture, and society are all supportive of the practice despite opposition from numerous stakeholder groups (Landinfo, 2008).

**Ethnic and Religious Background and Circumcision**

The ethnic and religious background of a Sudanese female determines the type of female circumcision that she undergoes. Research conducted by UNICEF in 2001, referenced by Landinfo (2008), found that 83% of Muslim Sudanese women experience infibulation, compared to 27% of Christian Sudanese women. Sunna, or sunnah, a less extensive form of the procedure, was experienced by 46% of Christian Sudanese women (Landinfo, 2008). The variety of demographic groups across the Sudan for whom the practice is rooted in neither tradition nor religion indicates the huge potential of social influence to support the persistence of the practice. Despite ongoing and escalating efforts on behalf of the Sudanese government and other groups to eliminate it, female circumcision continues with strong support (Landinfo, 2008).

**Sudanese National Efforts against Female Circumcision**

While female circumcision in the Sudan has been studied since the 1960s, efforts to curtail the practice did not begin until the 1970s, gaining substantial strength since. The Sudan Family Planning Association and the Sudan Society of Obstetrics and Gynecology adopted recommendations that female circumcision be completely abolished. After these official
statements were issued, voluntary actions were taken in further support (Landinfo, 2008). The Sudanese national plan to eliminate female circumcision is titled the Sudan National Committee on Traditional Practices (SNCTP). The purpose is to achieve a zero incidence rate of female circumcision nationwide. This is coupled with the efforts of the Sudanese network against female circumcision. The nation established an additional ten-year national strategy in 2008 with the goal of achieving an incidence rate of zero by 2018 (Landinfo, 2008).

**Salima campaign.** In the Sudan, an additional effort against female circumcision is being carried out by the Salima campaign. *Salima* is the Arabic word for whole or intact. The campaign supports the perspective that the female body is meant to remain whole and unaltered (Landinfo, 2008). These initiatives focus on the social and cultural aspects of the procedure, recognizing that they are rooted in religion and tradition, although legal efforts have been undertaken.

**Religious Support**

The current efforts against female circumcision on behalf of the Sudanese government have proven insufficient to cease the practice (Landinfo, 2008). There exists a lack of punitive measures as well as complication by Sudanese religious leaders who support the practice. In May 2005, the Islamic Figh Academy of the Presidency of the Republic put forth a fatwa stating, “Sunnah circumcision is a duty for all Muslims, and there is even a payment to do it” (Elsayed, Elamin, & Sulaiman, 2011, p. 64). The Islamic Figh Academy of the Presidency of the Republic was not alone in its vocal support of female circumcision. The Sudanese Council of Ministers would go a step further, essentially providing official sanction for the practice. In February 2009, the Sudanese Council of Ministers approved the draft of the “2009 Child Act,” within which Article 13, which provided protection of children from female circumcision, was dropped (Elsayed, Elamin, & Sulaiman, 2011, p. 64). The removal of this article essentially endorsed the
practice. Such actions by the religious community hindered the efforts of stakeholders who were against the practice.

**Sudanese Legislation against Female Circumcision**

Sudanese legislation has banned female circumcision in the past. Bans first occurred in 1946 through a supplement to the nation’s penal code. When the nation became independent in 1957, the law was upheld, including punitive measures of up to seven years in prison. This sentence was reduced to five years in 1974. As of 2003, the government was officially against the practices of both infibulation and other forms of female circumcision, but there were no official punitive measures by which to enforce these rules. As of 2008, the penal code did not directly cover female circumcision, although it may be covered by liberal translations of the law against physical injury (Landinfo, 2008).

**Ugandan Efforts against Female Circumcision**

The President of Uganda issued a public statement against the practice of female circumcision in 2009. The Pokot and Sabiny communities are the only Ugandan groups that currently practice female circumcision. The Sabiny number 200,000 in Uganda, while the Pokot are just 6,000, although some 260,000 Pokot live across the border in Kenya (UNFPA-UNICEF, 2009). On July 1, 2009, the President voiced his opposition to the practice to 5,000 members of these communities. On March 17, 2010, the President signed the Prohibition of Female Genital Mutilation into law, the first law banning all forms of female circumcision/cutting in Uganda. The punishment is up to five years of imprisonment for the circumciser, as well as imprisonment for the parents or others who subject the girl to the procedure. If the girl dies due to the procedure, the punishment for those involved may be life in prison (UNFPA-UNICEF, 2009). In addition to taking the time to address these communities directly, tribal support was garnered.
Tribal Support

The nation of Uganda provides an example of the effectiveness of employing tribal leaders in campaigning against female circumcision. Their approach did not endeavor to ignore culture, but rather to embrace positive cultural factors while seeking to end harmful factors. An annual Sabiny Cultural Day was established in 1996; a similar Cultural Day was established for the Pokot in 2009. This engagement with the culture is more effective in ending female circumcision, given that it addresses the cultural and social factors that support the continuation of the practice (UNFPA-UNICEF, 2009).

The Sabiny Elders Association was established in 1992 to engage Sabiny leaders and enforcers of cultural and traditional practices with the public. Cultural elders communicated the importance of benign traditions such as story-telling, community celebrations, and marriage ceremonies. At the same time, elders campaigned against those practices that they considered to be brutal and dehumanizing, such as female circumcision. Because of the cohesive actions of these cultural elders and the legal system in Uganda, female circumcision has been markedly reduced (UNFPA-UNICEF, 2009).

Tanzanian Initiatives against Female Circumcision

The nation of Tanzania has taken the initiative to legally ban female circumcision. Not only is Tanzania a signed member of the Maputo Protocol, there are state laws banning the procedure (Equality Now, 2001). In addition, the practice goes against the Arusha Declaration, the political statement of African socialism that, among other things, demands that every individual has a right to protect his life, dignity, and respect (TANU, 1967). Despite the law and declarations, the practice persists. Within Tanzania, the practice is often carried out en masse, with thousands of girls being circumcised at the same time, often as part of a ritual in December.
According to those who perform the procedures, governmental efforts are insufficient to effectively prevent the practice from occurring (Equality Now, 2001). Figure 4 displays current estimates (28 Too Many, 2013) of women and girls circumcised within various districts of Tanzania. Note the breakdown by ethnic group, emphasizing the significantly higher number of Gogo women and girls who are circumcised compared to those within other ethnic groups in Tanzania.

Figure 4. Distribution and size of population practicing female circumcision in Tanzania, by district and ethnic group (28 Too Many, 2013).

National laws against female circumcision, however ineffective, are clearly communicated in Tanzania. In 1998, the Parliament of Tanzania amended the Penal Code to prohibit female circumcision in Section 169A(1) of the Sexual Offences Special Provisions Act. Therein it is stated that any person in custody, charge, or care of a girl under the age of 18 who causes her to undergo female circumcision has committed the offence of cruelty to children. The
punitive measure specified for this offence is 5 to 15 years of imprisonment and/or a fine of 300,000 shillings. The perpetrator must also provide payment to the person against whom the offence was committed (Equality Now, 2001).

Tanzania is one of the original signatories of the Maputo Protocol. The Introduction to Article 5, Section b, of the Maputo Protocol (ACHPR, 2003, p. 7), states:

Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognizing international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

… b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation, and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.

Tanzania has also recognized the very real implications behind the continuation of the practice. Despite international, national, and local laws prohibiting the practice, it persists within the regions of Arusha, Kilimanjaro, Dodoma, Singida, Mara Region, Morogoro Region, Iringa, Mbeya, and Zanzibar. Local women have little recourse when laws are not followed, and social pressure to undergo female circumcision is great. Those who make the decision not to have the procedure may be unable to marry, given that males are often prohibited by tradition from marrying uncircumcised females (Mwambalaswa, 2004). In addition to the strong social pressure to continue the practice, there are logistical implications for enforcement that prevent adequate monitoring. For example, a lack of widespread knowledge of the law amongst the public, lack of police resources, reluctance to speak out against the community, fear of retaliation from circumcision practitioners, and bribery of local leaders and law enforcement all contribute to the continuation of the practice (US Department of State, 2008).

Within the Morogoro Region of Tanzania, local governmental officials have issued decrees against female circumcision. Despite nationally issued laws prohibiting the practice, in
1999, in the Morogoro Region, law enforcement officials effectively endorsed it. Three girls between twelve and fourteen years of age ran away from their homes to their local church to escape circumcision. The pastor and his wife, who had attempted to protect the girls, were arrested for taking unlawful custody of minor children. The girls were subsequently returned to their fathers, circumcised the next day, and married within a month (Equality Now, 2001). Despite full knowledge that the girls’ fathers were planning on committing a prohibited act, law enforcement returned the girls and criminalized the pastor and his wife for upholding the law.

**Social Initiatives**

While laws are in place against circumcision, the fact that it is still very commonly practiced and very deeply entrenched into the social fabric of many communities makes curtailing the practice very difficult. One of the more successful interventions has come through the public outcry against the procedure by respected community members. Some of the most memorable and influential public figures in Tanzania have spoken against the practice, including the state’s founder and first president, Mwalimu Julius Kambarage Nyerere (USAID, 2013). During his time in power, Nyerere emphasized the importance of reducing the practice of female circumcision, emphasizing its relevance to the Arusha Declaration and the values of the state (TANU, 1967). Even after his death, his wife, Mama Maria Nyerere, continues to speak out against the practice. She is viewed not only as political figure, but many view her as “The Mother of the Nation.” She includes female circumcision as a form of gendered violence and advocates for girls and women to be given opportunities outside of marriage, such as education and workforce training. Similarly, Mama Magreth Momanyi, a former practitioner of female circumcision, has stopped performing the procedure and instead advocates against it, urging communities to reject the risky practice and provide alternative ways for women and girls to
make their livings (USAID, 2013). While these social interventions are backed by legal policy, they are filling a gap that exists and bringing the law to the public in a way that is relatable and personal.

Another means of curtailing the practice is through education about the associated issues. For example, one of the commonly-cited concerns from those advocating female circumcision is a worry about “lawalawa,” a type of infection, most commonly a fungal, yeast, or urinary tract infection, that is believed to be caused by not being circumcised (Ali & Strom, 2012). However, researchers have found that this disease essentially did not exist before the ban on female circumcision, not because the physical symptoms did not exist, but because the conceptualization of the problem was different, viewing such infections as health problems not associated with circumcision. Efforts to combat female circumcision in forty-five villages in the Singida and Dodoma regions have focused on lawalawa as an area to target through information and counseling, breaking the connection between the symptoms of health problems and female circumcision (Ali & Strom, 2012). Such interventions not only help to reduce female circumcision, but may also improve the general health of women in these communities.

Protracted campaigns against female circumcision, community strategies, religious influence, and exposure have made people in Tanzania slowly but surely discard the traditional practice (UN-Women, 2012). At the MWEDO girls’ school near the town of Arusha, 86 girls—many of whom would otherwise have been circumcised and married for dowry—have been identified and given scholarships with full board to ensure they complete a minimum level of education and can be worth more than the dowry to their families (UN-Women, 2012). The goal is to provide an alternative life for these girls that places value in more than their marriage price, eliminating the perceived need for circumcision.
Interventions that have been proven to be successful in other communities have been tried in Tanzania without the same success. For example, in Kenya, a highly successful program was instituted to provide an “alternative rite of passage,” essentially, a ceremony and education camp for girls of circumcision age where elder women of the village join with human rights activists to promote health, domestic education, and community values without the necessity of circumcision (Spindel, Levy, & Connor, 2000). Some utilize a ceremonial nicking of the clitoris, tattooing, or “circumcision by words,” replacing the more invasive procedures. However, among many of the communities that practice circumcision in Tanzania, the adherence to the circumcision goes beyond the ritual and significance. Not only is the more invasive procedure deeply entrenched in the customs, but also there are other associated factors, such as the aesthetic appeal of a cut woman, and the physical insurance of virginity. These things cannot be accomplished with ceremonial or alternative rights of passage. In the communities where these sorts of interventions were most effective, the community was already headed away from the ritual and seeking change; this is not the case in much of Tanzania.

**Non-Governmental Organizations**

To inform the public of the dangers of female circumcision and to combat the relative inactivity of the legal system, the non-governmental organization Equality Now is active in Tanzania. In concert with other non-governmental human rights organizations, Equality Now encourages the enforcement of the laws against female circumcision, publishes research to raise awareness among citizens, and calls for an end to the practice (Equality Now, 2001).

The Network Against Female Genital Mutilation (NAFGEM) was founded in 1998 to fight against female circumcision in the Kilimanjaro Region of Tanzania. NAFGEM uses community outreach, promotion of law enforcement, female empowerment, and media
campaigns to promote awareness, education, and to encourage people to give up the practice. They recognize that many Tanzanians do not believe that laws to protect children apply to female circumcision, as many Tanzanians believe that circumcision is a positive procedure. By working closely with local officials, other NGOs, and neighboring villages, NAFGEM has started the process of exposing myths associated with female circumcision and providing more scientific information—for example, explaining that complications during childbirth and later in life are often related to female circumcision procedures that were carried out at a young age. Sometimes, the success comes in the form of girls themselves being aware that there are legal protections available. For example, a former circumciser in Tanzania points out that “if girls are against it, they can ask the authorities for assistance, and their parents will be arrested,” (Equality Now, 2011, p. 32). Through these integrative efforts, there has been some success in reducing or eliminating female circumcision in some communities. The multi-method approach used in this example is more likely to succeed than a simple decree against the practice, as it allows for custom, tradition, and local sensibility to be taken into account.

**Impact of Customary Law on Circumcision Bans**

Customary law may be the most important factor to consider when addressing the ineffectiveness of national law in curtailing practices such as female circumcision. These practices are deeply engrained not only in the individual minds of the people who practice it, but also in the community at large. Customs such as rites of passage, health rituals, and marriage rituals are some of the most strongly adhered to of any customary law acts, and the mere passage of a national law does little to curtail these practices. National laws are often viewed as modern or inapplicable; the view of many members of the community is that customary law has been practiced for decades, possibly even centuries, and thus is more powerful and valuable than other
laws imposed by the state.

This is particularly relevant for female circumcision. The practice, as established in previous chapters, is so firmly embedded into the customs of the peoples who practice it that it encompasses justifications of health, beauty, attractiveness, purity, cleanliness, and far more. This practice is seen as an important way of life and way of maintaining one’s community; as such, something as simple and seemingly arbitrary as a law prohibiting it is unlikely to have a large effect, if any at all.

**Importance of Community**

A final point to consider regarding the curtailment of circumcision is the nature of the community. Many modern legal restrictions on the process view circumcision as an individual concern—namely, an issue that harms the girl or woman who is being circumcised. This is in line with the Western tendency to view the values of the individual more highly than the values of the community, in direct contrast to the many tribal groups that exist in Africa. For most groups who practice female circumcision, however, the issue of one of community. Community members share common values, and these values, in addition to other factors, affect not only the identity of the community, but its cohesion (Luban, 2001). Female circumcision is heavily associated with values of female purity before marriage and a sense of giving oneself over to the community. As such, interventions that target the individual practice, even if they exist in the best interest of the person undergoing the procedure, inevitably weaken one of the important tenets of the community. Ritual practices, legal or illegal, strengthen community bonds, providing a sense of connection and cohesion. The Gogo tribe of Tanzania exemplifies these community values, and provides a case example through which to analyze not only the enduring practice of female circumcision, but also the way in which it interacts with national laws.
prohibiting the practice in a pluri-legal environment.
Chapter V

Literature Review: The Gogo of Tanzania

The Gogo, commonly referred to as the “Gogo,” and, less commonly, the Wagogo (Lewis, Simons, & Fennig, 2013), inhabit the central region of Tanzania. In 1957, the Gogo numbered approximately 300,000 people (Rigby, 1967); today, the Gogo are estimated at over 2,000,000 (Joshua Project, 2013). The part of Tanzania that the Gogo occupy is known as “Ugogo” or “Gogoland” (Rigby, 1967). Gogoland makes up only two percent of Tanzania; the Gogo population makes up only three percent of the state’s population (Mascarenhas, 1977). This part of the country is semi-arid, with a single rain season lasting approximately five months and producing approximately twenty inches of rain annually (Rigby, 1967). The Gogo primarily occupy the Dodoma region of Tanzania, but can also be found in the neighboring Singida region and Manyoni District (Lewis, Simons, & Fennig, 2010).

The Gogo are a Bantu ethnolinguistic group (Kwekudee, 2013). While many Gogo have become urbanized and have moved to cities, most remain in rural areas where they practice settled agriculture or work on plantations. In addition to agriculture, the Gogo are known internationally for their music, which is performed not only within Gogo communities, but internationally (Kwekudee, 2013). The primary language spoken by the Gogo is the Gogo language or Chigogo or Kigogo, which includes dialects based on location, for example, the Nyambwa dialect of the West Gogo, Nyaugogo of the Central Gogo, and the Tumba of the East Gogo (Lewis, Simons, & Fennig, 2013). Many Gogo speak Kiswahili or Swahili, the national language of Tanzania (Kwekudee, 2013). Fluency in the national language is important for urbanized Gogo, as this is the language used in commerce and trade; however, preservation of the Gogo language is important for cultural and historical means.
Origin and Culture

The Tanzania Burunge people came from the region of central Africa. From there, the Burunge people and culture began expanding to other parts of sub-Saharan Africa, beginning around 2000 BC. The cause of these migrations is believed to have been the result of an increasingly settled agricultural lifestyle: although they required little land, and far less than herding cattle would require, the land had to be fertile and well-watered for cultivation to be a viable alternative. Population pressure in central Africa may therefore have prompted the first migrations. Several successive waves of migrations over the following millennia followed the first. They were neither planned nor instantaneous, but took place gradually over hundreds and thousands of years. This allowed plenty of time for these people and their culture to spread and be influenced by other cultures, either through assimilation or, more rarely, through conquest (CIA, 2014). The Burunge consider their traditional way of life to be an important community resource. There is a great deal of disagreement over what should be preserved and what should change. Customs centering on marriage and gender relations are strongly debated, especially in urban areas (CIA, 2014). This is demonstrated in the responses to the interview questions; many of the respondents who had left the community and moved to urban areas emphasized these sorts of debates, and some of this urban influence can also be observed within the traditional community.

The part of Tanzania inhabited by the Gogo, known as Gogoland, covers most of Dodoma District. It lies on an upland plateau of over 3,000 feet, comprises less than two percent of Tanzania's area, and represents a slightly higher percentage of the country’s population (Hayuma, 1980). In the 1967 population census, the area had 300,000 people, 2.6 percent of the country’s population. Before the arrival of the Europeans, the Gogo had no centralized political
system, instead consisting of numerous clans who lived in areas delineated by traditional bounds. Within each ritual area there were several neighborhoods made up of scattered homesteads, although occasionally the homesteads were clustered. Land was inherited but held by usufructuary rights (CIA, 2014).

**History of the Gogo**

The ethnolinguistic group that is shared by the Bantu and the Gogo originates in Western Cameroon. The Burunge people originated in Central Africa, and began expanding to other parts of Africa in approximately 2000 BC (George, 2013). Because of this history of migration, the Gogo share many cultural and historical similarities with other neighboring peoples, including the Hehe, Kimbu, and Kaguru (Rigby, 1967). It is likely that these migrations are a result of agriculture, herding, and population. Following this initial migration, the Gogo continued to migrate over centuries, spreading across the continent and being influenced by, as well as influencing, other cultures (George, 2013). As such, the Gogo have always been an evolving group.

Colonialism has shaped the lives of the Gogo for centuries. Mathias Mnyampala, a Gogo historian, lawyer, and poet, emphasizes that, before colonization, the members of what is now referred to as the Gogo were referred to primarily by clan membership; the grouping of clans into a larger group was an effort of German, and later British, colonizers to categorize the clans (1995). Each clan within the Gogo has its own unique rituals, culturally significant objects, and areas in addition to oaths and ritual leaders (Rigby, 1967). While the Gogo are composed of many clans, they share many similarities in values, beliefs, and customs. Clan affiliation depends on a variety of factors including ancestry, living area, clan name, sub-clan name, and clan oaths. As such, the concept of “kinship” as it refers to extended family is often determined more by in
terms of who interacts regularly and who is part of the community, and less by biological blood lines (Rigby, 1967).

The traditional leadership of the Gogo was separated into religious and political authority by the British colonists, altering the social and political structure of the people. While there was some effort to give the Gogo freedom to govern themselves under British rule, evidence suggests that the leaders elected by the British were those most willing to enforce British norms; further, they were forbidden from leaving their district or consulting others before making legal decisions, reducing the independence of the Gogo (Mnyampala, 1995). The nation of Tanzania achieved independence in 1961 (Tumbo-Masabo, 1998).

Two contrasting catastrophes marred the early years of Tanzanian independence—a disastrous flood in the Rufiji Delta and a drought-induced famine in Dodoma. The country and its leaders have had to be vigilant to the reality of the environment (Hayuma, 1980). In the drought of the early 1970s, Tanzanian leaders were proud of the fact that no life was lost.

Dodoma, a region in central Tanzania, is a smaller component administrative unit, as well as the principal town in the region. It symbolizes to many a semi-arid area. Most of the region is classified by climatologists as semi-arid, because its precipitation lies in the lower quartile. It receives an average rainfall of 200-600 mm per annum; as such, pure agriculture is precluded (CIA, 2014).

Religion

The Gogo are primarily (79%) Christian, with a substantial Islam population (20%), and 1% Ethnic Religions (Joshua Project, 2013). This is due in large part to colonization and missionary work across the past few centuries. Of the large Christian population, 60% identify as Roman Catholic (Joshua Project, 2013). Despite formal Christian and Islamic beliefs, many
Gogo incorporate other spiritual beliefs such as beliefs in spirits and curses that are not traditionally associated with Christianity or Islam.

**Economy**

The Gogo primarily farm and raise livestock for sustenance and trade. Sorghum, bulrush millet, peanuts, cattle, sheep, and goats provide the basis of their economy and livelihoods (Rigby, 1967). The relative lack of resources in Gogoland results in a heightened importance of these crops and livestock; along with it, the importance of a community that can care for these factors and maintain the strong work ethic necessary to surviving in the challenging climate. Due to the semi-arid climate of Gogoland, there is significant risk of drought and famine, making resources scarce at times (Kwekudee, 2013). Modern integration into commerce, trade, and industry has made these issues less relevant for urban Gogo, but these problems still pose risk for their rural counterparts. In general, the Gogo themselves subsist on cereals, reserving cattle and goats for milk production and consumption during ceremonies and celebrations such as weddings, funerals, and births (Mascarenhas, 1977). Gogo men in urban areas are more likely to participate in plantation work or settled agriculture.

**Law**

As members of the country of Tanzania, the Gogo are officially governed by Tanzanian law. Section 169A(1) of the Tanzania Sex Offenses Provisions of 1998 states that “Any person who, having the custody, charge or care of any person under eighteen years of age, ill treats, neglects, or abandons that person or causes female genital mutilation or procures that person to be assaulted…commits the offence of cruelty to children” (p. 14). However, this law comes into conflict with the values and beliefs of many Gogo people. Tamahana (2011) states that, while customary laws may conflict with human rights values, they work in anticipated and
understandable ways, giving the individual groups, such as the Gogo, control of their own lives and communities. As such, the customary law and national law conflict with one another in many areas, not just circumcision.

State land law in Tanzania provides some protections for women, integrating customary norms and gender-inclusive practices (Hellum, 2013). Women’s rights organizations in Tanzania have campaigned successfully for the right of women to own land and take part in marital property transactions. Regardless of these state laws, the willingness and ability to take advantage of these rights depends on the woman’s age and socioeconomic status. Despite the official law and state intervention, customary norms play a bigger part in determining the actual realization of these rights (Hellem, 2013).

Outside Interests

Outside intervention, for example, Western interest or human rights activists, are compared to colonists in the way that they seek to impose their beliefs upon an already functioning society (Tamahana, 2011). Tanzania Media Women’s Association (TAMWA) conducts nationwide media campaigns, focusing on education and information to promote legal changes that benefit human rights and women’s rights (UNICEF, 2005). They target regions, such as the Dodoma, that have a high rate of circumcision (68%).

Gogo Social Structure

Social structure of the Gogo is based on patrilineal decent, with the male relatives of the family inheriting the goods, livestock, and land of the father (Rigby, 1967). This leaves women somewhat dependent. Despite state laws that allow women to own land and property, customary law and social structures do not facilitate this arrangement. Kinship amongst the Gogo is based on clans, sub-clans, clearly defined ritual areas, and fluid neighborhoods. Neighborhoods are
composed of multiple homesteads, and are typically centered on land features, kinship links, and livestock grazing areas. New members of the neighborhood do not need permission to join, but must abide by the customs and laws of the existing clan. The cultivation of fields for crops and grazing for cattle is integral in this process, necessitating the relatively frequent migration and relocation of the Gogo (Rigby, 1967). Likewise, the cooperation of the community in maintaining communal areas and contributing to the good of the community is of utmost importance to the Gogo.

**Community**

![Figure 5](image)

Figure 5. Variation in the scale of cultural processes (Lyman, 2007).

Figure 5 provides a visual representation of the variation in the scale of cultural processes, modified from the original work of Landres (1992). Lyman (2007) emphasizes that there exists a direct correlation between the number of people who make up a unit, ranging from
few” to “many,” and the temporal duration of beliefs and practices within that unit. Essentially, the more people who are affected by a cultural practice, the more firmly engrained that practice will be in the minds of the community, and the longer the practice will remain relevant. As an ethnic group, the Gogo have existed for many centuries, and while their population and beliefs do not extend to the national level, they certainly comprise the community level. Just as community practices take considerable time and membership in order to become a recognized part of the culture of the community, reducing any such practice and removing it from community values will take a similarly long time.

**Family**

The birth of children is important for the Gogo, especially the rural members. In particular, boys are able to provide substantial manual labor to care for crops and animals, and girls provide bridewealth, the fee that is paid by the husband or the husband’s family to the bride’s family. This bridewealth is usually paid in livestock, although the use of cash exchange is becoming more common (Kwekudee, 2013). While divorce is uncommon, all children and property that a couple shares are granted to the man should divorce occur (Kwekudee, 2013). In cases of infidelity, the husband of the pregnant woman assumes paternity of the child regardless of actual biological paternity (Rigby, 1969).

Women are most often the ones who spend time with children; both boys and girls are raised predominantly by their mothers and older sisters until they are old enough to begin working or attending school (George, 2013). As children age, they begin to spend more time with their same-sex parent, learning the ways of the Gogo culture from them until they are formally initiated into the community as adults, after which, they are soon married. The relationship between brothers and sisters is strong among the Gogo. A wife is never truly
incorporated into her husband’s family, and will frequently visit her own brothers and care for
them when they are sick (Kwekudee, 2013). The closeness between siblings is often instrumental
in preventing or minimizing domestic abuse, as a woman’s brother may take revenge upon his
sister’s husband if he abuses her (The Gogo Tribe, n.d.).

**Marriage**

Marriage was traditionally, and largely continues to be, the most significant event in the
life of a Gogo man or woman (George, 2013). Polygamy is practiced among the Gogo, especially
in the case of a woman’s infertility. Likewise, a man’s impotence is considered justification for a
woman to leave her husband (Tumbo-Masabo, 1998). This fact is important to consider when
evaluating the practice of polygamy, because it assures that there are enough men to go around
for each woman. However, the prohibitive cost of bridewealth means that only wealthy or well-
established men take multiple wives, thus, the practice is minimal (George, 2013).

For the Gogo, weddings bring two families together, uniting them in the union of the
married couple. This brings excitement to both families, but also demands a considerable amount
of preparation, some of these preparations starting many years before the wedding, sometimes
even before the married couple ever meets. Across almost every culture, there exists various
ways to prepare for this major event and make the wedding day a memorable and special
occasion for all involved. Like most cultures, the Gogo tribe has specific preparations, customs,
and rituals that characterize their weddings (Cole, 1902).

It is customary for Gogo boys and girls to begin thinking about and preparing for
marriage as young children. Early in life, boys and girls are prepared physically and mentally for
their future roles as husbands and wives, with significant assistance from their parents. The
indirect preparations for marriage are seen as a child grows. Throughout the child’s life, he or
she often experiences many different physical operations, marking their age and preparing them for more important rites of passage (Frazer, 1995). At a very early age, most Gogo babies have a small scar burnt into their foreheads. This is believed to protect against the eye infections that run rampant in Ugogo. Between six and eight years, corresponding with the growth of new teeth, the two lower incisors are removed. Around eight or ten years, it is customary to pierce the lobes and the upper part of the ears, allowing for attractive ornaments to be inserted into the extended holes (The Gogo Tribe, n.d.).

These various physical operations are conducted throughout a child’s life to prepare for the traditional physical look of a Gogo tribe member, enhancing their attracting and marking them as part of the community. Further, these operations set the stage for puberty, considered one of the biggest milestones in both a boy and a girl’s life (Frazer, 1995). For the Gogo, puberty is the confirmation that the child has become an adult, meaning that he or she is suitable for marriage in the near future, and can join the community as an adult instead of as a child. Puberty is far more salient for girls than for boys, due to the physical nature of the changes that take place in the body as well as the social meaning attached, but for either gender, puberty plays a significant part in marriage preparations. One of the last ceremonies that both boys and girls participate in is the circumcision ritual, although girls also go through a separate ceremony to celebrate their first menstruation, assuming they are circumcised prior to this time, as is currently typical.

Even after all these processes and procedures have been carried out on children, yet another process occurs before a couple can marry. The “procedures and phases of the marriage contract” is an agreement between the families of the bride and groom, similar to a prenuptial agreement (Frazer, 1995). This contract may be established in many ways, but the way in which
it is completed is usually based on the desires of the couple’s kinship. The most common type of marriage and marriage contract is known as a betrothal marriage. In this arrangement, the families negotiate over assets such as livestock and bride wealth, essentially agreeing upon what will be traded with the girl’s family in exchange for her marriage. Likewise, in the case of divorce, the marriage contract dictates which assets must be returned or compensated for.

As the negotiations are likely to take up a considerable amount of time, a man may occasionally take his future wife away before these negotiations are completed by the families, similar to eloping. In order for the elopement to be successful, the couple must go many neighborhoods away and marry quickly and secretly. Upon their return as a married couple, the action is not disapproved of, but the marriage negotiations resume and are finalized before the couple is fully accepted by the neighborhood or by their families. A common issue to discuss while discussing bride wealth is whether the bride can be inherited or traded, especially in the instance of the husband’s death. The negotiation varies between families, and often involves the exchange of assets in order to essentially purchase the woman back in cases of divorce or the husband’s death (Frazer, 1995).

**Gender**

The Gogo are a patriarchal society, with men being historically in charge of decision-making and inheritance (Mnyampala, 1995). The roles of men and women differ for the Gogo. Traditionally, men focused on livestock and land management, leaving women to tend gardens, raise children, and manage the household. It is likely that colonization by both the German and the British not only reinforced patriarchal roles, but strengthened them by providing wage labor to men, increasing women’s dependence on their husband or male relatives (Mnyampala, 1995). In more modern times, men continue to focus on livestock and land management, but are also
increasingly focused on formal education and employment, such as work on plantations or in the agriculture field. When money prohibits children from being sent to school, it is the girls who are restricted and kept at home. Primarily, a girl’s purpose is to combine the assets of two families, upholding her commitment to both, and to produce children for her future husband. Women traditionally earn additional wealth selling produce, and even young girls are involved from an early age in the daily chores and maintenance of the home and children (George, 2013).

It is the man’s family who begins the negotiation processes for bride price, which is the first step to marriage. Bridewealth further cements the relationship between husband and wife, because it is considered improper to divorce after bridewealth has been paid and children have been born. In this case, the wife’s duty to her family and her community is seen as unfulfilled, and the woman’s family must repay the man’s family the bridewealth (George, 2013). Some couples choose to elope, running away with the bride before bridewealth is paid. Bridewealth is still paid eventually, but elopement allows the couple to marry in a faster way with fewer complications. This practice is gaining popularity today (George, 2013).

**Binary Opposition.** There is a noticeable and significant sense of binary opposition among the Gogo people. The importance of community cannot be understated, and the appropriate completion of developmental stages and rites leads to an acceptance of a boy or girl in the community. While the stages and rites are parallel for boys and girls, there is a significant difference between how they are carried out, demonstrating a clear example of binary opposition. These oppositions are also made clear during the marriage process. For example, considerations such as the time and location of the marriage ceremony, where a couple will live once they are married, and how soon they will start a family must be made in order to meet the goals of both parties. These preparations are often unequal, as the treatment of boys and girls, and later, men
and women, is vastly different. While the work and preparation time for marriage is split fairly evenly between both men and women, they are treated very differently and fulfill different roles. The male is generally seen as stronger and more useful; the female is seen as dependent and akin to a commodity. As the man is expected to take care of himself, his wife, and his children, he is often treated with more care.

A similar example of this binary opposition among the Gogo is seen in the ways in which men and women prepare for marriage and find a marriage partner. The role of the man is to search, to seek out his desired wife, and then to negotiate with her family for her hand in marriage. The woman is largely excluded from this process. While she typically makes a connection with the man and is eager to marry, especially to a strong provider, her role in the negotiations themselves tends to be similar to that of livestock—observing, waiting, and passing between the hands of the men who make the decisions about her life. Binary opposition is clear in this example because of the total inequality between the male and the female. The male is seen as the confident negotiator and future provider for his family, while the female is often excluded from being a part of the marriage preparations at all, assumed to carry out her wifely duties of producing and tending to children once the marriage is complete. In some marriages, there is room for a nuptial agreement, a negotiation of the marriage preparation that establishes ground rules and property distribution in the event that the marriage goes wrong. It is unlikely that the women would receive any property of her own, as her status within the marriage is one of obligation. In fact, it is more likely that the man or his family would receive property, as the dissolution of the marriage would be considered a violation of the contract established between the two families (The Gogo Tribe, n.d.).

Customs and traditions of the Gogo are markedly different from those that are traditional
in egalitarian societies. These differences do not stop with marriage preparations. There are further differences apparent in the Gogo traditions and customs of everyday life. One example involves determining where the couple will live. The Dodoma region is vast, and provides many locations for the couple to choose from. One of the main determinants of the married couple’s new home is proximity to the kin or family of the female. A Gogo man will traditionally seek to live farther from his wife’s family since conflict with the male relatives can result in altercations. This is due to the fact that, while hitting or abusing one’s wife is not prohibited by state law, it often angers the father or brothers of the woman, who retaliate in an attempt to defend their daughter or sister. Living at a distance from the female’s family reduces the conflicts between the male and his wife’s family. The proximity of the married couple to the male’s family is far less relevant, creating the binary opposition (The Gogo Tribe, n.d.).

**Traditions**

Gogo people, typical of Tanzanians in general, value discipline, control of emotion, and polite interactions (George, 2013). Affection between men and women is not traditionally displayed, and women are restricted from smoking, yelling, or crossing their legs in many traditional areas. Elders are given honor and respect; however, youth are beginning to challenge elders by forgoing customary practices such as arranged marriage in favor of more urban and often more Westernized practices (George, 2013).

**Rites of Passage**

Tumbo-Masabo observes that “parents who cannot send their children for initiation are despised and the uninitiated are called names and are not regarded as grown-ups, even if they are elderly” (1998, p. 119). The Gogo women interviewed by Tumbo-Masabo asserted that uncircumcised women stink, and that uncircumcised Gogo women stink even more. Due to these
beliefs, it is nearly impossible for a rural woman to marry if she is uncircumcised. While the practice is declining amongst urbanized members of the Gogo, rural members still hold tightly to their beliefs.

**Circumcision**

Gogo female circumcision is often performed in a group, as families often pool resources in order to hire the circumciser. Further, the procedure is often performed in the cold season, as this facilitates healing and pain reduction (Tumbo-Masabo, 1998). While there is significant variation in how the procedure is carried out, one popular method is for girls to be taken away from their homes in a group, with singing and drumming to drown out noises (Mapana, 2007). The songs serve not only to drown out cries of pain, but to emphasize the importance of the ritual. Lyrics such as “look how beautiful you are; before circumcision you were not that beautiful” (Kwekudee, 2013, To console the circumcised girls, para. 2). These songs normalize the ritual and build a sense of pride and community for the girls undergoing it. Similar songs and rituals are performed during the circumcision of boys (Kwekudee, 2013). As circumcision becomes more and more legislated against, many of the musical traditions have been transferred to church participation, maintaining the community aspect of the tradition (Kwekudee, 2013).

Circumcision is a major milestone for both boys and girls; however, the process is carried out much differently and is associated with some different meanings. For most boys, the age of circumcision and initiation does not correspond with a physical stage of development, such as puberty, but is socially dictated. While a girl’s first menstruation is socially marked among the Gogo, puberty and first emission of a boy is not marked among the Gogo as it is among other Bantu peoples (Rigby, 1967). Boys used to be circumcised between fifteen and twenty years of age, but the age of initiation has decreased over the years due to social expectations. The current
age for a boy to be circumcised today is between the ages of eleven and fourteen, and even younger in some cases. Gogo circumcision ceremonies are symbolic of passage into adulthood and becoming a man, and this symbolism is evident in the ceremonies themselves (Frazer, 1995). The boy has a shelter built to recover in, and receives visitors of both genders. The circumcision is a time of great public celebration, as it symbolizes his initiation into the community and a public change of his status from child to adult. After this initiation, the boy is allowed to pursue legitimate heterosexual relations, preparing himself for his future marriage. This start to sexual activity is closely tied to the search for a spouse, and is represented in the circumcision ceremony, involving many close family members who support and guide him (The Gogo Tribe, n.d.).

A girl’s initiation ceremony and circumcision comes well before the age of puberty, often between the ages of eight and eleven, and does not make her eligible for marriage (Frazer, 1995). The ceremony is vastly different between boys and girls. Compared to a boy’s ceremony, where he has a special shelter built with visits from multiple villagers, a girl has no such shelter built for her, and she is often required to go away from the neighborhood to recover. In some cases, the girl is told to go out into the desert where the sand can soak up the blood (The Gogo Tribe, n.d.). Visitors are limited to other women, including community members, friends, and relatives, who tell her about her life to come as a woman. As one might expect, this has a different effect than initiation for boys, and is representative of the opinions toward female and male bodies amongst the Gogo. Further, after his circumcision ritual, a boy is able to pursue sexual relationships and subsequent marriage; a girl is not only forbidden from pursuing sexual relationships until she is married, but she has many years to wait between her circumcision ceremony and puberty, the marker indicating that she is marriageable. As such, there is a second
ritual seclusion and public ceremony in a girl’s life when she has her first menstruation, marking the reaching of puberty. (Frazer, 1995). At a girl’s first menstruation, she informs her mother or female caretaker, who then passes the message to the neighborhood that she has grown up and reached adulthood. This allows her to marry and be seen as a fully grown woman in the community.

While girls were traditionally circumcised at twelve or thirteen, they are being circumcised much earlier now, as parents are eager to complete the practice as soon as possible in order to avoid the child being overly influenced by Western ideals at school, and in order to avoid laws preventing the practice. When girls are circumcised at ages as young as eight years old, they are not taught about reproduction or sexuality, but are instead taught general morals of respect, privacy, and community (Tumbo-Masabo, 1998). In addition, they are taught community values such as diligence, perseverance, and kindness (Tumbo-Masabo, 1998). Upon completion of the circumcision, the girls are secluded for a healing period of a few weeks to three months, during which time they are accompanied by elder women and peers who teach them about life matters and often become friends.

The practice of circumcision is important to the Gogo woman for many reasons. One of which is a fear if disease, for example, “lawalawa,” a type of genital fungus (Tumbo-Masabo, 1998). While this disease is not documented in medical literature, the belief is that the condition will cause a woman to die if she is uncircumcised. Most modern research associates lawalawa with a simple infection that can cause itching, discomfort, and odor. Circumcision has actually been shown to increase the types of infections that cause this condition. While there is significant documentation in medical literature that circumcision actually increases health risks, the women who were surveyed in a focus group study of twelve Gogo respondents did not believe this
(Tumbo-Masabo, 1998). Instead, many believed that government mandates against the practice stemmed from educated Western women who were ignorant of local customs. An emphasis was placed on the ritual of circumcision and the associated learning and experiences, for example, advice on socialization, friendships strengthened during the process, and a feeling of community belonging (Tumbo-Masabo, 1998). While some studies have suggested that female circumcision prevents women from enjoying intercourse, the women interviewed in this study felt that sex was more pleasurable for a circumcised woman as it was less “messy” and “smelly” (Tumbo-Masabo, 1998, p. 116). As demonstrated in Figure 6, while the popularity of circumcision is waning in some parts of Tanzania, it is still very strong in the Dodoma district, home to the Gogo.
Sexual intercourse before the circumcision procedure is considered taboo. Circumcision is seen not only as a marker of adulthood, but as a time when girls are instructed on the ways of women, sex, and motherhood, preparing them for their lives as women (Average & Agreement, 2009). A focus group study of twelve Gogo respondents (Tumbo-Masabo, 1998), found that most parents were expected to teach their children about manners, discipline, and daily tasks. Issues of sexuality were expected to be taught by the woman who performed the circumcision. This researcher found a strong reluctance amongst women to discuss what is
taught during initiation, but some women alluded to concepts of sexuality and sexual hygiene being taught during this process. Further, the idea that bad luck will befall anyone who speaks freely of the process was emphasized.

A Gogo girl is not traditionally considered an adult woman until she has been circumcised (Kwekudee, 2013). As she is not considered a woman, she cannot marry. As such, many girls are pleased once they are circumcised, not because of the procedure itself, but because of the significance it has within her community.

**Religion.** The Catholic Church takes a strong stand against female circumcision, being one of the first organized religions to actively oppose the practice. Regardless, many Catholic members continue to practice this traditional act (Children’s Dignity Forum and Foundation for Women’s Health Research and Development, 2009). Similarly, although there is no evidence that Islam advocates for the practice of female circumcision, the practice is strongly intertwined with many Muslim beliefs regarding chastity and purity (Aldeeb Abu-Sahlieh, 1994). The rejection of the practice by religious officials indicates that there are stronger cultural and traditional features at work, cementing the practice into the social customs of the groups who practice it.
Chapter VI

Methodology

This study is an investigation of women’s perception of female circumcision in Tanzania and the way in which these perceptions influence the applicability of state laws prohibiting the practice. This specific case study was conducted in an attempt to examine female circumcision as an example of the ways in which legal pluralism affects rule of law. In an attempt to gain an understanding of the importance of this ritual to the community as well as first-hand knowledge regarding the meaning of the practice and the decision of whether to follow state law or customary law, key informants from the community and local women, some of whom have undergone the procedure, were interviewed and given the opportunity to speak freely on the subject. This section discusses the general methodology, including the research design, sampling and data collection, and data analysis procedures that were used to gain understanding from the research.

Methods

This research uses a case study design, focusing on a small, specific issue in an attempt to understand the role of the larger issue of legal pluralism. Yin (2009) defines a case study as an “empirical inquiry about a contemporary phenomenon (e.g., a “case”), set within its real-world context—especially when the boundaries between phenomenon and context are not clearly evident” (p. 18). Case study research is especially useful in cases where the research seeks to find answers to questions of why something is happening or how it continues, providing rich descriptions and insightful explanations that may not otherwise be found in other research designs. Case study design has been shown to be a strong and reliable research method in many
fields, including anthropology, law, and business (Flyvbjerg, 2006; Yin, 2009). Some considerations are unique to case study research, for example, selecting an appropriate case, case study design, and theoretical framework through which to analyze the responses (Yin, 2009). Case study research draws heavily on the importance of integrating theory, archival data, and triangulated data in order to validate the findings that are extrapolated from the case study. These features were taken into consideration throughout the duration of this research inquiry, guiding the development from the original literature review, to the selection of the Gogo of Tanzania as a case study, to the integration of constructivist theory and the works of Geertz in the theoretical formulations.

The research conducted for this dissertation used a qualitative design (Creswell, 1994). While general tendencies and community opinions can be gleaned from such research, it is important to consider the fact that female circumcision is a very personal practice; it is held as important and valuable not only to the community at large, but to the individuals who choose to continue the tradition. While many organizations, such as WHO, publish annual reports on the incidence of female circumcision, the nature of this research focuses on the qualitative aspects, attempting to bridge understanding between the academic community, largely composed of Western researchers, and the communities in which female circumcision is commonly practiced. Qualitative research facilitates an exploration of these sorts of issues and brings the individual words and overarching themes to the forefront of research.

The field methods and debriefing techniques suggested by Padgett (2008) and Hammersley & Atkinson (2007) were used for ethnographic research, taking a grounded theory approach (Charmaz, 2006). Grounded theory is the guiding methodological approach of this dissertation, as the goal of the research is to construct theory on women’s thoughts and
experiences about female circumcision and the juxtaposition between laws and customs. Using a grounded theory methodology is appropriate for this type of study because it allows researchers to identify new concepts as they emerge from the subjects and then build theory one interview at a time (Charmaz, 2006; Strauss & Corbin, 1998). Hawkins & Abrams (2007), for example, used a grounded theory approach in interviewing homeless men and women with mental illness and substance abuse. Likewise, Abrams & Curran (2009) used the technique to challenge the traditional biomedical view of postpartum depression and uncovered a link between low-income minority mothers’ mental health and their experiences of living in poverty.

Through the use of research based on grounded theory, more comprehensive understandings of personal and community issues can be gained, and theories can be drawn regarding the appropriate resolution of these issues. The interviews conducted for this research effort focused on gaining a more complete understanding not only of the importance of female circumcision, but also the ways in which this intersection affects the compliance with or evasion of existing state laws. Through this example, a more thorough understanding of legal conflicts of this nature in general will be gained.

The methodology for this project included semi-structured and directed interviews. This allowed for the most important questions to be asked of every respondent while offering the opportunity for respondents to add in important information or stories as they saw fit. The interview questions were developed with the goal of exploring the intersection of customary law and state law, using female circumcision as an example and talking point to elucidate this intersection. The framework of the research focused on uncovering how the conflicts created by the intersection of African customary law and the modern state affect not only the practice of female circumcision, but also the community views on the practice.
Research Design

Study Location

The research was conducted in the Dodoma region of Tanzania, amongst the Gogo tribe that lives in this area. The nearest major cities are Dar es Salaam and the city of Dodoma; the area in which the research was conducted was rural. This part of the country is considerably removed from the metropolitan areas and has local leadership firmly in place in addition to state laws.

Participant Identification

The sample for this study was drawn from two groups: key informants, who are the traditional healers, elders, and leaders in villages in Tanzania, and local women. The key informants are an important part of understanding female circumcision, as it is often considered to be a community practice. While the practice is essentially one that affects women directly, the cultural values make it a community issue; further, men are directly involved in making decisions for their daughters, enforcing or avoiding laws, and providing guidance and judgment to the community. As such, key informants hold the role of village or community gatekeepers, consistent with literature (Babbie, 2011; Padgett, 2008). It is important to consider the input of these informants in addition to women themselves, as the issue extends far beyond the individuals who undergo the practice. The key informant interviews were followed up with interviews with local women. Some of the women experienced female circumcision, while some did not. Regardless, all were familiar with the practice of circumcision and had numerous stories to tell about other women and girls who had undergone the procedure, as well as those who had not. Many members of the respondent pool, especially amongst the key informants, were members of local ward tribunals (Appendix E). Tribunals, established in Tanzania in 1985, are
part of the decentralization reform that helps to relieve primary courts of high workloads. Most of the members are laypersons with limited jurisdiction who serve by mediating conflict and settling disputes amicably, preserving peace and making settlements on minor assault, threats, harassment, gambling, and child truancy. Many cases involve land disputes, adultery, and dowry disputes (Mader & Bailluch, 2010). While not formal judges, these legal figures are key to the harmony of the community and have significant sway in their wards and most importantly, for the purposes of this inquiry, are empowered to apply modern statutory as well as customary law in resolving disputes (Part III, Section (5) of the Tanzania Ward Tribunals Act).

All participants interviewed, including both key informants and local women, were eighteen years of age or older and able to give informed consent. The participants lived in the same larger community (the Gogo), and their experiences reflected a degree of similarity, indicating cohesion within the group. Study participant selection followed purposeful sampling or a “snowballing” approach, where connecting to one person leads to another who can continue to provide helpful suggestions of who to interview next. During the interview process, the respondent was asked to link into their network and suggest at least one other person to be interviewed. Babbie (2011) points out that a snowballing method is appropriate to use when members of a particular group are difficult to locate or when the study is exploratory. In this case, members of the Gogo who were willing to discuss this sensitive practice were hard to come by, and the snowballing method provided a considerate and useful way to identify people who would be willing and able to participate. While this method does generate some selection bias, the difficulty of reaching people for interviews far outweighs the costs; further, the small community from which respondents were selected makes it likely that a representative group was selected.
Study participants were recruited and interviewed on an ongoing basis until the interviews adequately covered a range of different experiences, reaching saturation (Charmaz, 2006). This process took approximately six months, and generated a total of 91 contacts through the use of the snowballing method. From these contacts, 33 full interviews were conducted, including interviews with sixteen local stakeholders and seventeen local women. At this point, the researcher determined, based on preliminary readings of the data, that the research had reached saturation. Some researchers report saturation in as few as ten interviewers, and using a grounded theory approach to the interview allows researchers to continue to build theory as they go (Charmaz, 2006). Since preliminary data readings seemed to adequately capture various perspectives and experiences, it was determined that further interviews would not contribute any significantly different information to the research. During transcriptions, two local women and one local stakeholder contacted the interviewers to indicate that they no longer wanted to be involved in the research. Consistent with the ethical considerations of this project, their data was destroyed and their responses were not used in the final analysis. The final count for interview respondents was fifteen local women and fifteen local stakeholders.

**Data Collection**

The data collection approach included a semi-structured interview with key informants in Tanzania and local women over the age of 18. Demographic data was collected by the interviewer, and this data reflected the interview subject’s age, gender, religion, marital status, income level, position in the community, and number of boy and girl children. This information was gathered not only to give the researcher a better understanding of the respondent, but also to provide context for the responses and to facilitate a more complete analysis of the data. Consistent with recommended case study research design practices (Yin, 2009), perspectives of
multiple community members were included; for example, women who had been through the circumcision ritual themselves, women and men who had daughters who may be candidates for circumcision in the future, men and women who were community leaders, and law enforcement agents. Given the highly sensitive nature of the subject matter, female social science graduate students, fluent in Swahili, conducted interviews with female respondents. These students were also used to build the network or willing informants and ensured that informed consent was secured. The presence of a relatively local interviewer who spoke the language provided the respondents an opportunity to speak more comfortably about the issue. In addition, a local teacher who was ciGogo-speaking was consulted and conducted the interviews with male respondents.

During the semi-structured interview, the interviewers took extensive notes, making every effort to capture exact quotes from the respondents. These same interviewers later translated the information into English; while there is a risk of some of the exact wording being lost through translation, the students and local teacher were experienced at communications between the ciGogo language and English and made every effort to communicate the experiences and answers of the respondents as accurately and representatively as possible in the transcriptions.

This research used semi-structured interviews that were designed to elicit brief demographic information about the women interviewed, their perspectives on female circumcision, and their perception of the laws regulating and prohibiting the practice. The questions were developed based on an altered format suggested by Seidman (2005). This format takes ethical and cultural issues into consideration, focusing on goals of respect and inclusivity.
The questions were framed in an open-ended format that encouraged respondents to provide in-depth answers to the questions.

The interviews were broken into three sections. The first section provided a history and background of the women interviewed in order to foster understanding of their perceptions of their place in the community, life background, and early life. Further, this section addressed the community framework of social issues such as marriage and community roles, respectfully acknowledging this important factor. The second part of the interview specifically focused on the knowledge of and experience with female circumcision. This included first-hand experience and community experience, for example, the experience of friends, relatives, or other community members who had undergone the process. Finally, the third part of the interview asked for the respondent’s reflections and thoughts about their experiences and the juxtaposition of their experiences and the laws. This included questions both about the official laws against female circumcision as well as a question about the impact of NGOs. The survey was concluded by an open invitation for the respondent to add other comments about the practice of female circumcision in their village.

Seidman (2005) suggests that a focused format, such as the one used in developing the interview questions for this research, is helpful in easing people into the interview. It is a good way for the participant and the researcher to organize his or her thoughts, and it follows a line of inquiry that flows logically from the least controversial issues to the most controversial issues, allowing time for the respondent to become comfortable with the interviewer and to develop rapport and trust.

The following are semi-structured questions were used to engage key informants and local women. Semi-structured questions are designed and implemented not in the manner of
survey questions, but to be used as a guide to the interview. Their purpose is to elicit and guide conversation, not necessarily ask specific questions in an exact order, phrased in a rehearsed manner. As such, participants and interviewers may follow the written pattern or may diverge from the questions in a nature manner that is appropriate for the interview (Padgett, 2011; Seidman, 2005). This is important in rapport building as well as information gathering, as it allows the spontaneous generation and contribution of ideas that may otherwise be overlooked by the researcher when designing the interview questions. Using the questions only as a guide is particularly important to grounded theory because new ideas may arise during the interview (Charmaz, 2006; Padgett, 2008). As such, the interviewer is capable of departing from the script, asking follow-up questions, or allowing the respondent to continue on with other lines of thought that may otherwise be overlooked or limited in a more structured interview or survey format.

**Semi-Structured Interview Questions for Key Informants**

1. How would you describe your role in the village?
2. How would you describe this village/community?
3. Tell me about the traditional views of marriage in this village/community?
4. What do you think are the common views on female circumcision?
5. Do families know that there are laws about circumcision? If so, tell me about how you believe they understand these laws?
6. What do you think are the main reasons that women have their daughter circumcised?
7. Could you tell me about how that process happens?
8. Please tell me if you have heard from non-governmental organizations (NGOs) that are against female circumcision?
9. What do you think circumcision means to this village/community?
10. Are the other things you would like to add about female circumcision in your village?

Semi-Structured Questions for Women in the Community

1. Could you briefly tell me about growing up in this village? How would you describe your childhood?

2. Tell me about the traditional views of marriage in this village/community?

3. What did you know about female circumcision when you were younger?

4. Did you know that some people were against female circumcision? When did you learn about that?

5. Have you or any one you know been through the ritual? What can you tell me about that?

6. Can you tell me what you know about others in your community say about the practice?

   What do people say in favor of it? What do people say against it?

7. Please tell me if you have heard from non-governmental organizations (NGOs) that are against female circumcision?

8. In your view, do you feel that the government laws are paying attention to customs? Why or Why not?

9. How would you say that the government’s laws against female circumcision have affected your views about it, if at all?

10. In your view, why do you think the laws against female circumcision are a good or bad idea? Why? Why not?

11. What would you say to other women who were interested in performing the ritual?

   Data Analysis

   As is typical of qualitative studies, each interview was translated and transcribed verbatim. The text of the interviews was then analyzed for themes relevant to the research
questions and areas of investigation (Mauthner & Doucet, 1998; Padgett, 2008). While there is significant literature regarding the quantitative analysis of data and the quasi-quantitative analysis of qualitative data through extensive coding, a framework for data and content analysis is often overlooked and not addressed by research. Mauthner and Doucet (1998) address this issue and provide a conceptual framework for the purely qualitative analysis of interview data, taking into consideration the interview respondents’ own words as well as the inherent influence of the interviewer. This approach, as well as methodology for case study designs, framed the analysis of the current research.

The data analysis consisted of the researcher independently reviewing verbatim transcripts from the interviews and identifying the themes that arose from the interviews (Strauss & Corbin, 1998; Strauss, 1987). With regard to the research question, the most important themes were identified, and direct quotations from the respondents were collected in order to illustrate these themes. The reading of the transcripts was performed using a “relational” method of analysis in order to help the researcher to become sensitized to the individual, familial, and socio-structural narratives of each of the participants (Mauthner & Doucet, 1998). This approach challenges the researcher to identify biases and make every attempt to understand the respondents’ words from the perspective of that individual.

Based on the preliminary themes that were generated from the analysis of the interview transcripts, conceptual frameworks and theory were explored. By integrating the themes of multiple interviews, patterns can be generated that point to overarching ideals and trends. While these patterns do not represent definitive results as are found in experimental studies, case study research provides hypotheses that can be explored and built upon in future research (Yin, 2009). Based upon this data, a conceptual framework that suggests an interpretation of the importance
of female circumcision was developed. Following this, the importance of female circumcision as it relates to law could be explored. Finally, theory was developed regarding the intersection of state and customary law based on this case example (Strauss & Corbin, 1998). Once the interview data had generated a solid theory of its own, these conceptual findings were analyzed within the context of existing empirical literature on female circumcision. Similarities and differences were explored, and the words and stories of the respondents were compared to the results of years of research in the area. These comparisons and connections facilitated the guidance of the final presentation of the data and provided the basis for developing the answers to the research questions of this study.

**Reliability of Data**

The primary method of ensuring reliability of data used in this research was asking questions repeatedly, in different formats. For example, participants were asked three direct questions about the value and meaning of female circumcision, each phrased somewhat differently, allowing them multiple opportunities to express their beliefs on the subject. In addition, during the data analysis process, the similarity of the responses was assessed and determined to be highly reliable. While each respondent had different vignettes and experiences, the overall views and beliefs about community values remained consistent. Further, the information generated by respondents was compared to the existing literature on the subject. The ideas espoused by many of the respondents were consistent with those in the literature. There were no indications that the data was unrepresentative of the sample group.

It is important to take into consideration the specific group of Gogo who were interviewed. Specifically, those who participated in this research inquiry were those who continue to choose to live in their specific village. The goal of this inquiry was not to garner
responses representative of the entire Gogo population, but rather, a very small sample from a particular set of villages and homesteads, the results of which may then be extrapolated and expanded upon to provide a basic example through which to understand the way in which state and customary law come into conflict. This presents somewhat of a sample bias, as those who might be characterized as “more progressive” members of the Gogo community tend to out-migrate at far higher numbers than their more traditional counterparts, as evidenced in literature and in first-hand accounts from some of the interview respondents. While many of these findings are applicable to the Gogo in general, they match far better with traditional Gogo living in close-knit communities such as the village where the respondents to this inquiry lived.

**Ethical Considerations**

All interviews were conducted voluntarily with key informants and local women. Prior to inclusion in the study, potential participants were advised of the purpose of the study and the time requirements for the interview. Informed consent was obtained by graduate students who were native Swahili speakers and who made every effort to explain procedures clearly and to answer any questions. Participants were informed of the goals and scope of the study, and were advised as to how their responses would be used in the final research. Participants were not compensated for their participation. Participants were advised that they were welcome to stop the interview at any time, for any reason. Further, participants were advised that they could voluntarily remove themselves from the study at any time by contacting the researcher directly, as three of the respondents eventually chose to do. Participants were advised that their data would remain confidential, and that their responses would be used to identify themes and provide quotes illustrating these themes. They were advised that direct quotations may be published, based on the interview transcripts, but were assured that all identifying information would be
removed. In order to ensure confidentiality, the names that are used to refer to participants during this study are pseudonyms; while they are popular Gogo names, they are not the actual names of any participants. Further, no names or identifying data other than demographics were collected for any of the participants.

In the development of the interview questions, selection of interviewers, and analysis of the data, cultural considerations were made carefully. Female interviewers were chosen to interview the female respondents, and social science graduate students who were familiar with the issues being discussed were given priority. Effort was made to ensure that the interview questions were not leading or offensive, especially given the sensitive nature of the subject. This research study was conducted in accordance with ethical research standards and complied with all US and Tanzanian laws.
Chapter VII

Results and Analysis

The previous chapter outlined the research methodology for the present study. This chapter will present the relevant findings of the data analysis that was conducted using the research. The interviews, conducted by Swahili-speaking female graduate students, were translated and transcribed for analysis. The findings below present the most relevant and frequently occurring themes, presenting the evidence that will be used in the next chapter to draw conclusions about the data and that will connect to the existing body of literature.

One of the most promising factors observed during these interviews was the consistency between respondents. While the respondents did not respond in an identical manner, there were notable themes and similarities between their stories. Specifically, the stories that were shared and the experiences that were described were similar to one another, while the justifications and beliefs of the respondents varied more significantly. The respondents were chosen from the same village and from within the same social circles, creating some bias and most likely increasing the similarity. As such, there is a risk of presenting too homogenous of a view; the Gogo people as a whole are far more diverse than those from a single village. This study interviewed thirty different people from various walks of life—parents, teachers, healers, members of the formal and informal justice system, and more. Some of the respondents had been raised in traditional households; others had been raised in more progressive households. Many expressed their personal beliefs freely, taking the initiative to compare and contrast them with community and state beliefs as was appropriate. Regardless of belief, there were notable themes throughout the interviews of the importance of community, tradition, and a strong sense of independence.
While the interviews focused on the specific issue of female circumcision, many of the respondents touched on other important social issues or the nature of law, values, and interference in general. While none of the respondents seemed eager to break any laws or overthrow the ruling structure, there was a sense of quiet rebellion against state law and loyalty to the traditional ways of managing and living in their society. The specific findings addressed below will highlight this observation and set the stage for the final exploration of legal pluralism and how the role of local law within the Gogo can be used to overcome the harsh conflict between state law and local law.

**Consistency of Data**

The existence of culture in a theoretical sense was discussed in Chapter II; regardless, what appeared in the data was a number of certain consistencies and resiliency. Repeatedly, members of the Gogo who were part of the current research inquiry emphasized the sameness of their views, the emphasis on the greater good, and the need for traditional customs to be passed down in order to preserve the sense of closeness and community that they have enjoyed in their own lives. “It is a small community, so people share not only space but opinions. What is that saying? There is something about how like-minded people live together.” These words, spoken by a part-time police officer and father of three, emphasize the similarities of the community, a phenomenon that is somewhat self-reinforcing. This is a process that works for this community; it is going to be continued. Uruma, a ward tribunal member, states that “the passing down of knowledge and tradition is a key part to our way of life and it is expected of the elders.” Dudu, a woman with grown children, pointed out that people who decide not to follow tradition customs should relocate for their own well-being. Similarly, Moni, a mother of three, described those who do not follow tradition as an “insult to our beliefs and the way we keep our community together.”
This emphasizes the importance of consistency among the Gogo; more generally, it highlights the desire for consistency in cultural groups as a whole.

While a long-term examination of culture may find evidence of significant change, short-term, time-limited explorations, such as this inquiry, are likely to find a more static view. Explorations of the history of the culture or where the members of the group predict that the community will be in a few decades are likely to indicate past or future change, but in the immediate presence, consistency and maintenance of tradition overshadow these changes. This was the case in the current research inquiry; the respondents repeatedly emphasized not only the existence of static views, but also the importance. Barta, a woman who has left the village, pointed out that “the new generation… is talking more about it but I still do not see radical change in that belief system any time soon.” Similarly, Mary B, a young mother, said “my generation is starting to question it and doing what they can to at least get the ball rolling.” Such a time-limited inquiry provides only a snapshot of the culture as it exists; while there are references to the past and hints toward what may occur in the future, the overwhelming emphasis is on current beliefs and practices.

The very definition of culture is constantly evolving among scholars of various fields, producing a rather interactive process that works to define an ever-moving target. While many tendencies stay the same, and many problems are likely solved or addressed in a similar way within one group, forming the basis of that group’s cultural evolution, there remains complexity and discourse within that community. The perpetuation of social customs, such as female circumcision, can be viewed as a sort of continual reconstruction of the culture, resulting in the issues remaining static over some periods of time. A non-centralized, diffuse culture such as that of the Gogo is filled with complex decision-making by all of its members, allowing for both
change and consistency. Many of the respondents talked about the effect of education and the ability to travel and connect with the larger outside community as a means of influencing their views on traditional practices including circumcision. Linda, a student, points out that “times change, but customs are harder to change. I feel that since more and more of the younger females are starting to question it, that it is kind of the beginning of it being phased out for the most part. Much like in the bigger cities where it isn't so commonly practiced.”

**Power Dynamics in Gogoland**

As was briefly noted in Chapter II, power, as a general proposition laid out in the literature review, has been an area of shifting dynamics across the African continent. However, in this particular inquiry in the Gogoland region of Tanzania, there appears to be an enduring, almost static, quality to this dynamic. Specifically, the data seem to indicate that the national government, despite its seeming monopoly on the not inconsiderable organs of state, has been ineffectual in imposing its will at the local level, at least on the subject of the case study. Moreover, this enduring quality seemed to be evident at the local level in the dynamics between and among local actors such as traditional authorities, heads of household and the institution of patriarchy. This will be further illustrated in the following discussion of the results of the inquiry.

**Emphasis of Community**

It has been widely established in the relevant literature that community is an important part of life not only for any group of people, but especially for the Gogo (George, 2013; Tamahana, 2011). Unlike many more individualized, often Western groups, the Gogo are highly committed to one another and to their community. This was demonstrated in three different areas: marriage, the concept of the greater good, and the importance of fitting into the community. The respondents touched upon these concepts extensively, citing their own
experiences and the experiences of others in order to demonstrate their point. The specifics changed, but the consistent theme was the importance of the community over the individual, regardless of who the respondent was.

Taking a broad overview of the empirical data, one could liken the affinity structure that contributes to propensity to obey local norms and state laws to a sunflower, or what many Tanzanians would call *alizeti*. The *alizeti*, ubiquitous in Tanzania and considered by many to be the unofficial national flower, can serve as an apt and useful metaphor to illustrate allegiance to local custom. This allegiance characterizes the clash between national and customary law in the pluri-legal environment of Tanzania. See figure 7 below for a visual representation of the Alizeti Diagram.
In much the same way as households and immediate families are the vital and indivisible units of Gogo society, the core of the face of the alizeti is a highly dense collection of kernels. In Gogo society, social bonds and pressure to comply are most intense; similarly, in the alizeti, there is an extremely regimented pattern with each kernel ensuring its position by relying on those kernels that are most proximate. One of the commonly emphasized benefits of circumcision was the way in which girls bonded with their peers, mothers, and elders. “I think that connection with the girls from an elder female is very important” Ivansnel, a father of six
girls said, “it ties you to the other women who have had it done.” As one moves away from the core, the kernels gradually become less dense. The pattern, while still quite evident, becomes increasingly less predictable. Similarly, as one moves away from the household and immediate family to the broader clan and extended family level of Gogo culture, patterns remain, but are less predictable. At the extended family level, many of the respondents emphasized the heightened importance of circumcision to the older generation, such as Rose B, who emphasized that “the older generation here is very much in favor of [female circumcision].” However, a few pointed out disagreements with the popular view amongst their elders. Kissimbo, a police officer, pointed out a history of disagreement in his own family, pointing out that, while his “grandfather was somewhat outspoken about some of the traditions,” his father and mother were both “very much in favor of the customs and rituals here.” These similarities and differences within the extended family demonstrate the increasing irregularity that occurs, similar to the outer layers of the alizeti.

As one moves still further from the core, the kernels become increasingly irregular in their placement while still maintaining somewhat of a pattern. The kernels of the flower are influenced by the tight patterns in which they originally grew. This can be likened to the next level of Gogo societies, where one moves away from the clear kinship ties to relationships with the broader village or community. As one approaches the outer edges of the head of the alizeti, the kernels, while still a part of the head and group of kernels, appear to be in no particular pattern and are far more likely than their closer and tighter neighbors to fray and flake away from the head, essentially ceasing to be a part of the plant any longer. Likewise, if an individual moves too far to the outskirts of the Gogo community and way of life, they are far more likely to leave the community entirely. This illustrates the tenuous and opaque notions of broader ethnic and
national identity hinted at in the data. Repeatedly, individuals who were described as being “different” in some way, for example, not being circumcised or not getting their daughter circumcised, enjoying the city life more than the traditional village life, being overly adventurous—these people were described as outcast from the Gogo society, in theory and in practice. Beyond the sense that these people were socially excluded, various respondents indicated that such people left the community, often on the premise of school or work. Lorah, a tradition young woman, expresses this sense of community and exclusion as “just the way it has always been and if people have such a problem with it than they can just move on.”

Finally, there are petals arranged around the outermost fringe of the alizeti that are clearly separate from the head and the kernels that it contains. At best, these have distant and tangential connections to the individual kernels. These petals are clearly a part of the plant that serves an important purpose; to some observers, these are the plant’s most prominent feature. This element can be likened to that of the modern government in Tanzania and many of its national laws. While these laws might clash with some of the customs and norms of the close-knit local communities, they are also a part of these communities. Included in these laws is modern state enforcement machinery, courts, policy, and as efforts of outsider actors such as NGOs, foreign governments, international organizations, and advocacy groups that typically exercise their influence as a function of their ability to get national governments to act. Among this outermost layer is where the current research inquiry exists—the “Other Interventions” petal can be used to target those actions that do not fall within the other means of influence.

Marriage

Consistent with the literature (Tumbo-Masabo, 1998, George, 2013), the respondents all emphasized the importance of marriage. Few Gogo people go unmarried, and to do so is
considered unusual and suspect. From the interview data, it became clear that there are such people in the community; one woman referred to a woman who was “unmarried, and was educated in one of the bigger communities. She has an ego about herself and most of the community ignores her.” The description of this non-conforming woman and the community’s response to her is telling. This woman does not fit into the community, nor is she embraced by it. The woman was described as not only being against circumcision, but unmarried, educated more than most, and having an ego. Other women with similar characteristics were described as having left the village; facing community exclusion, it is easy to see why this would be a popular choice for those who do not fit the community standards. Atsianu, the patriarch of a large family, stated that “not getting married is like insulting our village.” Similarly, a healer and married father of three described marriage as “the glue that keeps us together and alive.” The respondents all emphasized that, for the Gogo, marriage is not a choice that one may make secondary to career or personal ambitions.

The goal of each person is to marry and produce a family, not only to further their own lines, but to further Gogo community as a whole. As such, marriage-related rituals such as circumcision are of utmost importance. This is consistent with the research of McGee (2005), who emphasized that many African societies view an uncircumcised female as looking too masculine, causing the woman to be unmarriageable. Again and again, both men and women emphasized that uncircumcised women were ineligible for marriage, both because of the lack of physical and sexual appeal of an uncircumcised woman, and because of the social stigma associated with not being circumcised—for example, being associated with being unclean, impure, and improperly socialized. Marriage is viewed as a duty to better the community, and holds responsibilities similar to that of communal land tenure. In the same way as a single family
could not realistically exempt themselves from participating in land tenure, as it would disrupt the agrarian production; the removal of young men and women from the marriage pool would weaken the community (Gluckman, 1968; Elias & Akinjide, 1988). Many of the mutual responsibilities that families share are based around marriage, which means that a disruption in this social order due to a woman being uncircumcised is likely to place not only the woman’s family, but the community at large in danger of being unsupported by the rest of the community.

**Importance of Fitting into Community**

The respondents described female circumcision as a fact, not a debate. Mwakimenya, a father of two and a member of the ward tribunal, describes the practice by stating that “it really is something that is celebrated here, so it is weird having to give reasons other than that are just how it is done.” The practice is a way of life for the Gogo, and is not questioned or debated any more than the arrangement of a marriage, or the sale of livestock, or the process of visiting a healer. For Westerners, circumcision is a topic of debate and contention, for the Gogo, it is a way of life. Once again, Bourdieu’s (1984) concept of “habitus” is brought to mind. In contrast to the many horrific stories that appear in the literature and the popular media, the circumcision ritual is highly celebrated, compared to the birth of children or one’s wedding day. This celebration is established in the literature across many cultures that practice female circumcision (Wasunna, 2000; Mapana, 2007). April, a married mother of three, speaks highly of the circumcision ritual and remembers her own circumcision day fondly, commenting that her “husband and kids would not like to hear this but that day was probably the greatest day of my life.” While all of the respondents who had undergone circumcision noted the intense pain that was associated with the process, there was little focus on this, nor was there an overwhelming sense of regret. Most often, the women were glad to have completed the process, and focused on the positive elements.
Similar to women’s stories about the process of childbirth, the circumcision ritual was described as physically painful, but far more culturally and emotionally meaningful. One of the common themes that emerged from the interviews was the sense of community belonging that came from being circumcised. Hena, a mother of two, laughed as she recalled her own experience fondly: “Other than the pain it was a beautiful day I remember with all my loved ones and friends around me. I remember I begged them to let my best friend hold my hand instead of my aunt… It was an amazing bonding experience and she is still my best friend today.” In contrast, women who do not undergo the procedure are excluded from their community. Lise, a mother of four boys, recalls growing up poor and outcast from the community, with parents who did not believe in circumcision. In her challenging youth, she longed to undergo the ritual herself in hopes that it would be a “final solution to finally being accepted.” When her parents died, she went to live with Gogo relatives who supported her in getting circumcised. While she has no daughters of her own, she firmly stated that she would have her daughter go through the ceremony without question. She emphasized that denying a girl the opportunity to be circumcised “was unfair to me and is to any daughter here whose mother does not let her have her ceremony.” This story emphasizes the rejection that a woman is likely to face if she does not undergo circumcision, the pressures of society being extremely strong (McGee, 2005). Lise’s words coincide with literature demonstrating the fact that, while it is usually a girl’s parents who decide to have her undergo the circumcision ritual; many girls decide to go through it themselves due to the social pressure that they face (Oloo, Wanjiru, & Newell-Jones, 2011).

While Lise’s story is tragic, it represents the state of the community and its feelings on the importance of circumcision. Kissimbo, a local police officer and father of three, describes the difficulties faced by uncircumcised women through his own experiences: “I have had to break up
disputes from women being bullied for being uncut. People will scream things at them. Most just move on eventually, which I do not blame them for.” As circumcision is taken as a fact of life, often, the only alternative is to move. This is viewed as the most respectful solution, and was also a common theme among the respondents. Lise, who recalled her own despair at not being allowed to be circumcised, states, “to this day I am not sure why my mother stayed here, to be honest. She would have done better to move away, but I suppose she wanted to prove something.” Likewise, Mary, a young former student, stated that “if I were to have a daughter, I would not let her undergo ceremony and would probably just relocate somewhere else because it would be just as irresponsible to raise my child here having not been through ceremony than putting her through the pain of that ritual itself.” While Mary was one of the few respondents who did not personally agree with circumcision, she does not condemn her community for doing so. Rather, she seemed to view her choice as a personal one, thus placing the responsibility for moving to a location that is accepting of uncircumcised women on the parents or woman herself. Mary B, a young mother of one daughter, is similarly open to the practice, but agrees that if her daughter decided not to go through with the circumcision ritual, she would relocate immediately. It seems that, while there is room for personal choice on the matter, the key is that if one remains in the Gogo community, circumcision is a must.

The concept of ever-changing culture is relevant not only to this discussion in particular, but many factors in the life of the Gogo. Some of the respondents indicated that their culture is changing, consistent with literature that is showing a trend toward more “progressive” attitudes and more migration into cities. Linda, a student who aspires to become a teacher, suggests that “the early stages of [change] have started. Each year, it seems more girls do not undergo the ritual.” Alternatively, Mwakimenya, a father of two, insists that custom “will not change,
because it just cannot. It is too ingrained in the culture here.” As such, even the opinion on whether change is possible is up for debate. While every culture can be seen as in the middle of cultural change, there are some important issues that the Gogo are dealing with more than others, and that have more widespread effects on the Gogo people, for example, female circumcision.

**Greater Good**

As has been noted in the relevant literature, there was a consistent theme throughout the interviews where respondents tended to emphasize the good of the community over the good of the individual. More accurately, one’s own personal good was seen as a function of the overall good of the community. Bowman (2005) examined Kikuyu women, who expressed the sentiment that abolishing female circumcision would “destroy the tribal system” (p. 139). Likewise, the women interviewed in this research inquiry were very strong in their beliefs for circumcision. Circumcision is believed to promote cleanliness, purity, and community values—to suggest the halt of such an important practice seems almost heretical from this viewpoint. Rose, a mother of two and seller in the markets, recalls her mother’s explanation of the importance of circumcision: “she always said it was about surrendering your womanhood to the family and becoming one with the women in your village.” The concept of “surrendering” seems particularly important; while there was a sense among many of the responses that the practice itself is somewhat distasteful, the results are clearly of high value. This concept was especially evident among the female respondents who had undergone circumcision. In addition to the personal benefits of celebration, community inclusion, and marriage eligibility, circumcision is seen as a feature that strengthens the entire community; likewise, in its absence, it weakens the community.

One of the popular sentiments expressed during the interviews was the concept of choice. Many of the women who had been circumcised recounted happily that they had been consulted
regarding the decision of whether to become circumcised or not. Barta, whose parents neither promoted nor discouraged circumcision, allowed her to make the decision for herself. At the age of thirteen, she determined that she did not want to undergo the ritual, and chose instead to move away and attend school. Her parents personally disagreed, and while they supported Barta, they remained in the village, visiting on occasion, as Barta was excluded from the Gogo community. “They gave me the right to decide and the fact that it came late let my opinion have merit… I know in their eyes they probably are disappointed with me even still but they sometimes visit and I know they love me and I will always respect them for letting me decide.” Her statement reflects her sadness at being excluded from her community, but does reflect the tolerance and alternatives to undergoing the procedure. Likewise, Kissimbo, a police officer, describes his view of uncircumcised women in a matter-of-fact way: “I do not look down on these women as others in this village might. I just do not think this is the place for them. Not for that way of thinking. Maybe in the future sometime.” While he does not actively hate or look down upon women for not being circumcised, he addresses the fact that they cannot be a part of the Gogo community, at least, not currently. For those women who choose to stay, undergoing the ritual is vital. As Rose B, a mother of two and respected community member states, “it is meant to make us have a better place in society and a stronger bond with the community.” Whether the practice itself is supported, whether the individuals believe that circumcision promotes cleanliness or purity, one message is conveyed strongly in the responses of the Gogo interviewed for this project: circumcision is a fact of the Gogo, and to avoid it is to offend the community.

Household as Extension of Personality

Many of the questions and responses dealt with the nature of the community, the relationship to family and law, and the importance of individual roles within the community.
Respected local authority figures, particularly men, tended to support the finding of previous researchers, emphasizing the household as an extension of one’s personality, a concept addressed in Chapter II (Elias, 1956; Elias & Akinjide, 1988). The importance of this notion is that it emphasizes the public view of the household and the household leader’s role in society. Yesse, the father of eleven and leader of his own and his sons’ families, describes his role as being “in charge of the family. Not just my wife or children or grandchildren, but the whole extended family, everyone that was born in or married into it.” This is great responsibility, and it is obvious from his responses that he takes great pride in this role. Ivansnel, a livestock farmer and head of a medium sized family, describes his responsibility as “to make sure [the family] members remain respectable, especially its women.” Once again, there is emphasis on the responsibility of the male patriarch for his entire family. While there is responsibility, there is also great pride in these men’s voices as they describe the ways in which they care for their families.

However, this view tends to complicate issues that may otherwise be seen as personal, such as female circumcision. While many critics of the practice argue that it is an issue that affects the woman’s body, men like Yesse and Ivansnel are held responsible for the actions and choices not only of their daughters, but of their sons as well, who would be outcast for marrying an uncircumcised woman. Many of the men who were interviewed espoused similar beliefs, emphasizing the importance of their role in maintaining family harmony, making family decisions, and representing their family to the community. In addition to the pride, they acknowledged the challenges. Ghian, the father of seven and head of a small clan, pointed out that “it is a tiring role sometimes, if I am to be honest, with so many people to take care of, so
many families to keep in order, to keep sound and happy. Then if there are people from other clans that want to interfere, I have to step in and settle things. It is exhausting at times.”

The leaders of clans are held responsible for the members of their family, and take on great responsibility in making sure that they carry out the best decisions for everyone involved. As such, the private issue of female circumcision gets played out in the public sphere. Marriage is vital not only for the survival of the community, but also for the survival of the individual couple. “It means wealth,” Ngola explains. The traditional healer and father of five describe marriage as “wealth of opportunity for a young female to be able to marry a man of good quality and bear his children and promote the wealth of future generations in both family and fortune.”

Repeatedly, the respondents emphasized the extent to which uncircumcised women were not accepted, and worse, not eligible for marriage. “The family, the home unit, is so very central to our culture, and it is crucial that a female marry the best man possible, join the families, and then birth the children for the greater prosperity of all,” Yesse explains, emphasizing just how important marriage really is for the Gogo.

The public nature of circumcision reinforces the attachment to the ritual, supporting extended personality theory of certain customs (Elias, 1956, p. 170). Many respondents described the woman’s body as valuable and important, but this importance was to the community, not just the woman herself, and not just the woman and her husband. Atsianu, the head of a clan of over thirty members, emphasizes that the circumcision ritual “means power… a woman is taken seriously as an adult member of society.” He goes on to explain that circumcision allows a woman to get married, therefore, it “means a happy life… a female has fortune on her side to have a husband and bear many children.” The associations of circumcision with marriage and childbirth makes it a necessity for continuing the line of children in the
family, and thus continuing the survival of the Gogo people, who are already limited in numbers. “The most important thing for a man in life is to ensure that his name and that of his father and father’s father lives on,” Ivansnel explains, “and the only way to pass your name is through marriage. Marriage and children, because you cannot have a marriage without children, are the main reasons for a man’s being in the world.” Salehe, a medicinal healer, describes the Gogo community as “very close. There are only so many people, so we all know everyone and their business… working for the continuance of life.” As such, the circumcision ritual is seen as vital to continuing the existence of the Gogo, not only in terms of tradition, but possible in terms of actual life.

“We are a poor and simple people but we do have pride… pride in family and pride in household. And if a man does not have that, then he truly has nothing.” Ivansnel’s words not only emphasize the importance of the family and household to the Gogo man, but also echo the sentiments of Elias’s research (1956). There are few possessions that the Gogo can claim as their own, but the family is one of them, making it that much more important. Considering this importance and the aesthetic, traditional, and health values associated with circumcision, it follows logically that the women involved, as well as the men in the community, would strongly promote the continuation of this practice.

**Remoteness and Otherness**

There was a recurrent theme of remoteness among the respondents, and a strongly conveyed sense of “otherness” of all things beyond the perceived bounds of the community. While the Gogo are a part of the nation of Tanzania, there were few mentions to the nation itself; rather, the respondents focused on the Gogo community within which they lived. This was directly relevant to the sense of attachment to local custom at the expense of adherence to
national laws. This sense of remoteness and otherness was most strongly displayed through a sense of physical and traditional distance from the governing body, the way in which those who defy custom are excluded, and a noticeable resentment for those outside groups and institutions who attempt to impose on or interfere with custom.

**Distance from Government**

The part of the Dodoma region that is inhabited by the Gogo is rural and physically distant from the governing bodies in Dodoma and Dar es Salaam; further, it is distant in terms of culture, values, and expectations. The national government was repeatedly described as being disconnected, uninformed, and annoying to the Gogo, who have lived with their traditions and customs for many years with considerable success. Ivansnel, the leader of a moderately sized family clan, states that “our ways have served us to the side of peace rather than hate, but our customs become very sacred to us.” While respondents did not go into a great deal of detail with respect to the basis for such a sentiment, such opinions were generally reflective of a broad array of respondents.

For generations, the Gogo governed themselves. During colonization, there was some colonial interference, but the remote location of the Gogo and the lack of exploitable resources left them largely unaffected by the colonizers; for the most part, these people were able to continue to practice their customs and continue life in their way. Dudu, a married mother of four, is highly opposed to those members of government who make laws against tradition practices, stating that such actions show “how out of touch governments are with us all the way out here.” This sentiment was echoed by many other local women, male family leaders, and prominent community figures. Some of the respondents viewed the government’s involvement in the issue of female circumcision to be a waste of time, especially when there were more important issues.
This echoes the words of Merry (2008), who discusses the “global preoccupation with [female circumcision] at the expense of many others (p. 8). The term “Gogoland” is sometimes used to refer to the geographical location where the Gogo tend to live; this name seems very fitting in light of the separation between Gogo customs and the customs of the rest of the nation of Tanzania.

**Exclusion of Those Who Defy Custom**

Despite community beliefs, the final decision to undergo circumcision is a personal one, made by the parents of the girl in question. The overwhelming theme stated by the respondents regarding a girl or family who chooses to forego the traditional ritual and remain uncircumcised was that these people were choosing not to be a part of the community. Rutta, a police officer with four children, states “if you live here and you don’t get married, you are doomed. You will not have as many life choices, people will look at you like you have three heads, and you will feel alienated.” As circumcision is viewed as vital to the overall ritual of marriage, one can extrapolate the concept that women will be similarly shunned if they are not married. This is consistent with the words of the other respondents who pointed out that uncircumcised women are shamed, avoided, bullied, and sometimes harassed. Further, this result is consistent with findings of the literature (McGee, 2005; UNICEF, 2005; Wasunna, 2000). Not only amongst the Gogo, but also across many cultures that practice female circumcision, the decision to forgo ritual can lead to social ostracism.

Making the decision not to be circumcised means that one is choosing not only to go against the standards for purity and appearance, but often indicates that the person will remain unmarried, violating Gogo values of marriage. The message is that if one wants to be a part of the Gogo community, he or she must uphold the values; likewise, if someone does not want to
uphold the values, they are making a decision to be excluded from the community, and should move away from it. Madhani, a mother of four and a member of the village tribunal committee, expresses her feelings on those who do not conform to tradition by stating, “it does sound a little callous, but if you want to live here you should live by the customs that we live by; otherwise you compromise the heart of the community… A woman's body is very sacred.” This supports the statements of many women and men who acknowledge that they would move if their daughter did not want to go through the circumcision ritual.

There were a number of respondents who indicated relief that they only had male children, or no children at all, and who were essentially opposed to the practice on a personal level. Even some who had undergone the procedure or allowed their daughters to do so had some misgivings about it; however, the larger driving force was the sense of the need to comply with the practice in order to remain a part of the community. Many respondents indicated that they would like to see change in the future, but since change had not happened, they placed higher value on upholding current traditions. Tied up in all of these responses was a sense of pride in cultural sovereignty and a resistance to change based on outside interventions. The Gogo have managed well for centuries, many of the respondents seemed to indicate, and they would continue to do so regardless of what the rest of the world things.

**Otherness and Interference**

There is a sense of otherness among the Gogo, a sentiment of being extremely different from the people who live in cities and adhere to more modern traditions and values. Research has demonstrated that not only do members of rural cultures feel a need to defend their society at any cost, they tend to fear that weakening traditional customs will allow Western influences to take hold (Wasunna, 2000). While many of the women who were interviewed expressed dislike for
the legal efforts to curtail female circumcision, criticizing the government and NGO interference into what they view as a personal and community issue, one respondent captured the essence of these critiques and feelings eloquently. Lorah, a young woman who had recently been engaged to be married at the time of the interview gave the following response when asked about her feelings on the efforts of legal activists and NGOs to stop female circumcision:

Those people live different lives in a different culture and should not impose on our way of life. I am sure there are many aspects of their cultures that the people of this village would find absolutely damning and unimaginable. The difference is we do not go over to their home and tell them how to live. My ritual was one of the best days of my life and to think someone wanted to have taken that away from me is hurtful… In other countries, women have surgery on their private areas for personal reasons and no one makes a big deal about it.

Are they protecting us from ourselves? Are we barbarians for this? We don’t need laws. Circumcision is not forced. It is encouraged, but no one is making women do it. Laws would just mess things up, not change things we do. If women are for it, something we allow to be done to our own bodies, who is government to say we cannot? That is taking away a choice of ours. That is backwards thinking.

The key element to Lorah’s statement is the focus on different cultures. She does not criticize others for not practicing circumcision; rather, she views the entire conflict as one that can and should be avoided. While she valued her own circumcision ritual, she is not attempting to make a case that every woman in the world should undergo the procedure; rather, she is demanding that other parties stay out of what she feels is a personal and community value. The politically- and emotionally-charged terms of “barbarians” and “backwards thinking” are used here in contrast to what many governing bodies and activist groups espouse—while the practice of female circumcision is often described using these terms, this young woman instead describes the interference of others as such. Similarly, while many organizations present circumcision as a process that takes choice away from women, Lorah points out that it is actually the laws and actions against the practice that are taking away the choice. This is consistent with research
emphasizing that, despite the good intentions of many white Western feminist organizations, interventions against circumcision fail to consider the voices, opinions, and priorities of women of color (Griffiths, 2009). The words of the Gogo emphasize that they are separate from the rest of Tanzania, and perhaps the rest of the world, but their words also emphasize that their way of life works for them and is held in high regard.

**Adherence to Law**

Almost universally, people accept the importance of obeying what is presented to them as law. This certainly rang true for the Gogo, some of whom seemed offended when asked about working “around the law” or “outside of the law” to continue to practice female circumcision. Many of the respondents emphasized the importance of following both customary and state law, but left room for female circumcision within this framework despite the actual state laws against it. Overall, there was a trend among the respondents to make subtle distinctions and gradations of importance of adherence to state law, often basing their justifications on the notions of remoteness and attachment. Bowman (2005) describes the lack of adherence to law by pointing out that when “feminists continue to force treaties and laws… those laws are not abided by and the treaties are not respected” (p. 146). Customs were emphasized as far more vital to the functioning of the community at large than strict adherence to laws, suggesting a sort of higher law than those official laws imposed by the governing bodies.

**Importance of Custom**

Yesse, a family leader, makes the strong statement “we stick to tradition here and it works for us.” While this statement could be applied to any number of communities, it seems particularly salient for the Gogo. This group has survived for centuries in spite of a challenging climate, limited resources, and colonial interference into their way of life. Largely cut off from
the rest of the nation, and even more distant from the Westernized world, the Gogo have rich, traditional lives that have served them well and resulted in the survival of this community for quite some time. As such, they value their customs, many of which are actively focused on continuing that survival. The male patriarch of a large clan points out that Gogo men “think the outer parts [of an uncircumcised woman] resemble their own and it is difficult for them to find attraction in an uncut woman.” In a small community, such as the Gogo, this lack of attraction leads to a lack of marriage, which leads to a lack of children. This is supported in the literature with evidence that an uncircumcised woman is not only ineligible for marriage within the community, but that a woman who engages in intercourse prior to circumcision will be outcast from the community entirely (Oloo, Wanjiru, & Newell-Jones, 2011). It is easy to see how this threatens the community, which relies on large families, often with more than ten children. A woman who is uncircumcised is viewed as unattractive, and therefore will not marry or have children. This could be devastating not only to her family, but to the entire community, increasing the value of the practice in the minds of the Gogo.

Because these customs are so firmly engrained, laws that seek to curtail the practice are not well received. Lise, a mother of four who was circumcised in her teens, expresses her feelings on laws against circumcision as follows: “Laws should not interfere with our practices. Just like government should not be in charge of your religion. They should not come into your home and say, this is the way you do things.” The view of laws against customary practice is not that they are trying to help or better the condition of the people, but rather, that they are attempting to destroy the customs and values of the community. A part-time police officer states that he believes “that families here will carry out the practice regardless of laws if they feel it to be right.” Customary practices such as circumcision are not treated lightly; they are vital to the
functioning and survival of communities. While all of the respondents valued obedience and respect to national laws, there were strong sentiments from all of the respondents that customary beliefs and traditional values far outweigh these legal orders. As stated in Lundquist (2004), “people’s loyalties are not to national politics” (p. 28). Even among the police officers and ward tribunal members, who are a part of the ruling authority system of the Gogo, there was strong sentiment that emphasized the importance of local customs. This exemplifies the importance of local custom, even over adherence to national law.

In a sense, the resistance of the Gogo to accept the Tanzanian mandate against female circumcision may be viewed as a form of cultural resistance against a larger oppressor—not only the state’s power, but also the attempt at Western interference. While the majority of respondents emphasized the health, aesthetic appeal, and community aspect of female circumcision, there was also a strong undercurrent of cultural definition, not to mention a sort of pride at continuing along in the Gogo way in spite of the state ban on the procedure. The Gogo pride themselves on being a lawful and respectful people; their resistance to the circumcision ban emphasizes how strongly this issue affects their lives and their views of themselves as a community. “If we are talking about circumcision, that is not going to end, no matter the law. That is just the way it is here,” says Rutta, a police officer. Salehe, a village elder and healer, emphasizes that the Gogo “are very proud of the way we live. Everyone takes pride in everyone else.”

This is in line with Merry’s (2013) discussion of resistance, which emphasizes the relationship between power and cultural retention. Essentially, while the dominant parties of the modernized urban areas and the Western world are putting increased pressure on the Gogo, they are responding in turn by placing increased value on their traditions. Again, the tendency for members of rural cultures to defend their society in the interest of preventing Western influence
is noticeable in these actions (Wasunna, 2000). Female circumcision is important not only for the reasons cited by many of the respondents, but also because it is a way of reclaiming their culture. Sally Merry describes this reclamation, stating “cultural production and cultural appropriation provide for agency and power in historically constituted spaces” (2013, p. 586). As discussed in Chapter II, local law constitutes the culture of local communities—by distancing themselves from state laws banning circumcision, the Gogo are demanding that their local law and culture be considered legitimate. Ivansnel, the head of a large family clan, speaks derisively of NGOs and state laws against female circumcision, emphasizing “we do not go to where they come from and tell them what customs to keep and which to throw away. We stay here and try to keep to ourselves and our customs.” By maintaining traditional customs and rites of passage, the Gogo are rejecting Western interference, upholding their community values and maintaining power over their own experiences.

**Consequences of Ignoring Tradition**

In addition to community values, there often exist severe consequences for ignoring tradition and going against customary law. While there is little to no enforcement of the legal bans on female circumcision, there are considerable social consequences for those who choose to forego the practice. Moni, a mother of three, adamantly defends the practice of circumcision within her community, emphasizing the fact that “if you do not want to technically break the law then you will see your daughter have a bad life here.” She suggests, “maybe consider moving away. That may sound harsh but it is our culture and law has no say in culture.” While she acknowledges that female circumcision does “technically” break the national law, she puts far more emphasis on the consequences of not doing so, even suggesting that the family move away if they are not willing or able to comply with the social expectations. To not comply with the
custom of circumcision not only risks making the girl or woman herself an outcast, but can bring shame upon her family (McGee, 2005).

Many women pointed out that uncircumcised women and girls are shunned, not associated with by other women, unmarriageable, and viewed as “dirty” by the community. One man recalled “three years ago, one poor girl took her own life and that made me want to hug my daughters tighter.” He was referring to a girl whose parents had chosen not to have her circumcised, and her suicide was interpreted as a response to the severe harassment and exclusion she faced from the community. In light of this fact, it is easy to see why adherence to state law becomes less important than complying with the customary laws of the community.

The patriarch of a clan describes the tight adherence to tradition and customary law as follows:

I have lived here my entire life and our way works for us. Our customs are what bring us together and whether the outside agrees or not is not a large concern for me, my family, and the village. I have seen what happens when a girl lives in our society not having gone through the ritual. It’s not something any father would want for their daughter.

Over and over again, the responses confirmed the same thing: even if one is personally opposed to circumcision, the life that one leads as an uncircumcised woman in the Gogo community is too terrible to bear. Essentially, uncircumcised women among the Gogo are left with two choices: to live a life of exclusion and marginalization, or to move away from the community. Given these choices, it is clear why parents of girls and many girls themselves will eagerly evade the national laws in order to continue the traditional practice that equals their inclusion in society.

**Evading Law**

It is a documented fact that many Gogo people work around Tanzania’s law against circumcision, as girls continue to be circumcised at high rates and at younger ages than before (WHO, 2012). As one woman described the situation in the interviews, “law saying I cannot
[have my daughters circumcised] is not even close to being a strong enough doctrine to make me do otherwise.” What has been emphasized through this research is that the issue of circumcision goes beyond the simple following of state law; it includes deep-seated community values, traditions, and rituals. Even the police officers in the area have a role in allowing the practice to continue; the various police officers and ward tribunal members that were interviewed all made mention of actively not involving themselves in the process that is technically illegal. The respondents of this research inquiry made similar claims to those found in literature—namely, that local law enforcement does little to enforce national laws against female circumcision, and that the process goes largely unmonitored (Oloo, Wanjiru, & Newell-Jones, 2011). Kissimbo, a police officer, emphasizes that his role is to make and keep peace in order to make the community feel safe. He observes that police:

> are here to keep the peace, and turning a blind eye works to keep that peace… People will always follow their customs. I believe people here follow national law as much as they can, but time-honored beliefs have a way of sticking around. You cannot enforce a law too hard if it interferes with custom. Those laws are tricky and kind of unspoken.

This same sentiment was echoed by other members of the police force, acknowledging the national law prohibiting female circumcision, but pointing to “turning a blind eye,” “not seeing anything,” or “leaving it to women.” Through this active avoidance of the topic, these law enforcement officials are able to maintain their primary duty—promoting peace and safety—within the acceptable boundaries of their communities.

Despite the desire to follow the law, one point of contention that numerous respondents addressed was the inadequacy of the law itself and the inapplicability of the law to their community. One respondent asked, “do you follow a petty law that was written by bureaucrats a million miles away or do you work outside it to make sure your family stays intact and survives
well?” This question addresses the heart of the issue—female circumcision is viewed as a survival method, a way of keeping the community strong, intact, and supplied with happy marriages and children. The active rejection of the national law is consistent with research emphasizing the desire of tribal groups to preserve their tradition, avoid Anglicization, and maintain distinct identities (McGee, 2005). The Gogo people do not see the state laws against circumcision as fighting against pain, or fighting for women’s or human rights, they see them as an attack on their way of living, and potentially their culture as a whole. “Tradition fights change,” a mother and ward tribunal member stated, “and a law to dictate what a woman can and cannot do is always a sensitive topic. I think, especially around here, the authorities look the other way because they know what we all know.”

What the Gogo believe to be true is that their values and beliefs are of utmost importance, more important than paying heed to the far-off government mandates, and far more important than listening to activists who they see as interfering and outside of their community. Despite the tendency to evade these state laws, some believe that, with appropriate consideration and wording, customary laws and national laws can peacefully coexist. Linda, a young student who aspires to be a teacher, explains that the Gogo “are not going to trade our belief system for what some man tells us to do. But, the basic human laws…treating others with respect, those must always be obeyed and here they usually are.” Approaching the issue of female circumcision from this perspective, instead of from an outsider’s perspective, has a higher chance of success under this framework.

**National Modern Law vs. Local Benefit**

One of the biggest impediments to implementing national modern laws is the benefit of the new laws to the local community. This seems to be a key element of the efficacy of such
laws; without such benefits, there is really no reason for a community to embrace the new regulations. Robert Gordon provides a very apt definition of the hegemonic power of a legal order, stating that it “consists less in the force that it can bring to bear against violation of the rules than in its capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live” (Mezey, 2001, p. 47). What is lacking in the Tanzanian ban against female circumcision is this desirable quality. Throughout the interviews, many reasons were given for the continuation of female circumcision amongst the Gogo people. These reasons ranged from simple aesthetic practices, to concepts of cleanliness and purity, to community ties and more. On the other hand, the main benefit that most associated with stopping the practice, if they mentioned benefits of this at all, was that the girl would not experience pain from the process. A few days of pain seem minimal in comparison to the benefits listed, especially from a Gogo perspective. The importance of considering how to provide benefits without taking away from cultural values and traditions should not be understated. A central idea of law is that law is “the law of the nation state” (Cotterrell, 2012, p. 4). Coercive authority needs to come from inside the community, providing a form of self-regulation. This is consistent with research demonstrating that external regulation, such as that imposed upon a community by state law, is of limited utility (Cotterrell, 2012). This is likely to lead to informal regulation of the laws or norms in question, providing a sense of legitimacy which simple orders and mandates cannot provide.

**Drawbacks of Laws against Circumcision**

One concern that is associated with national laws against circumcision is that the process is moved “underground,” becoming a secret amongst society. This is likely to increase the use of unsterilized equipment and reduce the likelihood of a girl receiving medical care in case of
emergency (Bowman, 2005). On top of this is the social stigma associated with being uncircumcised. No matter how strongly laws are made or enforced, this will not immediately change social expectations, and girls and women who are uncircumcised will continue to be discriminated against and excluded from their society. A healer, Chibaite, described his own medical experiences with women who had not undergone circumcision. He described them as “very sad and lonely,” and talked at some length about a girl who he saw for a minor injury. “She was so stunned and surprised someone was talking to her. She smiled the whole time and listened to me. I think she was just so happy to have someone acknowledge her and talk to her. I think about that when mothers come to me for advice on the ritual,” he recalled, a sad expression on his face. He said that he often encourages mothers to get their daughters circumcised in order to meet the social standards of the community, as the alternative is community shunning.

Kissimbo, a police officer, would not officially state whether he would go against the law and have his own daughter circumcised, but did state that “whether or not my wife and I make the decision to have our daughter cut, I know if we go against having it done we will be relocating. This is from a father who loves his family with all his heart.” The only way to keep one’s daughter safe if she is not circumcised is to move to a more progressive area of the nation, leaving behind the community in which the rest of the family and history exists. State laws against the procedure only increase this difficulty, leaving the Gogo with two unpleasant options—violate state law, or cease to be a part of the community in one way or another. Uruma, a father of two boys and a ward tribunal member, points out that “people follow customs and beliefs first… the law comes secondary.” This statement emphasizes the views that were so strongly expressed by many of the respondents; even though law in general was important and respected, the specific state law against female circumcision was placed secondary to customs
and beliefs. Uruma goes on to explain, “major beliefs cannot be thrown away so easily just because a law says they are unlawful.” At the heart of the laws against circumcision is the exact opposite idea—that people will stop circumcision simply because it is illegal. In reality, this does not hold true, and often serves only to complicate the problem.

**Readiness to Change**

None of the respondents who were involved in this research study supported the ban on female circumcision. Even those who were not in personal support of the practice did not advocate for the state law prohibiting the practice, in part because the laws have proven to be ineffective. As one respondent stated, “you have to consider that a custom in this village has been set for a very long time. Countless generations. Whereas the law is new and therefore has less weight to our village than a custom we have practiced for so long.” This is consistent with research demonstrating that laws against a practice do not equal immediate or substantial change; rather, the change occurs over time and necessitates a change in social conventions (UNICEF, 2005). The respondents grasp the importance of custom; the fact that lawmakers do not provides an interesting contrast. This is echoed in one woman’s observation that “the government does not pay attention to customs when they are making laws. I feel like they are just off in some distant area trying to tell people how to live. They don’t understand our everyday lives here so they cannot make laws accordingly.”

The massive disconnect between the people who practice female circumcision and the people who make laws prohibiting it is very significant to the understanding of this issue. Based upon these suggestions, an intervention that works within the customary framework and endeavors to understand the practice and its importance is highly likely to be more successful in improving the quality of life than the current bans. One woman suggested “laws could maybe
make it more safe, but not rule it out.” While this seems contrary to the goal of ending the practice, it presents a more inclusive way of addressing the problem. The main arguments presented by opponents are the danger and pain associated; however, laws forbidding the practice do not actually reduce this danger or pain. A mother of two describes the effects of laws forbidding the practice entirely; pointing out that those who value the ritual “would just have to be more secretive about it, which would be dangerous for all. Sanitation may be compromised. It is a dangerous road to go down seeing as how the village is not yet ready to change.” This statement highlights two important facts; first, that criminalizing the procedure simply leads to it being done in secret and possibly in less sanitary conditions, second, that the village is not yet ready to change. The concept of readiness to change was addressed by other respondents, including many who saw the process as rather distasteful due to the clear negative health effects, yet a necessary part of the community. Female circumcision is deeply engrained in the social structure of the Gogo, maintaining social custom, providing jobs for the circumcisers, and reinforcing distinctions of morality and class. This is consistent with literature regarding readiness to change, which advocates a perspective to understand female circumcision through a “stages of change” process, allowing for gradual rejection of the practice over time (Shell-Duncan & Hernlund, 2007). It is possible that interventions aimed at increasing readiness to change, while remaining sensitive to the customs and the values of the practice, will be more successful.

One issue that arose was a sense of gradual change. While the male respondents seemed to stick to the fact that circumcision was an accepted practice amongst the Gogo, many of the female respondents pointed to conversations between women of “the younger generation” who were more willing to consider different viewpoints. It is possible that women, who are placed at
a disadvantage due to the procedure, are beginning to recognize the health and social drawbacks. On the other hand, men, who form the leadership of the Gogo, enjoy only the benefits; thus, they have little motivation to change. Mary B, a young mother, stated “the people in the village that speak out against it [have] a private discussion with close female friends. Mostly it is about whether the tradition is outdated and just too painful.” Mary B goes on to state “some people my age think it is a cruel and outdated custom.” Nyati, a mother of five grown children, also agrees that change might occur, but feels that the “time has not come yet… The transition may or may not come quickly but I understand it is in the early times of change. Mary, a young student, points out that, even with the national ban against circumcision, the actual change in custom will take longer. “People think laws take a long time to take effect?” she asks, rhetorically. “Tradition takes longer.” The issue of change is further complicated by the high frequency of outward mobility—those men and women who are opposed to the practice are far more likely to leave the village for more progressive locales; creating a self-reinforcing cycle and preserving the existing social structure.

Rose B, a mother of two, thinks to the future and how opinions might change. “I wonder if my daughter or granddaughters or great-granddaughters will feel less strongly about it,” she says, similar to Linda, who predicts that “there will be a shift in future thinking here… being uncircumcised in 10-15 years will not hold as much of a stigma.” Mary B does not predict as fast of change, predicting that female circumcision “in this village will probably still be practiced here in 100 years, but by then maybe choice will be more accepted.” What these responses indicate is the sense of change as a possibility. Despite the frequent assertions that circumcision is currently a cultural requirement, there is openness to new possibilities and future change, especially amongst the younger generation.
Efficacy of Project Law

Each of the respondents was asked about the impact of what is often referred to as “project law.” It was notable that none of the respondents seemed to place any value on the attempted interventions from NGOs and activists. This is consistent with research demonstrating that such projects have “failed miserably” (Bowman, 2005, p. 154). Some of the respondents had not heard much about the outside, third-party efforts to curtail the practice of female circumcision, but what they had heard or experienced was not positive, and was certainly not influential or inspiring of change. Pearl, a widow with four children, works hard to care for her family and does not have much time to spend listening to people talking and protesting against things. When asked about them, she dismissed it as “Westerners talking about something they do not understand,” and added, “who are they to lecture anyone on customs? I have heard about many of their customs that I find repulsive but I do not publicly speak out and say they are wrong.” Similarly, another respondent pointed out that activists and project law proponents “were disrupting services in the bigger cities.” She pointed out that “it is a bother, because we do not care what they have to say.” Not only do the Gogo not care about what outsiders have to say about their traditions, there was a sense among the respondents that they felt that the outsiders do not care about how the Gogo feel about their own traditions. It is easy to see how the efforts of these people go unheard. “Resistance is inextricably tied to the way a just world is imagined at particular historical moments by people in particular positions” (Merry, 2013, p. 600).

More than anything, the respondents seemed to view interventions and activists as annoyances. While some were offended, others simply dismissed the efforts. Salehe, a community elder and father of many children, stated firmly that project law:

does not make me want to change the custom in our village, so if they want to talk, they can. People have to have something to do and that is a little annoying, but it is just talk.
There are greater threats in life and especially around here as we are far out and cut off and rely on only each other. People that do not know what that is like are more than welcome to waste their opinions on us.

Salehe’s opinions indicate that, not only are these efforts ineffective, they are a waste of time. In addition, he emphasized what he considered the real threats to the Gogo—being far away and cut off from other areas. For a community that has identified real problems among themselves, the imposition of law against something that is not seen as a problem, but actually as a benefit, is not only ill-informed, it is insulting. Once again, this is consistent with the results found by Merry (2008). In addition, the lack of influence or efficacy of “project law” lies in the fact that it is a function of modern, national law and therefore is often rejected due to its association with national law. Consistent with Randeria (2008), many of the respondents felt that project law advocates were out to promote their own agendas, ignoring the real problems and needs of the Gogo.
Chapter VIII

Discussion and Case-Specific Recommendations

The goal of this project was to determine the ways in which the intersection of customary law and state law clash, and to provide recommendations for the resolution of these often-contradictory mandates. This research inquiry used female circumcision as a case example of the larger problem, and emphasizes the importance of legal pluralism and considerations of traditional and customary laws and practices in establishing state laws that are followed by the population at large. Based on an examination of the existing literature as well as the research conducted with the respondents of the Gogo tribe of Tanzania, some recommendations will be made specifically addressing the issue of female circumcision and the national ban against it. From the recommendations, broader suggestions for the field of legal pluralism in general will be extrapolated and expounded upon in the final chapter.

Recommendations Regarding Female Circumcision amongst the Gogo

Equal Dignity Approach

One of the most salient points that the respondents to this research project made repeatedly was that lawmakers and government do not take the perspective of the Gogo people into consideration. Government was seen as detached and interfering with their way of life, and the fact that the Gogo values and ideals were largely overlooked by the lawmakers was found to be offensive and one of the reasons cited for not complying with the laws. As an alternative, a rule or law-making paradigm that works from the ground up, taking into consideration local perspectives and viewpoints, is likely to be more accepted and even valued by the Gogo people.
As these are the people who are most strongly in favor of female circumcision, it is important to get their input and assistance in developing this paradigm.

This approach is referred to in the literature as an “equal dignity approach” (Pimentel, 2011). It refers to empowering customary law institutions and dignifying them in a way that recognizes them as separate from state courts, but on the same level. The approach calls for a separation between state and customary law, and emphasizes the benefits of oral tradition, community values, and public confidence. While the two forms of law are kept separate in this approach, state law by definition needs to be flexible and responsive to community needs in order to respectfully interact with, instead of acting upon, customary law. There are some drawbacks to the equal dignity approach, namely, that it opens the doors to human rights violations and creates difficult conflicts between which form of law to choose. Human rights violations are currently, as a matter of socio-political fact, occurring unregulated. While there is a formal, state law against female circumcision, it has been rendered ineffective due to the utter lack of compliance. Community acceptance of a different customary law, created through an equal dignity approach may reduce the harm of such practices.

The implementation of such an approach would rely heavily on consultation with local authorities and structures. Taking the respondents used in this project as a representative sample, it seems that many of the community leaders support the practice of female circumcision, but are open to change. For many, they were somewhat ambivalent about the act of the practice itself, focusing instead on tradition, community, and social value. An approach, such as the equal dignity approach, allows these values to be not only respected, but emphasized. Consultation with local authorities is likely to produce clues that may indicate not only the importance of the practice, but how to minimize its harm or practice. While such an approach may not
instantaneously eliminate the practice of female circumcision, it will at the very least establish precedence in the minds of the Gogo that their government and lawmakers are willing to engage with them and listen to their concerns. The rejection of the ban on female circumcision may not be as strongly associated with the rejection of outside interference.

**Increase Mobility for Women**

Another major theme among the data collected for this project was the concept that uncircumcised women must move away from their community, breaking up families and neighborhood ties. One approach that is both culturally sensitive and in line with the reduction of female circumcision is determining a way to make mobility a real choice. The removal of any member of a community naturally weakens community ties and threatens the destruction of the community; however, it appears that this is an issue that is currently being faced by those members of the Gogo who are already leaving their homes in order to avoid being persecuted for being uncircumcised. An approach of this sort has not been addressed in the existing literature, however, support exists for facilitating environments that enable and support change (UNICEF, 2005). Further research would need to be conducted in order to determine the type and scope of interventions such as this, and what impact it may have on the community.

An intervention addressing these opinions and allowing women more mobility may reduce this stigma and allow women and families to leave while still being part of their local community. One of the most frequent observations amongst the respondents was the remoteness of the Dodoma region. Interventions that facilitate easier movement between the Gogo homeland and the more progressive cities, such as Dodoma or Dar es Salaam, may allow women to move to areas where they are not stigmatized for being uncircumcised while still maintaining ties with their communities. In addition, campaigns that connect family members who have moved away
with the rest of their family and community may help to reduce the stigma while maintaining important values of family and community.

**Meld International Human Rights Goals with Local Sensibilities**

None of the respondents interviewed for this project actively opposed any international human rights goals. Many expressed beliefs that they wanted women to succeed, wanted their daughters to have choices in life, and wanted children to be free from harm, consistent with the goals of many international human rights organizations. The areas in which there was contention were those where international human rights goals interfered with or ran over the goals and traditions of the Gogo community. Evidence has shown that many African people who traditionally practice female circumcision have no interest in ending the practice, nor do they see it as counter to human rights goals (Dorkenoo & Elworthy, 1992).

In order to secure community approval of human rights goals, it is important to find ways in which to connect community values with the values of international human rights. Devising a way to meld these local sensibilities with international human rights goals may be an important step to making changes in the direction of reducing the practice of female circumcision and improving the safety of women and girls. In some areas, this melding has involved Western transformation of legal bodies as well as constitutional means to promote human rights. This can involve UN funding. However, these attempts have largely failed in the past; as people continue to use traditional means of problem solving (Hoekema, 2013). Grenfell refers to a concept of “deep legal pluralism” that is formally recognized and built into the state legal order. Grenfell calls for a blending of two paradigms, combining local sensibilities with state or human rights goals. While specific recommendations and empirical support are lacking in the literature, the
existing literature emphasizes that combining the two legal systems requires careful consideration, compromise, and planning beyond simple codification.

Corradi (2012) emphasizes, “human rights are more likely to be observed if they enjoy some degree of local ownership and legitimacy” (p. 160). This fact is important to consider, especially in the development of interventions and laws against female circumcision. In particular, this suggestion is important for project law advocates to consider. Female circumcision is a topic that has generated significant interest from development and human rights agencies, with many actors insisting that female circumcision is an international affront to the rights of women and humans in general (Weilenmann, 2009b). For the issue to be adequately addressed in a pluri-legal environment, the customary perspective must be not only taken into consideration, but viewed with respect and dignity to avoid the sort of influence that occurred during periods of colonization. If the Gogo are going to change anything about the female circumcision process, it will be because of their own interventions and changes in custom, not because of outside intervention. While many acknowledged drawbacks to the procedure, they emphasized the value of the procedure and its relevance to being a member of the Gogo, at least for this specific group of Gogo interviewed in this inquiry.

**Increase Women’s Ownership and Property**

Currently, there exists a high premium on the chastity and virginity of Gogo women. Women who can be proved to be chaste, for example, those who have been circumcised and essentially unable to have penetrative intercourse, are worth far more in terms of bridewealth (Oloo, Wanjiru, & Newell-Jones, 2011). This creates a condition in which a woman’s value is tied not only to her purity, but to the physical state of her body. As such, interventions that provide a woman with other means of local ownership and property are likely to provide women
with another means of worth and value. For example, if the inheritance of land or property was determined not by the gender of a family’s offspring, but by a more equal distribution amongst the adult children, women would have value beyond their virginity. Evidence demonstrates that when women achieve economic empowerment, the importance of marriage is lessened (Lundquist, 2004), and suggests that women who do not want to undergo circumcision in order to find a good husband will have other options.

In addition to ownership of household and property, the expansion of ownership of entities such as businesses or trade to women would further increase a woman’s value based upon her earnings instead of her virginity status (Bowman, 2005; Hellum, 2013). For example, a woman’s marriage to her husband could be viewed not only as a combination of their families, but as a merging of their businesses. Inherent in this idea is the provision that, when a woman leaves, her value leaves with her. Current customs dictate that marriage arrangements are made between the families of the bride and groom, with assets being exchanged for the woman, which often have to be paid back in the event of divorce or dissolution of the marriage. If the assets instead belonged to the woman herself, she would have these as bargaining tools. In this case, the most valuable women would be those who have assets and resources to bring to the marriage, not her virginity.

**Indirect Approaches**

While the goal of many governmental agencies and NGOs is to eliminate the practice of female circumcision entirely, the underlying goals of reducing harm, promoting safety, and promoting women’s autonomy should not be overlooked or lost in the focus on this specific issue. Dorkenoo & Elworthy (1992) outline four distinct issues inherent in female circumcision: the rights of women, the rights of children, the right to good health, and the right to development.
Addressing these factors, with or without a clear ban on female circumcision, may address some of the human rights goals. Many of the women who were interviewed for this research project indicated that they would support legislation to make circumcision safer for girls—addressing commonly cited issues such as dirty cutting instruments, lack of proper medical care, and lack of pain relief. While indirect interventions aimed at these factors may run counter to the larger goal of eliminating female circumcision, they are directly in line with stated human rights practices to reduce harm, increase safety, and provide healthy alternatives for women. From a culturally relativistic perspective, such indirect approaches may be better received, as current Westernized approaches and values are often actively rebelled against or ignored (McGee, 2005). Given the strong backlash against Westernized interventions that is experienced in many communities (Bowman, 2005), these sorts of interventions may be more effective.

Such practices may be seen as counterintuitive or enabling, however, the approach parallels interventions that have been used to successfully reduce the transmission of HIV amongst intravenous drug users. Clean needle programs are often criticized as enabling drug users to continue to use drugs, however, if the goal is simply to improve the quality of life and reduce disease and illness, these programs have been successful (Hyshka, Strathdee, Wood, & Kerr, 2012; Macneil & Pauly, 2011). Similarly, it is likely that implementing a sterile cutting instrument program for circumcision practitioners will increase the health and safety of the practice. While it may not reduce female circumcision, it is unlikely that it will increase the practice. Of the respondents interviewed, not a single person replied that they were unlikely to consider getting themselves or their daughters circumcised due to health reasons. Interventions targeting health education seem to largely gloss over this point, and attempt to solve a problem that does not exist (Bowman, 2005). Directly providing means of increasing the safety may not
reduce the rate of circumcision, but may reduce the transmission of HIV and infections that occur as a result of unsanitary practices. Furthermore, such an approach is likely to garner the support of the community, making government or NGO involvement a welcome resource instead of an interfering body. As opposed to the many instances where project law is seen as an intrusion, this holds the potential of being an area in which project law can shine, potentially bridging the gap between customary law and state law. Such initiatives highlight the important role of project law in a pluri-legal environment.

**Increase Women’s Education**

There is a documented difference in rates of circumcision amongst educated and non-educated women. Additionally, the more education a woman receives, the more likely she is to remain intact (28 Too Many, 2013). This leads to many possible interpretations. The first is that those women and families who value education are more likely to see career possibilities for themselves or their daughters outside of or in addition to marriage. The role of women in the world at large is changing, with more women enrolling in higher education and getting careers, and this is true for the Gogo people as well. In addition to laws that increasingly allow women to have rights over their bodies, land, and property, social conventions are changing, making it more acceptable for women to pursue these things in addition to being valuable wives and members of the community. Campaigns to promote education amongst women may be valuable in furthering these beliefs. Literature shows that, not only does education about the dangers of female circumcision reduce the rates of the practice, but that general education and a value of women attending higher education reduces the practice as well (Bowman, 2005). As such, increasing both education factors may reduce the practice. “Education makes a difference—those who are educated have the knowledge and the authority to make up their own minds and resist
cultural things” (Oloo, Wanjiru, & Newell-Jones, 2011, p. 26). This quote emphasizes the importance of education as it relates to women’s choice. While this intervention does not directly demand that women reduce participation in the practice, it does provide alternatives and non-traditional ways of thinking that leave options open. Figure 8 demonstrates current findings regarding the overall rate of women who are circumcised, breaking down the population by education level. While the figures are similar between those who have received limited education, there are far fewer women circumcised who have completed secondary education or beyond.

<table>
<thead>
<tr>
<th>Education</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>No education</td>
<td>20.3</td>
</tr>
<tr>
<td>Primary incomplete</td>
<td>12.9</td>
</tr>
<tr>
<td>Primary complete</td>
<td>16.6</td>
</tr>
<tr>
<td>Secondary +</td>
<td>3.1</td>
</tr>
</tbody>
</table>

Figure 8. Prevalence of female circumcision amongst differing education levels (28 Too Many, 2013).

One of the factors that is largely associated with women’s education ties in with another recommendation, that of increasing women’s mobility. Currently, there are no higher education venues in Gogoland—those who wish to have more than a basic education must attend private schools, or often go away to college in one of the major cities for more education. Increasing education in a way that is consistent with the Gogo values and community, not in opposition to them, is likely to provide a more comprehensive way of addressing not only female circumcision, but the role of Gogo women in general. Similarly, providing easier means for women to go away to school and then return to their communities, both in terms of logistical
matters and in terms of community acceptance, may increase their likelihood to get education. Emphasizing that a woman can receive education and still be a strong mother, wife, and part of the community is vital to this sort of intervention, as the traditional values must not get lost in light of more modern intervention types.

**Concluding Remarks**

Many of these specific recommendations deal with addressing a certain segment of the population in order to effect change. This intentionally addresses the fact that different segments of the population have different reasons for practicing and continuing behaviors. Each member of society has a different conception of what defines an ideal society, and the dynamics of power and agency play out clearly in issues of human rights. Traditional practices and values reinforce traditional roles and power structures, which may make the more dominant segment of society more accepting of such roles. In the Gogo community, men with large families and vast resources tend to be in power; this system can be reinforced through strict processes of gender and sexual control. Likewise, it is easier for members of the dominant group to adopt a disinterested perspective on a practice that provides benefits to them; it allows them to support the practice without having to work to defend it. As such, interventions should be carefully conducted with attention paid to understanding the role of men in society and considering the way in which men respond to these changes in what is frequently framed as a women’s issue. Adequately considering the role of these internal struggles may lead to a more integrated and thorough understanding of important traditional practices, such as female circumcision.
Chapter IX

Broader Recommendations

In the previous chapter, recommendations were made directly addressing the case study issue of female circumcision among the Gogo of Tanzania. Following from these recommendations and the literature review, this final chapter addresses the research questions and presents recommendations for the general methods of working within a legal pluralistic environment to address clashes between customary law and state law.

Despite the prevalence of rule of law approaches and the overwhelming emphasis on state law, approaches to promote these laws are largely unsuccessful, especially in post-conflict states such as those in Africa and the Asia-Pacific region (Grenfell, 2013). One such example occurred in East Timor, where state laws against domestic violence conflicted significantly with customary laws. The NGO-driven interventions produced an approach to address the conflict that, while it appeared it would be successful, resulted in community unrest and antagonism (Harper, 2011). The rule of law models proposed by the UN had been successful in other areas, however, the construction of the justice system that largely ignored customary law served to highlight the ways in which legal structures such as these combine with customary law to produce the exact opposite effect, damaging the groups which they were supposed to protect. While human rights issues are important to address, examples such as East Timor indicate that imposing strict state laws and ignoring customary laws is not likely to succeed (Harper, 2011). Inherent tensions between state and customary law need to be recognized, and the way in which the community functions outside of state law needs to be considered. As such, legal reforms may not be the most ideal way to end human rights violations or to gain community support for state
law. The current research inquiry adds understanding to this issue and suggests alternatives for legal interventions in cases where customary law and state law clash in post-conflict states.

Interventions fall along a continuum, ranging from unification at one end, to integration in the middle, to harmonization at the other (Legal Assistance Centre, 1999). These three classifications represent different legal frameworks and viewpoints. At one end, the concept of unification refers to codifying customary law to create one framework, eliminating the differentiation between customary and state law by embracing the former within the latter. Integration incorporates some of the same solutions as unification, but allows for the unique, local characteristics of each system to remain. Finally, harmonization involves allowing each legal system to remain intact, but working to eliminate friction between the legal systems. While the recommended practices suggested below do not fall neatly within the differentiations of unification, integration, or harmonization, they tend to work between integration and harmonization. As such, many of the recommendations seek partial unification while allowing multiple legal systems to endure, creating a melding approach of customary law and state law (Hoekema, 2013). The concept of melding creates the possibility of a center point that both national human rights priorities and local communities can agree upon. In addition to melding the goals of these two entities, local structures must be used as a starting point to facilitate change.

Amongst the Gogo, it is unlikely that the unification approach would be feasible. This approach is similar in form to codifying customary laws and norms, an act that has been rejected for many reasons, including the tendency for officially codified laws to be more associated with state power, a reduction in the evolving nature of customary laws, and difficulties in working with a largely oral tradition (Hoekema, 2013; Pimentel, 2011; Wasunna, 2002). On the other end
of the continuum, the harmonization approach would likely be unsuccessful as well; this is the closest to what currently exists in Tanzania regarding female circumcision, as the state law and local customary law systems operate independently of one another in practice, turning a blind eye to circumcision when it occurs (Legal Assistance Centre, 1999). Integration, the middle approach, seeks compromise between the two legal systems; however, there is a distinct difference between state and customary law regarding female circumcision. Essentially, the goals of each side are far too different to integrate into one another. Therefore, the solution that may best serve all parties involved is something between integration and harmonization. Such a solution would seek partial integration, allowing for some compromise, while also maintaining the integrity of both legal systems. This would involve not only a change in legal structure, but an increased investment in women’s education and opportunity. Finally, opportunities for men must also be increased, so that ownership and personality values can be established beyond the traditional household model. Consistent with the recommendations of the Legal Assistance Centre (1999), this approach would capture the positive elements of both the customary and state laws and combine them into a new framework.

Such an approach is being tried in Kenya’s judicial system (Mbote & Akech, 2011). Despite the presence of a state legal system, many rural populations seek the legal counsel of local elders, courts, and informal legal systems. For years, the state legal system ignored this tradition, denying the local courts the ability to make any binding legal decisions. However, in an effort to reduce the state legal caseload, as well as to adequately represent the people who live in these rural areas, the Provincial Administration of Kenya has started to train village chiefs in conflict resolution. Further, the Office of the President is developing a legal framework that will coordinate peaceful resolution. This joint effort is not seeking to eliminate local courts; rather, it
is addressing the shared goals of the local and state courts, while increasing the harmony and standards between the two. The authors provided many recommendations for the realization of these goals, including increased education for citizens, incentives for local lawmakers to join the program, establishment of courts and formal dispute resolution centers, increased training for local authorities, and constitutional inclusion of courts as a recognized legal body. It is obvious that this sort of approach is multifaceted and highly involved, echoing the “deep” concept of legal pluralism that is suggested by Grenfell (2013).

One way of accomplishing such a challenge among the Gogo would be to adapt the ward tribunals. While the tribunals currently exist as a means of guiding the community toward peace by mediating conflict and reducing the load for the primary courts, these tribunals could potentially be used to come to consensus regarding specific issues that are relative to contentious legal matters such as that of female circumcision. While an outright ban on female circumcision would likely be as ineffective for a ward tribunal as it has been for the state government, specific issues such as the age of consent, particularly for elective medical procedures, may be best addressed through this format. Working in conjunction with customary structures and the community, the ward tribunals could work to clearly establish a notion of age of majority and an individual’s right to choose. This will enable the community to create their own restrictions and limitations on the practice that will address both the community values, such as circumcision, and the human rights values, such as bodily autonomy. While this sort of intervention may pave the road toward a more successful, integrated system, it would necessitate an increase in government spending on education in order to prepare the ward tribunal members and promote these values.
Increasing Compliance with Laws and Reimagining Society

Geertz (2001) emphasizes the difference between notions of law: looking for an instrument, or reimagining society. As has been demonstrated throughout this research inquiry, law as an instrument has failed to have any effect on the reduction of female circumcision among the Gogo of Tanzania. It is likely that this approach has failed not only in this case example, but in female circumcision in general, as well as many other issues where customary law and state law clash. Instead, an overarching conclusion of this research inquiry is that reform efforts need to approach law as a way of reimagining society. This entails not strict legal sanctions and punishments, but cultural inclusion, consideration of local sensibilities, and an understanding that change may take time and considerable work. Tyler (2006) states that laws are created in order to establish and maintain order through the regulation of public behavior. People’s adherence to law is only somewhat related to deterrence and punishment. He describes key components in an alternative ideology of maintaining social order, specifying that legitimacy shapes compliance; legitimacy is based on procedural justice judgments, rather than instrumental judgment; and that procedural justice is vital in reference to non-instrumental issues. Motivations are to cooperate with others, to maintain social relationships, and to align with ethical judgments, not to avoid punishments or gain rewards.

More than punishment or reward, legitimacy is key to whether a group of people will follow law. When people believe that law is legitimized, they become self-regulatory, following the law regardless of any risk or absence of punishment. As such, authorities need active investment and cooperation from those in the community (Tyler, 2006). People evaluate their authorities on the basis of their performance; an authority that has shown consideration and success within a community is more likely to be followed than one who has not. Tyler (2006)
goes on to link legitimacy to the justice of the procedures that implement the law. One clear problem with deterrence based on punishment is that the behavior returns once punishment is removed; outside of constant vigilance, the behavior is likely to continue indefinitely.

Alternatively, creating a change in value so that the elimination of the practice is legitimized is likely to have far more effect on the long-term elimination of the practice. Authorities and rules must be consented to, not imposed through the use of threat or punishment. Ethical judgment, legitimacy of authorities, and procedural fairness are necessary. As such, the following are general suggestions to reimagine society and increase adherence to law when customary law is in conflict.

**Consult Local Authorities**

In general, the importance of local authorities should not be overlooked in any stage of the lawmaking process. Lundquist (2004) emphasizes this fact, stating that not only should mobilization strategies come from local populations, but that resources should as well. Further, the author emphasizes that those community members who are most familiar with the culture regarding female circumcision are those who will likely know the best methods to address issues that promote the continuation of the practice. Legal restrictions on cultural practices are not very effective, however, evidence points to the fact that the use of state laws that citizens know, understand, and collectively embrace can have a significant impact. Further, the use of oral tradition and oral communication of laws, rather than written laws, is more likely to garner support from the community and to be fully internalized (Pimentel, 2011). From the start, key issues should be taken to local authorities, such as law enforcement officers, ward tribunals, village chiefs, and strong members of the community. Even the identification of these actors
depends on a thorough understanding of the community, as some communities may not have the same authorities as others.

Candid exploration and seeking of referrals will demonstrate an intention to speak to the most relevant figures within the community. Once identified, these authorities should be given the relevant information from the lawmaking bodies and invited to give the lawmaking bodies the relevant information that they have. They should be considered experts on their communities, as they are a part of them. This supports a “change from within” ideal, as explained in the literature (Corradi, 2012). Information regarding the implementation of new practices, logic behind them, and means of enforcement should be garnered from these authorities. “When members of the community understand and identify with these local tribunals, when they are more accessible, when the orientations and norms of the decision makers are familiar, it is more likely that people in the community will feel an allegiance to them,” whether official law or not (Tamahana, 2011, p. 10).

**Work Directly with the Target Population**

The results of this study have shown, consistent with literature, that the populations that are targeted by many state laws, restrictions, and legal interventions are addressed infrequently. For example, many of the interventions for women’s rights, if they contact local authorities at all, speak with the male leaders of the community. While NGOs are far more likely to address the views of the women themselves, it is important to consider that the target population does not always consider themselves to be victimized or harmed by the practices that legal initiatives seek to end (Wasunna, 2000). Toward this end, female circumcision is an excellent case study, as the majority of the women who were interviewed for this project advocated strongly for the practice. Further, women are the main actors in the procedure and maintenance of female circumcision—a
frequently repeated sentiment from both men and women in this study was that it was a “woman’s issue,” in which mothers, aunts, and female community members took part, largely leaving men out of the process. This is further contributed to by the fact that men are often the enforcers of law; as such, they are uninvolved in the process that is prohibited by the law they uphold. Especially in societies with significant distinctions between men and women, initiatives focused on either gender must be directed at the gender being focused on. In the same way as efforts to change community practices must consider community views, efforts to change practices affecting women must include the voices of women (Kameri-Mbote, 2001). This extends to other demographic groups as well, particularly those that are marginalized. Not only is this a more respectful way of making these changes, it is far more likely to be effective, as research has demonstrated in many circumstances that people are more likely to participate in laws or changes that they have had a part in developing.

**Consider Local Sensibilities**

Many legal initiatives are developed based on international human rights goals. While these are often admirable and valuable goals, it is important to consider the local sensibilities as well. Many communities have no desire to be part of the international landscape, and this is reflected in their value of community practices over that of international practices. This is reflective of the arguments of cultural relativists, who believe that human rights laws should respect and work within their cultural context (Bowman, 2005). Further, international initiatives often gloss over the importance of practices to a given community. For project law to truly produce change, it must work within the existing structure of legal pluralism (Randeria, 2008). The combination of local sensibilities and international human rights should be a goal of any lawmaking body. The first step to accomplishing this is to have a thorough understanding of the
local customs and traditions that may be affected by the implementation of state laws. From this understanding, the local value of the practice can be addressed, and suggestions to maintain and continue that local value can be made. This is consistent with the recommendations of Lundquist (2004), who suggests that reformers seeking to curtail female circumcision must understand the mindsets of supporters and tailor their initiatives to curtail the practice in ways that are consistent with these mindsets. Western interventions within the African continent must be carefully considered and implemented in order to avoid destroying local cultural identity or causing a paradoxical situation in which the exact opposite of their stated goals occur. This would require informed planning and involvement with the local community in order to begin to succeed.

Some communities have had success in curtailing female circumcision by providing a new way in which to initiate girls to the community; likewise, other interventions that target traditional practices should consider what can be offered. As this research demonstrated, what is important to many communities is not the very specific practices themselves, but the rich history and tradition associated with them and their value to the community (Dorkenoo & Elworthy, 1992). Legal efforts to eradicate specific practices need to take these values into consideration and put the preservation of them high on their list of priorities. Wasunna (2000) points out that the enforcement of laws is not a problem where formal laws coincide with social customs; however, when the two are in opposition, there can be considerable problems enforcing laws, and the original problem may actually be exacerbated. The author advocates for education and public opinion change, not for strict legal restrictions and enforcement. International human rights and customary practices often oppose one another, but they should not be approached as complete opposites or enemies. Rather, the goal should be for both parties to work together toward a mutually acceptable solution.
Address Structural Issues Tangentially Related

Indirect approaches to laws are not often utilized. Many legal interventions target the end goal of a practice, for example, stopping female circumcision. The components of the practice that make it unacceptable by modern standards are cited as reasons to put the law in place, but these components are rarely addressed directly. In the example of female circumcision, these components include safety issues, issues of consent, and issues of women’s autonomy, to name a few. Legal interventions that address these components gradually, for example, by mandating that the practice be conducted under sterile circumstances by a licensed physician, or setting a minimum age of consent, or by allowing women a safe place to choose whether to undergo the procedure or not, would serve to curtail the problems of the practice without banning it outright; however, many human rights activists dismiss these solutions as counter to the goals of human, women’s, or children’s rights (Dorkenoo & Elworthy, 1992). However, the addressing of such tangentially related issues may provide a starting point to change opinions and garner community support.

By using change efforts for components of a practice as building blocks, success and acceptance can be built upon slowly. People are generally resistant to change, but smaller changes are far more acceptable than larger changes. Small steps can be taken to address the main concerns of practices, improving healthcare or quality of life, and along with these changes will come a change in mindset (Bowman, 205). As people become more and more accepting of the changes that are introduced, it is far more likely that they will come to understand the reasoning behind the desire to end the practice entirely and find other ways of completing the same purpose of the practice. This also reduces the negative stigma that is often associated with
laws as being overbearing or controlling (Wasunna, 2000), as the laws allow some flexibility for time-honored practices to continue to be developed and implemented.

**Increase Access to Resources and Education**

In general, state laws that prohibit customary practices are often taking away a vital part of the community. Further, they are often ineffective, while non-legal mechanisms have shown more promise (Bowman, 2005). Values, traditions, and rituals that are associated with these practices are stripped away in an attempt to obey the law, and there is nothing in place as alternatives. The increase of access to resources and education may provide a substitute for these things that have been removed (Oloo, Wanjiru, & Newell-Jones, 2011). These resources can come in many forms. Transportation, education, property, access to healthcare, and access to environmental resources are all things that are lacking in many parts of the world, especially those that are far removed from major metropolitan and governmental sectors. By providing valuable alternatives to girls and women of the community, the importance of other practices that are or have become harmful may be reduced in a way that is organic to the community instead of forced upon it by a distant lawmaker.

The value of education is particularly high, as this allows for larger structural change to occur within the community (Oloo, Wanjiru, & Newell-Jones, 2011). Many educational interventions have focused on education about the issue where change is desired; this often produces few or no responses, and may anger the practicing community, as they are likely to view these interventions as condescending. Instead, the recommendation is to increase the general education of these communities, providing them not only with information about health, law, and society beyond their community, but providing them with more varied opportunities for success. It is important to conduct such education in a way that does not demean the community
of origin, but rather operates in tangent with it, allowing the individuals to hold their traditional community beliefs strong, but still presenting them with alternative ideas and ways of living.

**Findings of Research Questions**

Specific conclusions relative to the research questions are as follows:

1. Why are certain modern nations ineffectual in their efforts to legally circumscribe certain behaviors?

   Overwhelmingly, the literature and interviews demonstrated that the national efforts are viewed with less commitment and importance than socially ingrained customs. Further, efforts to curtail traditionally valuable practices such as female circumcision are seen as imposing and an effect of disconnected government making efforts to invade upon local communities. Few national efforts take local sentiments into consideration, and a lack of understanding of the importance of the practice reduces overall adherence to the laws. In general, many view customary law and national law as two separate bodies of law that must be followed—in cases of conflict; the more valuable practice will be adhered to.

2. What role do the values of custom and community have on these behaviors?

   Custom and community values are essential to the continued practice of prohibited behaviors; further, they are the key to understanding and changing these behaviors. The respondents interviewed in this research inquiry did not see themselves as breaking a valid or important law; they viewed themselves as upholding vital community traditions.

3. Using female circumcision in the Gogo people of Tanzania as a case example, how can researchers, lawmakers, and law enforcers better understand the conflict between customary law and national law?
Female circumcision is an intensely debated practice that invokes human rights concerns, especially amongst Western people. It is often portrayed as a backward practice that harms and victimizes, as many cultural or tribal practices are. This research inquiry presents an opposing view, one in which the practice itself is described as socially necessary, pleasant, and a treasured memory of many of the women who had undergone the procedure. By examining this side of the response, researchers, lawmakers, and law enforcers can better understand the value associated with customary practices and the associated refusal to give them up. The conflict between national and customary law should be viewed with respect to the value of custom and the importance of the practice in question to the target population. Interventions can be targeted more appropriately, and the nature of the issue itself can be reconsidered in light of these factors.

4. What recommendations can be made to address conflicts between customary and national law, not only in the specific example of female circumcision, but in issues of legal pluralism in general?

Specific recommendations, outlined in the beginning of this chapter, follow a common thread—that is to consider the cultural relevance and value of practices that are foreign to lawmakers. Specific suggestions include involving local authorities in lawmaking procedures, directly consulting target populations instead of mandating how they live or view their health, taking into account local sensibilities when developing laws, and addressing structural issues that form the basis of laws against cultural practices including safety, education, and community value.

**Future Directions and Research Recommendations**

The results of this research inquiry were vastly different from many of the accounts of other researchers, particularly those associated with or sponsored by NGOs or human rights
initiatives such as WHO or UNICEF (Dorkenoo & Elworthy, 1992; Lundquist 2004; UNICEF, 2005). Specifically, the results of this inquiry found strong support for the practice of female circumcision, especially in those women who had undergone the practice. This raises the question of whether this response is particular to the Gogo people who were interviewed, or if it represents a larger subset of respondents. Many studies are conducted with women who have left their countries of origin; further, few studies of the Gogo exist in the current literature. A culturally-sensitive exploration of views of practices such as female circumcision may shed light on the nature of these different responses and may have implications for how to reduce the practice. Especially when considering a practice that has both harsh legal consequences and strong cultural attachments, solid research into the underlying justifications to the practice can assist in the development and enforcement of laws as it applies to the people who are being governed.

To date, few experimental studies have been carried out addressing the different ways in which national governments can engage with local authorities. While this is rarely the primary focus of lawmakers, an exploratory study examining the different interventions suggested in literature and in this research inquiry would provide insight into the actual effectiveness of these interventions. Regardless of the behavior that is targeted by law, experimental studies addressing the different ways in which citizens respond would provide insight about the implementation of future laws.

Female circumcision is often lumped into one broad category, despite consisting of many different practices. Research examining the differences between these practices and their effects may provide more useful information about the practice as a whole, including how to reduce the frequency of its use and the health effects it has on girls and women. This represents a broader
conceptualization of understanding the practice, and is likely to provide insight into the different ways in which the custom interacts with state law. Not only will a complete understanding of the different subtypes of the practice allow lawmakers to be more sensitive in their interventions, it will likely indicate specific ways in which laws can be made to fit different ethnic groups and communities.

Practices such as female circumcision are highly stigmatized in many parts of the developed world. Some researchers and lawmakers recommend aggressive measures to counteract the practice, heavily criminalizing it. However, many researchers have found that such practices serve to drive the practice underground (Bowman, 2005). Alternative interventions that are focused on supportive intervention, education, and consideration of community values may be more effective, and should be explored with greater frequency. In particular, the efficacy of alternatives to criminalization should be explored, as well as efforts to involve local participants in the decision making process.
Conclusions

The purpose of this research was to explore the intersection of customary and national laws and the reasons why national law may lack effectiveness in comparison to customary law. As a case example, female circumcision among the Gogo people of Tanzania was used. A literature review examined the nature of customary law, the history of African law and colonization, the practice of female circumcision, and the Gogo people in depth. The research used semi-structured interviews with key informants and community members of the Gogo in order to determine opinions and feelings about the practice of female circumcision and its relation to the national law prohibiting the practice. The interviews revealed overwhelming support for the practice amongst men and women, and provided insights into the reasons why the practice continues today. Some key findings emphasized the importance of the practice to the community and one’s standing within it, the value of female circumcision as a rite of passage, and disparity between valued customary practices and laws made by distant government.

Recommendations were made regarding female circumcision, including integration with local authorities, using community values to emphasize alternatives to the practice, and an increase in women’s education and property ownership as a way to provide alternative value for women. General recommendations were made regarding the field of legal pluralism, suggesting that local authorities be involved in national lawmaking, target populations be consulted directly instead of acted upon, local sensibilities be taken into account when developing laws, and structural issues such as safety, value, and education be addressed in order to promote new laws. Recommendations are given for future research, focusing on the practice of female circumcision, the importance of community values, and the interaction between customary and state law and how to increase adherence to state law.
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Appendix A

C169 Indigenous and Tribal Peoples Convention, 1989

C169 Indigenous and Tribal Peoples Convention, 1989

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts the twenty-seventh day of June of the year one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;
Part I. General Policy

Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law. C169 Indigenous and Tribal Peoples Convention, 1989

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.
2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and cooperation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7
1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.
2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

Part II. Land

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.
Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to: (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these peoples already possess.

Part III. Recruitment and Conditions of Employment

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;
(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Part IV. Vocational Training, Handicrafts and Rural Industries

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Part V. Social Security and Health

Article 24
Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

Part VI. Education and Means of Communication

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent
authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. Contacts and Co-operation across Borders

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. Administration

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the
programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

Part IX. General Provisions

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. PROVISIONS

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39
1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

Cross references
Conventions: C107 Indigenous and Tribal Populations Convention, 1957
Recommendations: R104 Indigenous and Tribal Populations Recommendation, 1957
Revised: C107 This Convention revises the Indigenous and Tribal Populations Convention, 1957
Appendix B

United Nations Declaration on the Rights of Indigenous Peoples
United Nations Declaration on the Rights of Indigenous Peoples
Resolution adopted by the General Assembly

[without reference to a Main Committee (A/61/L.67 and Add.1)]


The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations therein, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting
13 September 2007

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfillment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,
Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of Indigenous peoples to peace, economic and social
progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights\(^2\) and the International Covenant on Civil and Political Rights,\(^3\) as well as the Vienna Declaration and Programme of Action,\(^4\) affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

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\(^2\) See resolution 2100 A (XXI), annex.
\(^3\) A/CONF.157/24 (Part I), chap. III.
Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1
Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights1 and international human rights law.

Article 2
Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3
Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4
Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to

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1 Resolution 217 A (III).
their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6
Every indigenous individual has the right to a nationality.

Article 7
1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
   (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
   (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
   (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
   (d) Any form of forced assimilation or integration;
   (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.
Article 9
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11
1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12
1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.
Article 13
1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14
1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15
1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16
1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

**Article 17**

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

**Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21
1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22
1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23
Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24
1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.
Article 25
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26
1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28
1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources
equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

**Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

**Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32
1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33
1. Indigenous peoples have the right to determine their own identity or membership in accordance with their custodes and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35
Indigenous peoples have the right to determine the responsibilities of individuals to their communities.
Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.
Article 41
The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42
The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43
The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44
All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45
Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46
1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law
and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.
Appendix C

Maputo Protocol

Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa
PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

The States Parties to this Protocol,


CONSIDERING that Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

FURTHER CONSIDERING that Article 18 of the African Charter on Human and Peoples' Rights calls on all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

NOTING that Articles 50 and 61 of the African Charter on Human and Peoples' Rights recognises regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the African Charter;

RECALLING that women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the
African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

NOTING that women's rights and women's essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;


REAFFIRMING the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa’s development;

FURTHER NOTING that the African Platform for Action and the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all Member States of the United Nations, which have made a solemn commitment to implement them, to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women;

RECOGNISING the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy;

BEARING IN MIND related Resolutions, Declarations, Recommendations, Decisions, Conventions and other Regional and Sub-Regional Instruments aimed at eliminating all forms of discrimination and at promoting equality between women and men;

CONCERNED that despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States Parties, and their solemn
commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices;

FIRMELY CONVINCED that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated;

DETERMINED to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights;

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

For the purpose of the present Protocol:

a) "African Charter" means the African Charter on Human and Peoples' Rights;

b) "African Commission" means the African Commission on Human and Peoples' Rights;

c) "Assembly" means the Assembly of Heads of State and Government of the African Union;

d) "AU" means the African Union;

e) "Constitutive Act" means the Constitutive Act of the African Union;

f) "Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by
women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life,

g)  "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;

h)  "NPAD" means the New Partnership for Africa’s Development established by the Assembly;

i)  "States Parties" means the States Parties to this Protocol;

j)  "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;

k)  "Women" means persons of female gender, including girls.

**Article 2**

**Elimination of Discrimination Against Women**

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:

   a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;

   b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those
harmful practices which endanger the health and general well-being of women;

c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;

e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

**Article 3**

**Right to Dignity**

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

2. Every woman shall have the right to respect as a person and to the free development of her personality.

3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.

4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her
dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

**Article 4**

*The Rights to Life, Integrity and Security of the Person*

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

2. States Parties shall take appropriate and effective measures to:

   a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;

   b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;

   c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;

   d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;

   e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;

   f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;

h) prohibit all medical or scientific experiments on women without their informed consent;

i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;

j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;

k) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

Article 5
Elimination of Harmful Practices

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;

b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them,
c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;

d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

**Article 6**

**Marriage**

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

a) no marriage shall take place without the free and full consent of both parties;

b) the minimum age of marriage for women shall be 18 years;

c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;

d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;

e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;

f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband’s surname;
g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;

h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;

i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;

j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7
Separation, Divorce and Annulment of Marriage

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

a) separation, divorce or annulment of a marriage shall be effected by judicial order;

b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage;

c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;

d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.
Article 8
Access to Justice and Equal Protection before the Law

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

a) effective access by women to judicial and legal services, including legal aid;

b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;

c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone to the rights of women;

d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;

e) that women are represented equally in the judiciary and law enforcement organs;

f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

Article 9
Right to Participation in the Political and Decision-Making Process

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:

a) women participate without any discrimination in all elections;
b) women are represented equally at all levels with men in all electoral processes;

c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.

2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

**Article 10**

*Right to Peace*

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

2. States Parties shall take all appropriate measures to ensure the increased participation of women:

   a) in programmes of education for peace and a culture of peace;

   b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;

   c) in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;

   d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;
e) in all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.

3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

**Article 11**

*Protection of Women in Armed Conflicts*

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.

2. States Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.

3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

**Article 12**

*Right to Education and Training*

1. States Parties shall take all appropriate measures to:

   a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training.
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b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;

c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;

d) provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;

e) integrate gender sensitization and human rights education at all levels of education curricula including teacher training.

2. States Parties shall take specific positive action to

a) promote literacy among women;

b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;

c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

Article 13
Economic and Social Welfare Rights

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

a) promote equality of access to employment,
promote the right to equal remuneration for jobs of equal value for women and men;

e) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;

f) guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force;

g) create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;

h) establish a system of protection and social insurance for women working in the informal sector and sensitisises them to adhere to it;

i) introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;

j) take the necessary measures to recognise the economic value of the work of women in the home;

k) guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors;

l) ensure the equal application of taxation laws to women and men;

m) recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
1. recognize that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;

2. take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

**Article 14**

**Health and Reproductive Rights**

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

a) the right to control their fertility;

b) the right to decide whether to have children, the number of children and the spacing of children;

c) the right to choose any method of contraception;

d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;

e) the right to be informed on one's health status and on the health status of one's partner, particularly if infected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;

g) the right to have family planning education.

2. States Parties shall take all appropriate measures to:

a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;

c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

**Article 15**
**Right to Food Security**
States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;

b) establish adequate systems of supply and storage to ensure food security.

**Article 16**
**Right to Adequate Housing**
Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.

**Article 17**
**Right to Positive Cultural Context**
1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

**Article 18**

**Right to a Healthy and Sustainable Environment**

1. Women shall have the right to live in a healthy and sustainable environment.

2. States Parties shall take all appropriate measures to:
   a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
   b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in, their control;
   c) protect and enable the development of women's indigenous knowledge systems;
   d) regulate the management, processing, storage and disposal of domestic waste;
   e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

**Article 19**

**Right to Sustainable Development**

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:
a) introduce the gender perspective in the national development planning procedures;

b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;

c) promote women’s access to and control over productive resources such as land and guarantee their right to property;

d) promote women’s access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;

e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes, and

f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

**Article 20**

**Widows’ Rights**

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

a) that widows are not subjected to inhuman, humiliating or degrading treatment;

b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.

**Article 21**

**Right to Inheritance**

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

**Article 22**

**Special Protection of Elderly Women**

The States Parties undertake to:

a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;

b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

**Article 23**

**Special Protection of Women with Disabilities**

The States Parties undertake to:

a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to
employment, professional and vocational training as well as their participation in decision-making,

b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

**Article 24**

Special Protection of Women in Distress

The States Parties undertake to:

a) ensure the protection of poor women and women headed of families including women from marginalized population groups and provide an environment suitable to their condition and their special physical, economic and social needs;

b) ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

**Article 25**

Remedies

States Parties shall undertake to:

a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;

b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.
Article 26
Implementation and Monitoring

1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.

2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.

Article 27
Interpretation

The African Court on Human and Peoples’ Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

Article 28
Signature, Ratification and Accession

1. This Protocol shall be open for signature, ratification and accession by the States Parties, in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the AU.

Article 29
Entry into Force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.
2. For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.

3. The Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

**Article 30**

**Amendment and Revision**

1. Any State Party may submit proposals for the amendment or revision of this Protocol.

2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.

3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this article.

4. Amendments or revision shall be adopted by the Assembly by a simple majority.

5. The amendment shall come into force for each State Party, which has accepted it thirty (30) days after the Chairperson of the Commission of the AU has received notice of the acceptance.

**Article 31**

**Status of the Present Protocol**

None of the provisions of the present Protocol shall affect more favourable provisions for the realization of the rights of women contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties.
Article 32

Transitional Provisions

Pending the establishment of the African Court on Human and Peoples’ Rights, the African Commission on Human and Peoples’ Rights shall be seized with matters of interpretation arising from the application and implementation of this Protocol.

Adopted by the 2nd Ordinary Session
of the Assembly of the Union

Maputo, 11 July 2003
PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

1. People’s Democratic Republic of Algeria

2. Republic of Angola

3. Republic of Benin

4. Republic of Botswana

5. Burkina Faso

6. Republic of Burundi
7. Republic of Cameroon


8. Republic of Cape Verde


9. Central African Republic


10. Republic of Chad


11. Union of the Comoros


12. Republic of the Congo
13. Republic of Côte d'Ivoire


14. Democratic Republic of Congo


15. Republic of Djibouti


16. Arab Republic of Egypt


17. State of Eritrea


18. Federal Democratic Republic of Ethiopia
19. Republic of Equatorial Guinea

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20. Republic of Gabon

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21. Republic of The Gambia

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22. Republic of Ghana

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23. Republic of Guinea

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24. Republic of Guinea Bissau

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25. Republic of Kenya

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26. Kingdom of Lesotho

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27. Republic of Liberia

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28. Great Socialist People’s Libyan Arab Jamahiriya

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29. Republic of Madagascar

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30. Republic of Malawi

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31. Republic of Mali

32. Islamic Republic of Mauritania

33. Republic of Mauritius

34. Republic of Mozambique

35. Republic of Namibia

36. Republic of Niger
37. Federal Republic of Nigeria

38. Republic of Rwanda

39. Sahrawi Arab Democratic Republic

40. Republic of Sao Tome and Principe

41. Republic of Senegal

42. Republic of Seychelles
43. Republic of Sierra Leone

44. Republic of Somalia

45. Republic of South Africa

46. Republic of Sudan

47. Kingdom of Swaziland

48. United Republic of Tanzania
49. Republic of Togo

50. Republic of Tunisia

51. Republic of Uganda

52. Republic of Zambia

53. Republic of Zimbabwe
Appendix D


**THE SEXUAL OFFENCES SPECIAL PROVISIONS ACT, 1998**

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Sexual Offences Special Provisions 1998

THE UNITED REPUBLIC OF TANZANIA

No. 4 OF 1998

I ASSENT.

President


An Act to amend several laws written making special provisions in those laws with regard to sexual and other offences to further safeguard the personal integrity, dignity, liberty and security of women and children.

Enacted by the Parliament of the United Republic of Tanzania.

PART I

1. In this Act may be cited as the Sexual Offences Special Provisions Act, 1998
2. This Act shall come into operation on the first day of July, 1998

3. In this Act, except where the context requires otherwise: “boy” means a male person of the age of under eighteen years; “girl” means a female person of the age of under eighteen years; “gross indecency” means sexual act that is more than ordinary and falls short of actual intercourse and may include masturbation and indecent physical contact or indecent behaviour without any physical contact; "hospital" means the precincts of a hospital and includes the precincts of any institution of for the reception and treatment of persons during convalescence or of person requiring medical attention or rehabilitation. "Injury" means an actual harm caused to a person and includes physical, mental an psychological suffering;
"man" means any male person above the age of eighteen years; means sexual intercourse between per- sons who Are not spouses to each other;
"separated" means, and, includes separation arranged by the family, clan elders, without the parties going to court or otherwise;
"sexual abuse" means illegal sexually oriented acts or words done or said in relation to, any person for gratification or for Any other Illegal purposes;
"sexual intercourse" Whether natural or unnatural, shall, for the purpose of proof of a sexual offence, be deemed to be complete upon proof of penetration only not the completion of the intercourse by the emission seed;
"sexual offence" means any of the offences created in Chapter XV of the Penal Code;
"woman" means any female person above the age *of eighteen years whether or not married;
"women's or children's institution" means an institution for the reception and care of Women or children, however described;

PART II
AMENDMENT OF THE PENAL CODE
4. Section 15 of the Penal Code is hereby repealed and replaced with the following:

115.- (1) A person under the age of ten years is not criminally responsible for any act or omission.

(2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having sexual intercourse."

5. Section 130 of the Penal Code is hereby repealed, and replaced with the following:

"Rape 130.- (1) It is an offence for a male person to rape a girl or a

(2) A male person commits the offence of rape if he has sexual intercourse with a girl or woman under circumstances falling, under any of the following descriptions:

(a) not, being his wife, or being his wife who is separated from him Without her consenting to it at the time of the sexual intercourse;

(b) with her consent where, the consent has been obtained by the, use of force threats or intimidation or by putting her in fear of death or of hurt while she is in unlawful detention;"
(c) with her consent when her consent has been given at a time when she was of unsound state of intoxication induced by any drugs, matter or thing, administered to her by the man or by some other person unless proved that there was prior consent between the two;

(d) with her consent when the man knows that she is not her husband, and that her consent is given because she has been made to believe that he is another man to whom, she is, or believes herself to be, lawfully married;

(e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man.

(3) Whoever-

(a) being a person in a position of authority, takes advantage of his official position, and commits rape on a girl or woman in his official relationship or wrongfully restrains and commits rape on the girl or woman;

(b) being on the management or on the staff of a remand home or other place of custody, established by or under law, or of a women's or children's institution, takes advantage of his position and commits rape on any woman inmate of the remand home, place of custody or

(c) being on the management or staff of a hospital, takes advantage of his position and commits rape on a girl or woman;

(d) being a traditional healer, takes advantage of his position and commits rape on a girl or woman who is his client for healing purposes;

(e) being a religious leader takes advantage of his position and commits rape on a girl or woman,

is liable to imprisonment for a term prescribed under subsection (1) of section 131*.

(4) For the purposes of proving the offence of rape-

(a) penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence; and

(b) evidence, of resistance such as physical, injuries to the body is not necessary to prove that sexual intercourse took place without consent.

d€emed lawfully separated even if the separation is arranged by, the family or, clan members,
6. Section 131 of the Penal Code is hereby repealed and replaced with the following:

131- (1) Any person who commits rape is, except in the cases provided for in the renumbered subsection (2), liable to be punished with imprisonment of not less than thirty years with corporal punishment, and with fine, and shall in addition to ordered to pay compensation of amount determined by the court, to the person in respect of whom the offence was committed for the injuries caused to such person.

(2) Notwithstanding the provision of any law, where the offence is committed by a boy who is of the age of eighteen years or less, he shall-

(a) if a first offender, be sentenced to imprisonment only

(b) if a second time offender, be sentenced to imprisonment for a term of twelve months with corporal punishment

(c) if a third time and recidivist offender he shall be sentenced to life imprisonment pursuant to subsection (1)

(3) Notwithstanding the preceding provisions of this section whoever commits an offence of rape to a girl under the ten years shall on conviction be sentenced to life imprisonment.

7. The penal Code is hereby amended by adding after section 131 the following new section:

131A- (1) Where the offence of rape is committed by one more persons in a group of persons, each person in the group committing or abetting the commission of the offence is deemed to have committed gang rape.

(2) Every person who is convicted of gang rape shall be sentenced to imprisonment for life, regardless of the actual role he played in the rape.

8. Section 132 of the Penal Code is hereby repealed and replaced by the following:

132. (1) Any person who attempts to rape commits the offence of attempted rape, and and except for the cases specified in subsection (3) is liable upon conviction to imprisonment for life, and in any case shall be liable to imprisonment for not less than thirty years or without corporal punishment.
(2) A person attempts to commits rape if, with to procure prohibited sexual intercourse with intercourse with any girl or woman, he manifests his intention by-

(a) threatening the girl or woman for sexual purposes;
(b) being a person of authority or influence in relation to the girl or woman applying any act of intimidation over her sexual purposes;
(c) making any false representations to her for the purposes of obtaining her consent;
(d) representing himself as a husband of the girl or woman and the girl or woman is put in a position where, but for the occurrence of anything independent of that person's will, she would involuntarily carnally known

(3) Where a person commits the offence of attempted rape by virtue of manifesting his intention in the manner specified in paragraph (c) or (d), he shall liable to imprisonment for life and in any case for imprisonment of not less than ten years.

**9 Section 135 of the Penal Code is hereby repealed and replaced with the following:**

135 - (1) Any person who, with intent to cause sexual annoyance to any person utters any word or sound, makes any gesture or exhibits any word or object intending that such word or sound shall be heard, or the gesture or object shall be seen, by that other person commits an offence of sexual assault and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding three hundred thousand shillings or to both the fine and imprisonment;

(2) Where the charge for sexual assault under this section related to a boy or girl under eighteen years, it shall be on defence to the charge that the boy or girl consented to the act constituting the assault

**10. Section 136 of the Penal Code is hereby repealed.**

**11. Section 138 of the Penal Code is hereby amended:**

(a) in the section generally by substituting the phrase "fifteen years for twelve years";
(b) in subsection (1) by deleting the words "imprisonment for five years" and substituting for them the words "imprisonment for ten years";
RULE OF LAW IN PLURI-LEGAL ENVIRONMENT

8 No. 4 Sexual Offences Provisions 1998

(c) in subsection (2) by deleting the words "imprisonment for two years" and substituting for them the words "imprisonment for ten years"

(d) in subsection (3) by deleting the words "imprisonment for two years" and substituting for them the words "imprisonment for ten years".

12. The Penal Code I’s hereby amended by adding after section 138 the following new section;

138A. Any person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, is guilty of an offence and liable on conviction to imprisonment for a term not less than one year and not exceeding five years or to a fine not less than one hundred thousand and not exceeding three hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, a pupil of a primary school or a student of secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of all amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.

138B- (1) Any person who-

(a) knowingly permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent, exhibition or show;

(b) acts as procure of a child for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show;

(c) induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse, or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means;

(d) takes advantage of his influence over, or his relation, ship to, a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibit-
(e) threatens, or uses violence towards, a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;

(f) gives monetary consideration, goods or other benefits to a child or his parents with intent to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show commits the offence of sexual exploitation of children of not less than five years and not exceeding twenty years.

(2) In this section "child" means a person of the age of less than eighteen years;"

138. (1) Any person who, for sexual gratification, does any act, by the use of his genital or any other part of the human body or any instrument on any orifice or part of the body of any other person, being an act which doesn't match amount to rape under section 130, commits the offence of grave sexual abuse if he does so in circumstances falling under any of the following descriptions, that it to say-

(a) with the consent of the person
(b) with the consent of the other person where the consent has been obtained by use of force, threat, or intimidation or putting that other person in fear of death or of hurt or while that other person was in unlawful detention;
(c) with the consent of the other person where such consent has been obtained at time the other person was unsound mind or was in a state of intoxication induced by alcohol or any drugs, matter or thing.

(2) Any person who-
(a) commits grave sexual abuse is liable, on conviction to imprisonment for a term of not less than fifteen years and not exceeding thirty years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the offence was committed for the injuries caused to that person
(b) commits grave sexual abuse on any person under fifteen years of age is liable on conviction to imprisonment for a term of not less than twenty years and not exceeding thirty years, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person."
138. D.- (1) Any person who, with intention, assaults or by use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such and liable on conviction to imprisonment two hundred thousand shilling or to both the fine and imprisonment, and may also be ordered to pay compensation of an whom the offence was committed for any injuries caused to that person.

(2) Whoever, intending to insult the modesty of woman utters any word, makes any sound or gesture, or exhibits any other including any organ whether male or feminine, intending that such word or sound shall be heard, or that the gesture or object shall be seen, by the woman, or intrudes upon the privacy of the woman, commits the offence of sexual harassment.

(3) For the avoidance of doubt, unwelcomed sexual advances by words or action used by a person in authority, in a working place or any other place, shall constitute the offence of sexual harassment.

(4) For the purpose of this section an assault may include any act which act which does not amount to rape under section 130.

(5) No prosecution for an offence under this section shall be instituted or continued where the complaint is made by the alleged victim at any time more than sixty days after the occurrence of the event constituting the offence.

12. Section 139 of the Penal Code is hereby repealed with the following:

139. Any person who-

(a) procures, or attempts to procure, any person, whether male or female of whatever age, whether with or without the consent of that person, to become, within or outside the United Republic, a prostitute;

(b) procures, or attempts to procure, any person under eighteen years of age, to leave the United Republic, whether with or without the consent of that person, with a view to the facilitation of prohibited sexual intercourse with any person outside the United Republic, or removes, or attempts to remove from the United or that person, whether with or without the consent of that person, for that purpose;
(c) procures, or attempts to procure, any person of whatever age, to leave the United Republic whether with or without the consent of that person, with intent that that person may become the inmate of, or frequent a brothel elsewhere, or removes or attempts to remove, from the United Republic any such person, whether with or without the consent of that person, purpose;

(d) brings, or attempts to bring, into the United Republic any person under eighteen years of age with a view to prohibited sexual intercourse with any other person, inside or outside the United Republic;

(e) procures, or attempts to procure, any person of whatever age, without the consent of that person, to leave that person's usual place of abode in the United Republic, that place not being a brothel, with intent that that person may for the purposes of prostitution become the inmate of, or frequent a brothel within or outside the United Republic;

(f) detains any person without the consent of that person in any brothel or other premises with a view to prohibited sexual intercourse or sexual abuse of that person, commits the offence of procuration and is liable on conviction to imprisonment for a term of not less than ten years and not exceeding twenty years or to a fine of not less than one hundred thousand shillings and not exceeding three hundred thousand shillings or to both the fine and imprisonment."

14. The Penal Code is hereby amended by adding immediately after the following new section:

Addition of new section

139A - (1) Any person who-

(a) engages in the act of buying, selling or bartering of any person for money or for any other consideration;

(b) for the purposes of promoting, facilitating or inducing the buying or selling or bartering or the placement in adoption of any person for money or for any other consideration-

(i) arranges for, or assists, a child to travel within or outside the United Republic, without the consent of his parent or lawful guardian; or

(ii) obtains an affidavit of consent from a pregnant woman for money or for any other consideration, for the adoption of the unborn, child of that woman; or

(iii) recruits women or couples to bear children; or

(iv) being a person concerned with the registration of births, knowingly permits the falsification of any birth record or register; or
(v) engages in procuring children from hospitals shelters for women, clinics, nurseries day care centres, or to other child care institutions or welfare centres, for money or other consideration or procedures a child for adoption from any such institution or centre, by intimidation of the mother or any other person, or (vi) impersonates the mother or assists in the impersonation.

commits the offence of trafficking and is liable on conviction to imprisonment for a term not less than twenty years and not exceeding thirty years and fine of not less than one hundred thousand shillings or both the fine and imprisonment and shall in addition be ordered to pay compensation of an amount to be determined by the court, to the person in respect of whom the offence was committed.

(2) In this section "child" means a person of the age of eighteen years or less.

15. Section 140 of the Penal Code is hereby repealed and replaced with the following:

140. Any person who-
(a) by threats or intimidation procures or attempts to procure any girl or woman to have any prohibited sexual intercourse inside or outside the United Republic; or
(b) by false pretences or false representations procures any girl or woman to have any prohibited sexual intercourse anywhere inside or outside United Republic; or
(c) applies, administers to, or causes to be taken by any girl woman any drug, matter or thing with intent to stupefy or overpower her so as to enable any man to have prohibited sexual intercourse with her,

commits an offence and is liable on conviction to a fine of not less than one hundred shillings and not exceeding three hundred thousand shillings or imprisonment for a term of not less than ten years and not exceeding twenty years or to both the fine of and imprisonment and shall be ordered to pay compensation of an amount to be determined by the court.”

16. Section 154 of the Penal Code is hereby repealed and replaced with the following:
154.- (1) Any person who-
(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of an animal; or
(c) permits a male person to have carnal knowledge of him or her against
the order of nature;

commits an offence, and is liable to imprisonment for life and in any case to
imprisonment for a term of not less than thirty years.

(2) Where the offence, under subsection (1) of this section is committed
to a child under the age of ten years the offender shall be sentenced
to life imprisonment.

17. Section 155 of the Penal Code is hereby repealed and replaced with the
following-

165. Any person who attempts to commit any offences specified under 154
commits an offence and shall on conviction be sentenced to imprisonment
for a term not less than twenty years."

18. Section 156 of the Penal Code is hereby amended-
(a) in subsection (1) by deleting the words "for seven years" and substituting for
them the words "for life"
(b) in substituting for them the words "fifteen years."

19. Section 158 of the Penal Code is hereby amended by deleting subsection
(1) and substituting for it the following-

"(1) Any male person who has prohibited sexual intercourse with female
person, who is to his knowledge his granddaughter, sister or mother, commits
the offence of incest, and is liable upon conviction-

(a) if the female is of age less than eighteen years, to imprisonment for a
term of not less than thirty years;
(b) if the female is of the age of less than eighteen years or more, to
imprisonment for a term of not less than twenty years."

20. Section 160 of the Penal Code is hereby repealed and replaced with the
following-
160. Any female person of or above the age of eighteen years who, with consent, permits her grandfather, brother or son, to have carnal knowledge of her (knowing him to be her grandfather, father, brother, or son as the case may be) commits the offence of incest and is liable to imprisonment for life or for imprisonment of not less than thirty years and shall, in addition, be ordered to pay compensation for an amount determined by the court to the victim in respect of whom the offence was committed.

Provided that if the male person is below the age of ten years, to imprisonment of not less than thirty years."

21. The Penal Code is hereby amended by inserting immediately after section 169 the following:

169A.-(1) Any person who, having the custody, charge, or care of any person under eighteen years of age, ill treats, neglects or abandons that person or causes that person to be assaulted, ill treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of, one of his senses or hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.

(2) Any person who commits the offence of cruelty to children is liable on conviction to imprisonment for a term of not less than five years and, not exceeding fifteen years, or to a fine not exceeding three hundred thousand shillings, or to both the fine and imprisonment, and shall be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person."

PART III


22. Section 168 of the Criminal Procedure Act, 1985 is hereby amended by adding subsection (6) immediately after subsection (5) as follows:

"6 without prejudice to the provisions of section 168, where a court convicts a person in a case which involves sexual offence under the Sexual Offences Special Provision Act, the court shall pass a sentence as prescribed in that Act and in accordance with the Minimum Sentences Act."
23. Section 170 of the Criminal Procedure Act is hereby amended by deleting paragraph (a) of subsection (1) and substituting, for it the following:

"(a) imprisonment for a term not exceeding five years; save that where a court convicts a person of an offence specified in any of the Schedules to the Minimum Sentences Act, 1972 which has jurisdiction to hear, it shall have the jurisdiction to pass the minimum sentence of imprisonment."

24. Section 186 of the Criminal Procedure Act, is hereby amended by adding after, subsection (2) the following:

"(3) Notwithstanding the provisions of any other law, the evidence of all persons in all trials involving sexual offences shall be received by the court in camera, and the evidence and witnesses involved in these proceedings shall not be published by or in any newspaper or other media, but this subsection shall not prohibit the printing or publishing of any such matter in a bona fide serious of law reports or in a newspaper or periodical of a technical character bona fide intended for circulation among members of the legal or medical professions."

25. The Criminal Procedure Act, 1985, is hereby amended by adding

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punishment
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sexual
offences

348A-(d) Notwithstanding the provisions of section 348 of this Act, when a court convicts, an accused person of a sexual offence, it shall in addition to any penalty which it imposes make an order requiring the convict to pay such effective compensation as the court may determine to be commensurate to possible damages obtainable by a civil suit by the victim of the sexual offence for injuries sustained by the victim in the course of the offence being perpetrated against him or her.

(2) For the purposes of this section "sexual offence" means any of the offences created in Chapter XV of the Penal Code.

26. Section 373 of the Criminal Procedure Act, 1985, is hereby amended in subsection (3) by inserting after the words "by a subordinate court,"

"except if the matter involved a sexual offence," by adding after subsection (4) the following:

"(5) Where the High Court revives the record of proceedings in a subordinate court involving a sexual offence, it may if it considers that the justice of the case so requires inflict a punishment greater than that which the convicting court might have imposed but which the High Court could impose if the matter were to come to it on appeal as if the matter were in fact on appeal."
In this section the term "sexual offence" means any of the offences created in Chapter XV of the Penal Code.

**PART IV**

**AMENDMENT OF THE EVIDENCE ACT, 1967**

**27.** Section 127 of the Evidence Act, 1967, is hereby amended—

in subsection (3), by inserting after the words "Notwithstanding any rule of law or practice to the contrary, the words "but subject to the provisions of subsection (7)," 

in subsection (4), by inserting after the words, Notwithstanding any rule of law or practice to the contrary, the words "but subject to the provisions of subsection (7),"

by adding after subsection (6) the following:

(7) Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years or of a victim of the sexual offence, the court shall receive the evidence, and may, after assessing the credibility of the evidence of the child of tender years or case may be the victim of sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceeding, in the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth.

(6) For the purposes of this section the term "sexual offence" means any of the offences created in Chapter XV of the Penal Code.

**PART V**

**AMENDMENT OF THE CHILDREN AND YOUR YOUNG PERSONS ORDINANCE**

**28.** The Children Young Persons Ordinance is hereby amended in section 3 by adding immediately after subsection (4) the following:

(5) Where a child of less than eighteen years of age is a witness, a victims an accused or a co-accused in a case involving a sexual offence, the child shall be tried in camera and separately from the adult co-accused, or the evidence of the child shall be adduced in proceedings conducted in camera.

(6) In this section "sexual offence" means any of the offence created in Chapter XV of the Penal Code.
PART VI

AMENDMENT OF THE MINIMUM SENTENCES ACT, 1972

29. Section 5 of the Minimum Sentences Act, is hereby amended by adding paragraph “h” immediately after paragraph (g) as follows:

“h) Where any person is convicted of any sexual offence specified under Chapter XV of the Penal Code (Cap. 16), as amended by the Sexual Offences Special Provision Act, the court shall sentence such person to imprisonment for a term prescribed under that Chapter;

30. The Minimum Sentences Act is hereby amended in the First Scheduled by-

(a) inserting between paragraphs “11” and “12” the following new paragraph-

“12” Any offence provided for under Chapter XV of the Penal Code (Cap. 16),”

(b) renumbering paragraph “12” as “13”

Passed in the National Assembly on the 21st April, 1998.

Clerk of the National Assembly

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Appendix E

Ward Tribunals

How to enhance the rule of law at local level

CHAPTER 206
THE WARD TRIBUNALS ACT
[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS
Section

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SCHEDULE
CHAPTER 206
THE WARD TRIBUNALS ACT
An Act to establish Ward Tribunals, to provide for their jurisdiction, powers, practice
and procedure and other related matters.
[1st July, 1988]
[G.N. No. 199 of 1988]
Acts Nos.
7 of 1985
12 of 1990
18 of 1995
Cap. 216

PART I
PRELIMINARY PROVISIONS (ss 1-2)

1. Short title
   This Act may be cited as the Ward Tribunals Act.

2. Interpretation Act No. 18 of 1995 Sch.
   In this Act unless the context requires otherwise-
   "appropriate authority", when used in relation to a Tribunal, means the district
council or the urban authority within whose area the Tribunal is established, and
includes any person appointed by the appropriate authority to perform any of its
functions under this Act;
   "Chairman" means the Chairman of a Tribunal and includes a person appointed
to preside at proceedings of the Tribunal;
   "dispute" includes any case where a person complains of, and is genuinely
aggrieved by, the actions of another person, or any case in which a complaint is
made in an official capacity or is a complaint against an official act;
   "member" means a member of a Tribunal, and includes the Chairman;
"Minister" means the Minister for the time being responsible for local Government Authorities;
"Tribunal" means a Ward Tribunal established under section 3;
"urban ward" means any ward constituted under the jurisdiction of an urban authority;
"village" means any registered village or Ujamaa Village registered or designated under the Local Government (District Authorities) Act Cap. 287*, or the Local Government (Urban Authorities) Act Cap. 288*;
"village council" means a village council established under the Local-Government (District Authorities) Act Cap. 287*, or the Local Government (Urban Authorities) Act Cap. 288*;
"ward committee" means a ward committee established under the Local Government (District Authorities) Act Cap. 287*, or the Local Government (Urban Authorities) Act Cap. 288*, for the ward in which the Tribunal is established.

PART II
THE WARD TRIBUNALS (ss 3-7)

There is hereby established a tribunal for every ward in Tanzania to be known as the Ward Tribunal for the ward for which it is established:
Provided that the Minister may, by notice published in the Gazette, establish two tribunals for a Ward if he is of the opinion that there are special circumstances which make it necessary or desirable to do so.

4. Composition of Tribunals
(1) Every Tribunal shall consist of-
(a) not less than four nor more than eight other members elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner;
(b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).
(2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.
(3) The quorum at a sitting of a Tribunal shall be one half of the total number of members.
(4) At any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote.
5. Qualifications of members
   (1) No person shall be entitled to be nominated as a member of a Tribunal if he is-
       (a) a member of the National Assembly;
       (b) a member of a village council or a Ward Committee;
       (c) a civil servant;
       (d) a legally qualified person or any person who is employed in the Judiciary;
       (e) a person under the apparent age of eighteen years;
       (f) a mentally unfit person;
       (g) a person who has previously been convicted of a criminal offence involving moral turpitude; or
       (h) a person who is not a citizen of the United Republic of Tanzania.
   (2) No person shall be recommended as a Secretary of a Tribunal unless he is, in the opinion of the Ward Committee, sufficiently literate and educated and capable of satisfactorily discharging the duties of Secretary.

   (1) Every member of a Tribunal shall hold office for a term of three years from the date of his election and shall be eligible for re-election.
   (2) If a vacancy occurs in the membership of a Tribunal by death, resignation or effluxion of time or any other reasonable cause the appropriate authority shall appoint an appropriate person to fill the vacancy until the date of the next election of members.
   (3) Appointment to the office of Secretary shall be permanent in the service of the Local Government Authority within which the Tribunal to which he is appointed to be Secretary is situated.

7. Role of appropriate authority in relation to Tribunal
   The appropriate authority in respect of a Tribunal shall be responsible for the general policy regarding the operation of the Tribunal and shall ensure, facilitate and promote the smooth and effective performance by the Tribunal of its functions.

PART III
JURISDICTION, POWER AND PROCEDURE (ss 8-19)

8. General jurisdiction
   (1) The primary function of each Tribunal shall be to secure peace and harmony in the area for which it is established by mediating and endeavouring to obtain just and amicable settlement of disputes.
(2) In all matters before it relating to a dispute, a Tribunal shall attempt to reach a settlement by mediation before exercising its compulsive jurisdiction as provided under this Act, and may adjourn any proceedings relating to a dispute in which it is exercising that jurisdiction if it thinks that by doing so a just and amicable settlement of the dispute may be reached.

(3) Without prejudice to the generality of subsections (1) and (2), a Tribunal shall have and exercise jurisdiction in relation to all matters and disputes arising under all laws and directives passed by the appropriate authority, and laws and orders for the time being in force in relation to or affecting the business and affairs of the ward made or passed by a local government authority or any other competent legislative authority within the area of the Tribunal's jurisdiction.

9. Particular matters of jurisdiction

(1) Without prejudice to the generality of the jurisdiction conferred on a Tribunal by section 8, a tribunal shall have jurisdiction to enquire into and determine disputes relating to the offences and civil disputes specified in the Schedule to this Act and may impose penalties to the extent specified in that Schedule.

(2) The Minister may, from time to time, by order published in the Gazette, amend, vary or replace any of the provisions of the Schedule to this Act.

10. Pecuniary jurisdiction

(1) Notwithstanding measures imposable by a tribunal under section 17, a tribunal shall, in the exercise of its jurisdiction be limited to the following awards and penalties—
   (a) in criminal matters, a fine not exceeding ten thousand shillings;
   (b) in default of payment of a fine which does not exceed one thousand shillings, the convicted person shall be committed to work on an on-going communal project for not more than ten days;
   (c) in case of default of payment of a fine exceeding one thousand shillings, the matter shall be referred to the Primary Court for committal of the convicted person to prison or any other appropriate action under the law;
   (d) in civil matters, awards not exceeding ten thousand shillings.

(2) Subject to section 19, the power to commit persons to imprisonment under this Act shall vest in Primary Courts.
11. Reference of matters to a Tribunal
   (1) Proceedings may be instituted by making of a complaint to the secretary of a Tribunal, the Secretary of an appropriate authority, the Chairman of a Village Council or a ten-cell leader.
   (2) Any person who reasonably believes that any person has committed an offence may make a complaint about the matter to any of the persons specified in subsection (1).
   (3) A complaint may be made orally or in writing, but if made orally shall be reduced in writing by the person to whom it is made and, in either case, shall be signed by the complainant and the person to whom it is made.
   (4) When a complaint is made to any person, that person shall, if he is not the Secretary of the Tribunal, cause it to be submitted to the Secretary of the Tribunal who shall enter it in the records of the Tribunal and arrange for it to be heard and determined by the Tribunal in accordance with the procedure of the Tribunal for the hearing and determination of disputes submitted to it.

12. Summons and date of hearing
   Subject to the procedure made in that behalf by the appropriate authority, the Secretary shall issue summons to the parties involved in a complaint requiring them to attend before the Tribunal on the date specified in the summons for the complaint to be investigated and determined.

13. Appearance of parties
   (1) On the date specified in the summons the parties shall, subject to subsection (3), appear in person before the Tribunal, give their evidence and answer all questions put to them by any member of the Tribunal.
   (2) If on the date specified in the summons the complainant does not without reasonable cause, appear, the Tribunal shall dismiss the complaint and it shall not subsequently be brought before it; but if the Tribunal considers that the absence of the complainant is due to a reasonable cause or if the person complained against is absent, the Tribunal shall adjourn the hearing to some date which it may specify, and inform the appropriate authority of the absence of the person complained against.
   (3) Where the complainant or the person complained against is a child below eighteen years of age, or is a person who for any sufficient cause cannot adequately put his case or defend himself, that person may appear before the Tribunal together with his parent, guardian, relative or friend who may, subject to the procedure adopted by the Tribunal, assist him in the examination or cross examination of witnesses or the making of submissions before the Tribunal.
14. Proceedings to be in public
    All proceedings before a Tribunal shall be open to the public unless, in the opinion of the Tribunal, it is in the public interest that the public or any person be excluded from any part of the proceedings.

15. Proceedings before Tribunal
    (1) The Tribunal shall not be bound by any rules of evidence or procedure applicable to any court.
    (2) A Tribunal shall, subject to the provisions of this Act, regulate its own procedure.
    (3) In the exercise of its functions under this Act a Tribunal shall have power to hear statements of witnesses produced by parties to a complaint, and to examine any relevant document produced by any party.

16. Tribunal to pursue principles of justice
    (1) Notwithstanding the provisions of section 15, a Tribunal shall in all proceedings seek to do justice to the parties and to reach a decision which will secure the peaceful and amicable resolution of the dispute, reconciliation of the parties and the furtherance of the social and economic interests of the village or ward as a whole in which the dispute originates.
    (2) For the purposes of securing a just determination of a complaint, the Tribunal shall not make a decision on any complaint unless -
        (a) it has given an equal opportunity to each party to explain his part of the matter and to present his witnesses; and
        (b) any member of the Tribunal having any personal or financial interest in the complaint has disclosed it and not taken part in the proceedings.

17. Measures imposable by Tribunal
    At the conclusion of the proceedings the Tribunal may order that-
        (a) the party at fault apologise to the other party;
        (b) a person be censured or admonished at a meeting of the Village Assembly or Ward meeting;
        (c) the party at fault pay a specified fine not exceeding a certain amount prescribed by the appropriate or other legislative authority;
        (d) one party pay back what is due to the other party;
        (e) the defaulting party do some specific community work;
        (f) the defaulting party pay compensation;
        (g) the defaulting party carry out any other sanction acceptable in the village or ward concerned; or
        (h) the parties perform any customary act or acts which signify reconciliation.
18. Enforcement of measures of Tribunal
   
   (1) The appropriate authority shall devise an appropriate system for facilitating and securing the proper and full performance of the measures imposed and orders made by the Tribunal at the conclusion of the proceedings in relation to any matter referred to it.

   (2) A person who fails, without reasonable cause (the burden of proof of which is on him), to obey any order of the Tribunal under this Act for which no other penalty is prescribed shall be guilty of an offence and shall be liable, on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both that fine and imprisonment.

19. Order of imprisonment and its endorsement
   
   (1) An order of a Tribunal for imprisonment under this Act shall be in the prescribed form and, pending endorsement of the order under subsection (2), the convicted person shall be held in such custody, or shall be released on such terms, as may be ordered by the Tribunal.

   (2) Subject to subsection (3), an order of imprisonment under this Act shall have no force or effect unless endorsed by the Primary Court Magistrate for the area in which the Tribunal is established.

   (3) The Tribunal after making an order for imprisonment shall immediately cause it to be presented to the Primary Court Magistrate for endorsement.

   (4) The Primary Court Magistrate to whom the order is presented for endorsement, shall endorse the order without delay, unless he has reason to believe that the Tribunal acted without jurisdiction or in excess of its powers.

   (5) If the Primary Court Magistrate is convinced that the Tribunal has acted without jurisdiction or in excess of its powers, he shall exercise the power of revision provided for under section 21.

   (6) The endorsed order under this section shall have the same effect as any sentence of imprisonment imposed by a Primary Court under any other written law.

   (7) Where the order remitted to the Primary Court under subsection (3) is beyond the pecuniary jurisdiction of the Primary Court the Magistrate shall immediately refer the same to the higher court of appropriate jurisdiction in accordance with the provisions of the Magistrates' Courts Act Cap. 11*. 

8
PART IV
MISCELLANEOUS PROVISIONS (ss 20-30)

20. Appeals from decisions of Tribunal Act No. 12 of 1990 Sch.
   (1) Subject to subsection (2), a person aggrieved by a decision of a Tribunal
       may within sixty days appeal in writing to a Primary Court.
   (2) Except with the leave of the Primary Court, no appeal shall be entertained
       under the following circumstances-
       (a) in criminal cases in which the fine imposed does not exceed five
           hundred shillings;
       (b) in civil matters where the award does not exceed eight hundred
           shillings.
   (3) Except on points of law where the final appeal lies to the District Court,
       decision of a Primary Court on any appeal made to it shall be final and
       conclusive.

21. Review and revisional jurisdiction of the Primary Court
   (1) A Primary Court may call for and examine the record of any proceedings
       of a Tribunal, for the purpose of satisfying itself as to whether in such
       proceedings the Tribunal's decision-
       (a) does not contravene any Act of Parliament, or subsidiary
           legislation;
       (b) does not conflict with the rules of natural justice; and
       (c) was made by such Tribunal when it was properly constituted or
           without excess of jurisdiction, and may revise any such
           proceedings.
   (2) In the exercise of its revisional jurisdiction, a Primary Court has power to
       substitute conviction and sentence for an acquittal, to quash the
       proceedings and to order a rehearing.
   (3) In the case of civil matters, the revisional jurisdiction of a Primary Court
       shall be restricted to increasing any sum awarded or altering the rights of
       any party to his detriment.
   (4) No proceedings under this section shall be revised after the expiration of
       twelve months from the conclusion of such proceedings in the Tribunal.

22. Hearing of appeals and exercise of revisional jurisdiction
   (1) In the hearing of an appeal against any decision of a Tribunal the Primary
       Court Magistrate shall sit with not less than two assessors.
   (2) The Primary Court in dealing with appeals against any decision of the
       Tribunal shall--
       (a) consider the records relevant to the decision; and
(b) receive such evidence, if any, and make such inquiries as it may
doom necessary.
(3) A party to any proceeding appealed against or under revision, may
appear-
(a) personally; or
(b) by representative (other than a lawyer).

23. Decision on appeals or revision
(1) A Primary Court hearing an appeal against or making a review of a
decision of the Tribunal may-
(a) confirm the decision;
(b) quash the decision; or
(c) order the matter to be dealt with again by the Tribunal,
and may, if it deems appropriate, give an order or direction as to
how any defect in the earlier decision may be rectified.
(2) A Primary Court Magistrate hearing an appeal or making a revision shall-
(a) record the decision of the court on the appeal or revision and the
reasons thereof; and
(b) forward it to the District Court.
(3) The District Court may apply its revisional jurisdiction under the
Magistrates’ Courts Act Cap. 11*, in respect of any appeal or revision
recorded by a Primary Court Magistrate under subsection (2).

23A. Jurisdiction on land matters Cap. 216 Sch.
The provisions of sections 20, 21, 22 and 23 shall not apply to the word Tribunal
in the exercise of its jurisdiction in any matter relating to land.

24. Records of Tribunal
(1) A Tribunal shall cause to be kept and maintained proper records of its
proceedings in appropriate form.
(2) The Secretary of a Tribunal shall be responsible for recording all the
evidence adduced and other matters formally transpiring during the
proceedings before the Tribunal and all other matters in connection with
it.
(3) The records of the Tribunal shall be deemed to be records of the Ward
Committee and shall, for that purpose, be public records.

25. Inspection of Tribunals
(1) The Minister shall, after consultation with the Minister for the time being
responsible for regional administration, by notice published in the
Gazette, make provisions for a system of inspection of Tribunals and
instruction of local government authorities and Ward Committees for the
purposes of ensuring the furtherance of the purposes and objects of this Act.

(2) The Minister may, in the notice under subsection (1) appoint such persons or authorities as he may think fit for the purposes of this section.

26. Public education of officers, etc.
The Minister shall, in co-operation with any other Minister, Ministry, Department or other public authority formulate suitable programmes, schemes and seminars for the information and education of the public and the officers and members of Tribunals on the methods of performing the functions of the Tribunals, for the purposes of ensuring their efficient and just operation.

27. Remuneration of members Act No. 12 of 1990 Sch.
The members of a Tribunal shall be paid such sitting or other allowance as the appropriate authority may, in collaboration with the Ward Committees, determine.

28. Offences
Any person who—
(a) wilfully or without reasonable cause fails or refuses to attend before a Tribunal in response to a summons served on him;
(b) having attended, refuses or fails to answer any question put to him by any member;
(c) does any act or thing which obstructs the proper functioning of a Tribunal or impedes any officer of the Tribunal or other person authorised by the Tribunal in the performance of its functions, is guilty of the offence of contempt of the Tribunal and shall be liable on conviction to a fine not exceeding eight hundred shillings or be required to perform some specific community work or to both the fine and the requirement to perform the community work.

29. Directions by the Minister
(1) The Minister may, from time to time, give directions to the appropriate authorities in connection with operations of Tribunals including prescribing matters required to be prescribed under this Act, and all authorities and persons concerned shall carry out or comply with all those directions and prescriptions.
(2) The Minister shall cause to be published all directions and prescriptions under this section in such manner as he deems appropriate, including publication in the Gazette.
The Arbitration Tribunals Regulations, 1969, and the Swahili equivalent of those
Regulations entitled "Kanuni Kuhusu Mabaraza ya Usuluhushi" and the
Marriage Conciliation Board (Establishment) Order, 1971 are hereby revoked.

SCHEDULE
(Section 9)
PART I
OFFENCES AND PENALTIES UNDER THE PENAL CODE

1. OffenceSectionMaximum PenaltyGoing armed in public ... s. 84 Fine of Shs.
   800/- or 2 years imprisonment.
2. Forcible detainer ... s. 86 Fine of Shs. 800/- or 2 years imprisonment.
3. Affray ... s. 87 Fine of Shs. 500/- or imprisonment for 6 months.
4. Challenge to fight a duel ... s. 88 Fine of Shs. 800/- or 2 years imprisonment.
5. Using abusive language and brawling ... s. 89(1) Fine of Shs. 500/- or
   imprisonment for 6 months.
6. Threatening with violence ... s. 89(2) Fine of Shs. 400/- or imprisonment for 1
   year.
7. Dissuading persons from participating in self-help scheme ... s. 89C Fine of
   Shs. 1,000/- or imprisonment for 6 months.
8. Disturbing religious assemblies. 126 Fine of Shs. 1,000/- or 2 years
   imprisonment.
9. Abduction of girls under 16 years ... s. 134 Fine of Shs. 1,000/- or 2 years
   imprisonment.
10. Insulting the modesty of a woman ... s. 135(3) Fine of Shs. 800/- or
    imprisonment for 1 year.
11. Desertion of children ... s. 166 Fine of Shs. 1,000/- or 2 years imprisonment.
12. Neglecting to provide food ... s. 167 Fine of Shs. 400/- or 2 etc. for children
    years imprisonment.
13. Idle and disorderly persons. 176(b), (c) & (i) Fine of Shs. 500/- or (certain
    offences only) ... imprisonment for 3 months.
14. Wearing uniform without authority ... s. 178(1) Fine of Shs. 200/- or
    imprisonment for 1 month.
15. Bringing contempt on uniforms. 178(2) Fine of Shs. 400/- or imprisonment for 3
    months.
16. Foulng water ... s. 185 Fine of Shs. 2,000/- or 2 years imprisonment.
17. Common assault ... s. 240 Fine of Shs. 1,000/- or imprisonment for one
    year.
18. Omitting to take precautions against probable danger from any animal in one's
    possessions. 233(d) Fine of Shs. 1,500/- or 2 years imprisonment.
19. Attempting suicide ... s. 217 Fine of Shs. 300/- or 6 months imprisonment.
RULE OF LAW IN PLURI-LEGAL ENVIRONMENT

20. Concealing the birth of a child. 218 Fine of Shs. 1,000/- or 2 years imprisonment.
21. Other negligent acts causing harm not specified in s. 233s. 234 Fine of Shs. 1,000/- or imprisonment for 6 months.
22. Criminal trespass ... ... s. 299 Fine of Shs. 800/- or imprisonment for 1 year.

PART II
OFFENCES AND PENALTIES UNDER OTHER LAWS

1. OffenceSectionMaximum PenaltyGambling (gaming) under the Prevention of Gambling Act (Cap. 19) ... ... ... s. 3 Fine of Shs. 1,000/- or imprisonment for 1 month.
2. Under the Tsetse Fly (Control) Act (Cap. 100) (contravening regulations) ... ... ... Fine of Shs. 200/- or imprisonment for 1 month.
3. Contravening of by-laws made by a village council or Town, District or Municipal Council which relate to agricultural, educational and health matters. The sanction provided by the by-laws concerned. Smoking noxious plants (bhang) ... ... Fine of Shs. 2,000/- or (Cap. 95) imprisonment for 12 months.
4. Failure to enrol or send to school an enrolled child under the Public Primary Schools (Compulsory Enrolment and Attendance) Order, 1977 (Cap. 353)
   - The First Offenders: Whole Order Fine of Shs. 100/- or imprisonment for 1 month.
   - Second Offenders: Fine of Shs. 500/- or imprisonment for 2 months.
   - Subsequently: Imprisonment for 6 months.

PART III
CIVIL JURISDICTION

(1) Minor disputes relating to dowry and all disputes relating to land.
(2) All functions of Marriage Reconciliation Boards vested in the existing Arbitration Tribunals in terms of Government Notice No. 108 of 1971 under the Law of Marriage Act Cap. 29.*
(3) Adultery.
(4) Any other matter referred to a Tribunal by the disputing parties for reconciliation.
(5) Any other matter which a Minister for Justice may by order published in the Gazette add to this Schedule.

In the exercise of its jurisdiction in a matter governed by customary law, a Tribunal shall apply the customary law prevailing within any village or ward as the case may be.
Ward Tribunals
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Explanations/Abbreviations
- LAG: Local Administration and Government
- LGA: Local Government Authority
- LUM: Local Municipal Unit
- LTA: Local Traditional Authority
- WU: Ward Unit
- WMO: Ward Management Unit
- PPCU: Primary Public Purposes Unit
- ZMO: Zonal Management Unit
- LMO: Local Management Unit
- WU: Ward Unit
- ZMO: Zonal Management Unit
- LMO: Local Management Unit
The Local Government Reform Programme

Decentralisation reform plays a vital role within the Tanzanian National Strategy for Growth and Reduction of Poverty (or ‘Mikukuta’) to improve governance and democratisation at sub-national and specifically communal level.

Over 41 million citizens spread over 945,000 square kilometres of land area depend on 133 Local Government Authorities (LGAs) for public services. To achieve improved quality, access and equitable delivery of public services particularly to the poor, LGAs must be strengthened and made autonomous. This requires fundamental changes to their organisation and their handling of activities in terms of employees, systems and resources. The government addressed this in a ‘Policy Paper on Local Government Reform’ in 1998. The Local Government Reform Programme (2000-2008) is implemented by the Prime Minister’s Office Regional Administration and Local Government (PMO RALG). It focuses on promoting fiscal decentralisation, human resources autonomy and legal harmonisation.

The programme’s second phase, called LGRP II (2009-2014), now also emphasises on the need for accountable and transparent services by LGAs and aims at increasing the people’s participation in planning and implementation according to their identified needs.

Citizens’ participation and democratic decision-making is perceived as crucial for local development and accountable and transparent local governance. By increasing citizens’ participation by strengthening LGAs and Lower Local Government Authorities (LLGAs) and thereby improving service delivery at communal level, ‘Mikukuta’ can be implemented more efficiently and effectively, thus leading to enhanced poverty alleviation.

German support in harmonising the legal framework

SULCO Support to Local Governance Processes provides long-term expertise to PMO RALG in facilitating the harmonisation of sector and national laws and regulations with the requirements of decentralisation. Respectful inter-ministerial task forces have been established and they receive advice on steering this process. By helping local governments develop adequate by-laws, the rule of law at local level is strengthened. In addition, ward tribunals receive capacity development support.

Ward Tribunals secure peace and harmony at local level

Ward Tribunals were established in 1985 when the central government decided to revitalise local government authorities. They are thus part of the decentralisation reform. They are lower courts consisting of laypersons with limited jurisdiction and they help relieve the primary courts of their increasing workload.

Their primary function is to secure peace and harmony in their areas by mediating and endeavours to obtain just and amicable settlements of disputes. If a settlement cannot be reached, the tribunals have to decide the case. In general, they adjudicate on offences such as minor assault and threats, brawling, abusive language, abduction of girls below 16, illegal gambling, fouling water and failure to send a child to primary school. Civil matters include minor disputes relating to dowry and adultery, although most cases concern land disputes.
"Often times, the family of a deceased husband will try to throw the widow out of the house she lives in and take over her shamba [field]. In such cases, we will go to that Mama and talk to her. Then, we will invite her in-laws and talk to them too. We will advise both parties to settle the case amicably. In most cases, it works out after some compensation is agreed upon."

Ward Tribunal Committee member, Madimba, Mtwara

Each ward has a Ward Tribunal. Each tribunal consists of 4 to 8 committee members who are selected by the Ward Development Committee from a list of proposed residents. Members of the National Assembly, Village Councils or Ward Committees, civil servants, persons employed in the judiciary and persons previously convicted of a criminal offence are ineligible to serve on the committee. Nominated persons have to be Tanzanian citizens who are over 18 and mentally fit. Appointed committee members hold office for a term of three years and are eligible for re-election.

"I like this work. I do it because I want to help my fellow villagers. But sometimes I think it would be better for me to go to the shamba [and get some income from field work], because we spend a lot of time and we don’t get any compensation."

Ward Tribunal Committee member, Madimba, Mtwara

Apologies, fines and compensation

Anyone can lodge a complaint with the Secretary of the Ward Tribunal, or a leader at LGA or LLGA level.

" Usually, the people of my village come to see me if there is a problem. Earlier, if I could not help enough, people went to see the officers in town. Nowadays they can go to the Ward Tribunal instead. This is much closer for people to travel and much cheaper, too."

Village Chairman of Mgao, Mtwara

The tribunal’s jurisdiction in criminal matters is limited to a fine not exceeding TSh 10,000. For civil matters, its jurisdiction is limited to awards not exceeding TSh 10,000. In land matters, jurisdiction is limited to property valued up to TSh 3 million.

"Sometimes, families do not send their children to school. But the law does not allow this. So we discuss the case in our committee and then one of us goes to see the family to find out what the matter is and advise them that they have to send their children to school. If it is a matter of money, we talk to the village leaders to see if the family can receive some support to bear the costs."

Ward Tribunal Committee member, Mgao, Mtwara
Proceedings are open to the public although anyone can be excluded on the grounds of public interest.

At the conclusion of proceedings, the tribunal may order that the party at fault apologises to the complainant, be admonished at a village or ward meeting, pays a specified fine or compensation to the complainant or does community work. In land matters there are special legal consequences in civil proceedings.

'We are most busy during the season of cashew harvesting. Because that is when people sell the crops and get money. And if they have borrowed money from a neighbour before, that neighbour might want it back now. But some people refuse to pay their debts. Then we call them to our office, listen to them and educate them on the rules of law and advise them on finding a solution.'

Ward Tribunal Committee member, Maulimba, Mtwa

Anyone who fails to obey a Ward Tribunal order commits an offence and may be convicted of a fine not exceeding T25 2,000 and/or be imprisoned for a term of up to two months. In such cases however, the matter has to be enforced by the Primary Court.

An aggrieved party can appeal to the Primary Court. Appeal decisions of the Primary Court are final except on points of law where the final appeal lies with the District Court. The appeal court for civil matters relating to land is the District Land and Housing Tribunal.

**Lay judges need training on the rule of law, legal procedures and mediation**

Committee members of Ward Tribunals are laypersons with little formal education and no professional expertise.

'The basic qualification for Ward Tribunal members is the ability to read and write. This is not sufficient. They also need knowledge in mediation and arbitration and in the ABCs of the law.'

*Officer, Municipality, Mtwa*

Since the establishment of Ward Tribunals in 1985, there have been only occasional activities within a number of development projects that aimed to improve the tribunals' impact and efficiency in administering justice. However there has been no systematic training of ward tribunal committee members.

To enhance the rule of law at local level, the Handeni District Council in the Tanga region mandated the German Development Service (DED) in 2007 to conduct training. Between September and November 2007 approximately 270 members of all ward tribunals in the Korogwe and Handeni districts participated in this pilot project. A training manual was developed in cooperation with the Korogwe District Council and was financed by Capacity Building International (IBVorent). In 2008, follow-up training was provided to 143 tribunal members in the Handeni district.
Contents of the Ward Tribunal training

- The Land Courts - structure
- The village Land Council - composition, functions and procedures in mediation and jurisdiction
- The district Land and Housing Tribunal - composition, functions, powers over the Ward Tribunal and its general jurisdiction
- The Ward Tribunal - composition, functions, quorum, jurisdiction both geographical and pecuniary, and appeals (other than land matters)

Each training session lasted 3 days and was facilitated by legal officers from the participating district councils. Participants were involved in group work and discussions on relevant problems pertaining to their day-to-day experience. Feedback from trainees and officials was overwhelmingly positive.

"After the training, the Ward Tribunal Committee has become much more impartial and we are very satisfied with their work."

Villagers from Handeni, Tanga

Therefore, in 2009 GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) sent three legal officers and two paralegals from the Mtswara region to Handeni to gain knowledge so as to introduce the training in Mtswara as well. Subsequently, training was conducted in Mtswara in 2009 based on the experiences in Korogwe and Handeni. Approximately 200 participants were trained in nine training sessions.

"The key judges do a much better job after the Ward Tribunal training. Now, fewer complaints come to my office from the villages. And also fewer cases are referred to the District tribunal now."

Officer, Municipality, Mtswara
Roll-out of training with updated manual and formal curriculum

SULGO plans to conduct further Ward Tribunal training sessions in 2010. This includes follow-up training in Dodeni, Korogwe and Mtwara as well as an expansion to other Local Government Authorities in the Tanga and Mtwara regions. For this purpose, the training manual will be reviewed and updated. New topics will be integrated, such as the principles of the Village Land Act that is crucial to the settlement of land disputes. Additionally, a curriculum for trainers and a reference book on the daily work of Ward Tribunal Committees will be developed.

PMD RALG expressed its wish to build on the positive outcomes in the Tanga and Mtwara regions and to use the training manual to develop a nationwide training concept for Ward Tribunal Committees in Tanzania.

"In my opinion, the training sessions in Tanga and Mtwara have been very successful. They should become a model for the whole country."

Legal Officer, Mtwara

What is SULGO?

- Programme name: Support for Local Governance Processes (SULGO)
- Goals: Citizens use demand-oriented and decentralised services and benefit tangibly from their participation in local governance processes, which are increasingly embedded in a legally protected framework.
- Programme Regions: Tanga and Mtwara
- Commissioned by: Federal Ministry for Economic Cooperation and Development (BMZ)
- Principal Partner: Prime Minister’s Office - Regional Administration and Local Government (PMD RALG)
- German cooperation partners: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), German Development Service (GIZ), Invenot - Capacity Building International, Germany, Centre for International Migration and Development (CIM) and KfW Entwicklungsbank (KfW)
- Duration: 2007 to 2017
- Budget: EUR 17 million
TRAINING AND ADVICE
The German Development Service (DED) places professionally experienced and socially committed specialists in strategic positions in developing countries to support local organisations and self-help initiatives. In Tanzania, the main thrust of DED's projects is capacity development at the local level, within the German sector programmes. This involves both public and private institutions as well as civil society organisations.

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TECHNICAL COOPERATION
The Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) is an international cooperation enterprise for sustainable development owned by the government. It provides viable, forward-looking solutions for political, economic, ecological and social development in a globalised world. GTZ promotes complex reforms and change processes. Its objective is to improve people's living conditions on a sustainable basis.

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HUMAN RESOURCE DEVELOPMENT
Capacity Building International (InWEnt) stands for the development of human resources and organisations within the framework of international cooperation. InWEnt's services cater to skilled and managerial staff as well as to decision makers from business, politics, administration and civil societies worldwide. InWEnt cooperates equally with partners from developing, transition and industrialised countries.

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INTEGRATED EXPERTS PROGRAMME
The Centre for International Migration and Development (CIM) is a human resources recruitment and placement organization of the German Development Cooperation. CIM places experts and managers worldwide. Their work is supported with a variety of services and by topping up their local salaries. The partners of CIM are able employers in the civil service, private sector or civil society of partner countries. On behalf of these employers, CIM recruits professionals on the German job market.

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Appendix F

English Summary

The Pursuit of the Rule of Law within a Pluri-Legal Environment:

Female Circumcision—A Case Study

Practices, customs, and rituals of local people regularly come into conflict with state and national law. This is even more true in cases where state law is in direct conflict with traditional or customary law, an issue which is occurring more and more frequently with globalization and international reform efforts. In particular, customary law and state law often come into conflict regarding issues of human rights and women’s issues. This can create significant problems for law enforcement, state officials, and customary law proponents, and can have a negative impact on the lives of community members. Potential conflicts not only make daily life difficult for citizens and law enforcement members, but create a broader problem for legal policy. Conflict leads to citizens feeling disconnected from state government, reducing compliance and driving proscribed behavior underground. Simultaneously, enforcers of state law are forced to expend an increasing share of their limited resources to monitor prohibited behaviors. Deciding precisely how or even whether to comply with state law or custom can be a significant challenge for individuals in such situations. Consequently, I became interested in the ways in which such laws conflict and coexist.

Examining the situation through a perspective of legal pluralism provides an opportunity to understand both sides of the dilemma. In a pluri-legal environment, two or more bodies of law or legal frameworks intersect in a way that allows them to operate independently—for example, state laws governing some practices, and customary laws governing others, as is the case in
much of sub-Saharan Africa. I saw an opportunity to examine the relevance of legal pluralism to a major problem in Africa. This conflict between state and customary law is particularly salient in the conflict over female circumcision. Despite laws against the practice, it persists, supported by a strong customary dictate. This state of affairs provides an ideal situation to examine not only the conflict, but the role of legal pluralism in understanding the conflict. In the style of Geertz, I examined the issue through a framework in which law is an encompassing means by which citizens can imagine and order societies. This provides a way of viewing the world, not just a way to enforce goals or to demand behaviors. In this inquiry, I sought to be at once descriptive, explanatory, and interpretive of the behaviors that I studied.

Using female circumcision as a case study, this dissertation examines the role of legal pluralism in understanding the differences that occur between state and customary law. It hints at possible solutions for lawmakers to reduce conflict and increase compliance with national laws. I identified four questions that are important in understanding female circumcision in context. This research explores why some nations are ineffectual in stopping certain behaviors, the role of custom and community on such behaviors, how researchers and lawmakers can best understand the conflict between customary and national law, and how best to address pluri-legal issues. The history, value, and justifications of and for female circumcision were explored through literature review and first-person interviews with members of the Gogo, an ethno-linguistic group in Tanzania. The results of the literature review and interviews provide insight into the nature of female circumcision, legal pluralism as a means of understanding customary and state law conflict, and recommendations to address these pluri-legal issues in the future.

My research began with a detailed literature review. I began by examining the role of legal pluralism and customary law in Africa. The African continent has the largest number of
ethno-linguistic groups, and has been marked through history by colonialism and political unrest. As a result, many pluri-legal systems have arisen. There are at least two distinct legal systems operating in much of Africa; the state law, and customary or traditional law. In addition, project law, international efforts, and business interests affect the laws of Africa. As much of Africa depends on communal property arrangements and strong ties between family and community members, the individualistic style of government that state law typically demands is often difficult to implement. Family and cultural values often take precedence over the laws of a government that is far removed from local spaces. As Mautner suggests, law constitutes culture, and often arises from inequalities between social groups. Some have noted that the ‘culture’ of the state and/or international interests actively attempt(s) to take precedence over the culture of the local people.

The literature noted that despite the argument that legal pluralism will fade away over time, and the belief that local laws will eventually coincide with state laws, there is little evidence in the African continent to suggest this. In areas where state and local law are in conflict, increased efforts to change behaviors often result in those behaviors being driven underground or, paradoxically, being more tightly embraced by citizens. Geertz supports the opposite theory, stating that society is becoming more pluralistic and must be understood through multiple social and legal lenses. Legal pluralism must be explored in the context of resolving state and customary law conflict.

Within the above context, the role of women in Africa and the role of female circumcision were explored and the relevant literature reviewed. The African continent has the highest number of cases of female circumcision per capita. Tanzania in particular has a high number of female circumcisions, despite the practice being banned in the Maputo Protocol
(2003) and a number of Tanzanian court interpretations of statutes effectively outlawing the practice. Two million African women undergo female circumcision each year, including approximately 90% of Gogo women, one of Tanzania’s largest ethnic groups. The Gogo of Tanzania were chosen as the subjects of this case study for that reason.

Among the Gogo, marriage is viewed as a mutual contract between families; the wife has a duty to bear and rear children, the man has a duty to provide for her. Women are often unable to own land, maintain jobs outside of the house, or hold other legal powers; as such, their main resource is their personal value, some of which is associated with the physical condition of their bodies, such as circumcision status. This reflects not only on the woman, but on her father, birth family, and subsequently on her husband and children. Further reinforcing this are community beliefs about female circumcision such as the belief that it is aesthetically pleasing, is hygienic, prevents promiscuity, and is a rite of passage for young women.

Female circumcision has been universally outlawed throughout the developed world and is decried by the United Nations and the World Health Organization. Most states in Africa have laws partially or totally banning the procedure; however, it continues to be widespread, especially amongst certain populations. In order to provide additional context, I specifically examined the efforts to curtail female circumcision in a variety of African states in order to understand the efficacy of such interventions. Efforts have been made by the UN, WHO, and other human rights organizations, as well as many women’s rights organizations. Most focused on educational campaigns, increased legal involvement, alternative rites of passage, and community activism. The literature indicates that in many instance these efforts have largely had little to no impact on circumcision rates in certain populations, or in fact have worsened the problem. Cultural factors come into play, as many women feel that they will be unable to marry
if they are uncircumcised; likewise, men are often forbidden or are reluctant to marry an uncircumcised woman. Amongst the Gogo, inheritance is based on patrilineal descent, often hindering women from inheriting or even surviving without being married. Circumcision is viewed as absolutely necessary for marriage, and is part of a series of rituals that bridge childhood and adulthood.

I sought to explore the perception of Gogo men and women regarding the issue of female circumcision. In addition to directly asking about circumcision and its relevance, I also asked about marriage and family, state law, and project law. The research used a case study design, focusing on a very specific issue and seeking deep, thoughtful answers. I chose to interview key informants from the community, for example, medical practitioners, law enforcement members, and members of the tribunal, a local law body. I focused on a qualitative design, analyzing the responses for consistency and themes. This resulted in a modified grounded theory approach, as suggested by Charmaz (2006), which allows researchers to identify new concepts and build theory throughout the interview process. This provides comprehensive understanding of personal and community issues, and allows theories to be drawn regarding possible resolution of such issues. Through a series of semi-structured, directed interviews, I sought to understand female circumcision and the conflict between laws regarding the issue. I used the “snowballing” method to gather 30 interview participants. Participants were over eighteen year of age, gave informed consent, consistent with best practices in research. Female social science graduate students, fluent in Swahili, conducted the interviews and transcribed and translated the responses. The interviews gathered data on the history and background of the participant, community values and experiences, and participant reflections on the juxtaposition of law and personal experience.
Questions were asked repeatedly, in different formats, to ensure reliability. In addition, the similarity of the responses was assessed during the data analysis process, ensuring reliability among respondents. Responses were compared to published literature results of similar interviews and found to be consistent. While there were variations between participants, overarching similarities occurred in many areas, indicating that the majority of the Gogo from this particular group share beliefs regarding the importance of female circumcision, the role of laws against the practice, and the impact of project law and legal actions in stopping the practice.

The results were remarkably consistent amongst respondents. Themes included the greater good of the community, respecting traditional customs, and attending to the distance in terms of space and ideology between a local Gogo community and state government. While culture is constantly evolving, the Gogo adhere to many traditional rituals. I found that they believe that this is part of what defines them as a people. While many respondents acknowledged the change that constantly occurs within the community, almost all respondents emphasized the importance of maintaining local identity. They indicated that marriage and family were of utmost importance to the Gogo, and provided examples of placing personal wishes below that of the greater good. Many men discussed feeling great pride in their family’s success, and great responsibility to care for and protect their extended family. Likewise, many women acknowledged that their status, both social and physical, reflected upon their family of origin, family through marriage, and community at large.

There was a general sense of remoteness from major metropolitan areas, which was associated with a sense of otherness and a resentment of outside interference. Those who did not comply with customary law were often excluded from the community. While most participants had participated in female circumcision in some way, they did not see themselves as
lawbreakers; rather, they felt that local custom was controlling. Some respondents indicated that state laws against circumcision only made it harder to obtain materials and conduct the procedure safely. There was some indication that the community may be open to change in the future. Members of the younger generation said the ritual had lost some of the hold on the community and may have some drawbacks. The practice may change, but there was no indication of immediacy. The change is likely to be internally motivated, not government mandated.

Based on the literature and the results of the interviews, I provided case-specific recommendations for how the issue of female circumcision might best be handled. Following the work of Pimentel, I suggested an “equal dignity approach” that considers the importance of customary law. By recognizing customary law institutions, community values and public confidence are maintained and each legal framework can regulate its respective practices. I suggested increasing opportunities for women, such as mobility, education, and property holding rights, the absence of which tends to reinforce female circumcision, in order to provide a secure place for women in the community. Accordingly, I suggested that local sensibilities could meld with international human rights goals. International reform efforts must work within the existing framework in a respectful, dignified position. I also suggested indirect reform, such as providing clean surgical tools and medical intervention. While these do not address the legal issue of female circumcision occurring, they do address larger goals of safety and cleanliness. I concluded that adequate understanding of female circumcision and its value must be accomplished before attempting to change it. The local community must be maintained in a respectful, non-imperialistic way that considers community values and needs.

Using information from the case study example and published literature, I drew broader conclusions and made recommendations. I considered the general lack of success that many state
law enforcement entities have had with enforcing laws against customary practices and other cases in the literature to make general recommendations for how to handle conflict between state and local law. I suggested that integration, which incorporates solutions on a state level while maintaining unique local characteristics, would best serve situations such as that of female circumcision. Consequently, laws must be viewed as legitimate in order for citizens to comply, and I suggested that legitimatizing law is a process of actively investing in community cooperation. Instead of focusing on punishments or rewards to change behavior, lawmakers must work with local communities to establish legitimacy. Through consultation with local authorities, direct involvement with the target population, consideration of local sensibilities and values, and addressing of structural issues such as education, mobility, and opportunities, I suggest that state laws can increase legitimacy. As a result, they will likely experience an increase in compliance.

Specifically addressing my research questions, I found a number of reasons why certain modern nations are ineffectual in their efforts to legally circumscribe behaviors. Some national efforts are not seen as legitimate by citizens. Efforts to curtail these practices run the risk of imposing on or invading local communities. Efforts to treat communities with an “equal dignity approach” and involve local authorities may help reduce the gulf between state and customary law. Custom and community values play a vital role on the existence or curtailment of prohibited behaviors and are at the heart of understanding the continued commitment to the behaviors. When state law and local custom come into conflict, citizens are more likely to uphold community traditions that seem more relevant to their community values.

Female circumcision is often portrayed by Western observers as a harmful practice with no benefits. However, this study provided insight into the world of those who live with the practice, demonstrating the significance and meaning of the act. This allows lawmakers,
researchers, and law enforcement members to understand non-compliance not through a criminal lens, but through a cultural one. This can be generalized to many other laws and prohibited behaviors. What is most important for legal authorities to understand is that the conflict has at its core a difference of values. The importance of custom and the meaning of the behavior to the community members should not be overlooked or undervalued. When making interventions, they should occur within these value frameworks. Cultural relevance should always be a key consideration and adequately understood, even when they are foreign or anathema to lawmakers and/or policymakers. Local authorities should be involved in lawmaking and enforcement processes, target populations should be consulted and involved in implementing changes, and laws should work to accommodate existing structures. In addition, I recommend that lawmakers consider structural issues that are related to the legal issue at hand; for example, considering health, safety, education, and resource issues within the community. Once these are addressed, it is likely that the associated behavioral issues will be more amenable to change.

Finally, few experimental studies have been carried out that address the way in which national governments can engage with local authorities in the fashion outlined above. An experimental study would provide more definitive answers regarding the success or failure of such programs. Likewise, few experimental studies have examined the impact of harsh criminalization as compared to alternative interventions and their effect on compliance as well as community acceptance. Such a study would further the ability of lawmakers to make good decisions regarding the way in which such laws are enacted and enforced. This inquiry starts on that path by examining the data from a qualitative perspective, raising questions, and connecting themes. By continuing research in this area, a wide array of interested entities such as academic
institutions, social justice organizations, and governments will improve not only the body of knowledge, but likely the lives of the people affected by such practices.
Appendix G

Dutch Summary

Het realiseren van rechtsstatelijkheid (‘rule of law’) in een pluriforme juridische omgeving.
Een onderzoek naar vrouwelijke besnijdenis

Het onderzoeken van deze situatie vanuit het perspectief van rechtspluralisme biedt een mogelijkheid om beide kanten van het dilemma te begrijpen. In een juridisch pluriforme omgeving kruisen twee of meer rechtsstelsels elkaar op een manier die toelaat dat zij onafhankelijk werken – e.g. het nationale recht beheerst enige praktijken en het gewoonterecht andere, zoals het geval is in een groot deel van zuidelijk Afrika. Ik zag een mogelijkheid om onderzoek te doen naar de relevantie van rechtspluralisme voor een groot probleem in Afrika. Dit conflict tussen statelijk recht en gewoonterecht is bijzonder saillant in de strijd over vrouwenbesnijdenis. Hoewel deze praktijk wettelijk verboden is, blijft deze voortbestaan, steunend op een diep gewortelde gewoonte. Deze stand van zaken is ideaal om niet alleen het conflict te onderzoeken, maar ook de rol van rechtspluralisme in het begrijpen ervan. In de stijl van Geertz, heb ik het onderwerp onderzocht vanuit een raamwerk waarin het recht een alomvattende manier is waardoor burgers zich samenlevingen kunnen voorstellen en deze kunnen ordenen. Dit biedt een manier om de wereld te aanschouwen, en niet louter een manier om doelstellingen af te dwingen of gedrag te vereisen. In dit onderzoek wilde ik het gedrag dat ik bestudeerde simultaan beschrijven, uitleggen en interpreteren.

Dit proefschrift onderzoekt aan de hand van het onderwerp vrouwenbesnijdenis de rol die rechtspluralisme speelt in het begrijpen van de verschillen die bestaan tussen nationaal recht en gewoonterecht. Het wijst op mogelijke oplossingen die wetgevers zouden kunnen gebruiken om conflicten te verminderen en de naleving van de nationale wetten te vergroten. Ik heb vier vragen geïdentificeerd die van belang zijn om vrouwenbesnijdenis in haar context te kunnen begrijpen.
Dit onderzoek gaat na waarom sommige staten er niet in slagen bepaalde gedragingen te verhinderen, wat de rol van gewoonte en gemeenschap is bij zulke gedragingen, hoe onderzoekers en wetgevers het conflict tussen gewoonterecht en nationaal recht het beste kunnen begrijpen, en hoe kwesties van juridische pluriformiteit het beste kunnen worden aangepakt. De geschiedenis, waarde en rechtvaardigingen van en voor vrouwenbesnijdenis werden onderzocht aan de hand van literatuuronderzoek en individuele vraaggesprekken met leden van de Gogo, een ethno-linguïstische groep in Tanzania. De resultaten van het literatuuronderzoek en de interviews bieden inzicht in de aard van vrouwenbesnijdenis, het rechtspluralisme als een middel om het conflict tussen gewoonterecht en nationaal recht te begrijpen, en leveren aanbevelingen op om kwesties van juridische pluriformiteit in de toekomst te adresseren.

Mijn onderzoek begon met een gedetailleerde literatuurstudie. Ik ben begonnen met het nagaan van de rol die rechtspluralisme en gewoonterecht in Afrika heeft. Het Afrikaanse continent heeft het grootste aantal ethno-linguïstische groepen, en het kolonialisme en politieke onrust hebben hun stempel op de geschiedenis van het continent gedrukt. Als gevolg daarvan zijn vele pluriforme rechtsstelsels ontstaan. In een groot deel van Afrika bestaan ten minste twee onderscheiden rechtsstelsels: het nationale recht, en het gewoonte- of traditionele recht. In aanvulling daarop hebben juridische hervormingsprojecten, internationale inspanningen en zakelijke belangen hun invloed op het Afrikaanse recht doen gelden. Omdat een groot deel van Afrika afhankelijk is van vormen van gemeenschappelijk eigendom en sterke banden tussen familie en gemeenschap, is de individualistische wijze van bestuur die het statelijke recht doorgaans vraagt vaak lastig te implementeren. Familie- en culturele waarden krijgen vaak voorrang op de wetten van een regering die ver verwijderd is van de lokale situatie. Zoals
Mautner oppert, vormt recht cultuur, en komt het vaak voort uit ongelijkheden tussen sociale
groepen. Sommigen hebben opgemerkt dat de ‘cultuur’ van de staat en/of internationale
belangen actief pogen voorrang te krijgen op de cultuur van de lokale bevolking.

In de literatuur werd opgemerkt dat ondanks de bewering dat rechtspluralisme mettertijd zal
verdwijnen en de overtuiging dat lokale wetten uiteindelijk gelijk zullen zijn aan nationale wet-
en regelgeving hiervoor weinig bewijs is in het Afrikaanse continent. In gebieden waar nationale
en lokale regelgeving met elkaar botsen, leiden extra inspanningen om gedrag te veranderen
veelal tot clandestien gedrag en paradoxalerwijze zelfs tot het sterker hechten aan het gewraakte
gedrag. Geertz verdedigt het tegenovergestelde wanneer hij stelt dat de samenleving
pluralistischer wordt en begrepen dient te worden door meerdere sociale en juridische lenzen.
Juridisch pluralisme moet worden onderzocht in de context van het oplossen van botsingen
tussen nationale en lokale wetgeving.

Tegen deze achtergrond werden de rol van vrouwen in Afrika en die van vrouwenbesnijdenis
onderzocht en de relevante literatuur geanalyseerd. Het Afrikaanse continent kent het grootste
aantal gevallen van vrouwenbesnijdenis per hoofd van de bevolking. Tanzania in het bijzonder
heeft een hoog percentage vrouwenbesnijdenis ondanks het feit dat deze praktijk in het Protocol
van Maputo (2003) werd verboden en door een aantal Tanzaniaanse gerechtelijke instanties de
facto ontwettig werd verklaard. Twee miljoen Afrikaanse vrouwen ondergaan jaarlijks
vrouwenbesnijdenis, met inbegrip van 90% van de vrouwelijke leden van de Gogo, een van de
grootste ethnische bevolkingsgroepen in Tanzania. De Gogo werden om die reden geselecteerd
voor nader onderzoek.
De Gogo beschouwen het huwelijk als een wederkerig contract tussen families: de vrouw heeft de verplichting om kinderen voort te brengen en op te voeden; de man om voor haar te zorgen. Vrouwen kunnen doorgaans geen grond bezitten, geen baan buitenshuis hebben of andere juridische bekwaamheden bezitten; hun voornaamste kracht is hun persoonlijke waarde die deels berust op de fysieke conditie van hun lichaam zoals besnijdenisstatus. Dit heeft niet alleen zijn weerslag op de vrouw maar ook op haar vader, familie, en vervolgens haar echtgenoot en kinderen. Dit wordt nog eens versterkt door gemeenschapsovertuigingen over vrouwenbesnijdenis zoals het geloof dat vrouwenbesnijdenis esthetisch aangenaam is, hygiënisch, promiscuïteit voorkomt en een *rite de passage* vormt voor jonge vrouwen.

Vrouwenbesnijdenis is in de ontwikkelde wereld alom verboden en wordt afgekeurd door de Verenigde Naties en de Wereld Gezondheidsorganisatie. De meeste staten in Afrika hebben wetten die de procedure geheel of gedeeltelijk verbieden, desondanks is zij in de praktijk nog wijdverbreid, in het bijzonder onder bepaalde bevolkingsgroepen. Teneinde meer achtergrond te geven, heb ik de pogingen om vrouwenbesnijdenis aan banden te leggen onderzocht in een variëteit van Afrikaanse staten met het doel om de doelmatigheid van dergelijke interventies te begrijpen. Pogingen zijn ondernomen door de VN, de WHO, en andere mensenrechtenorganisaties alsook vele vrouwenrechtenorganisaties. De meeste pogingen richtten zich op scholingscampagnes, toegenomen juridische betrokkenheid, alternatieve *rites de passage*, en activisme.

De literatuur geeft aan dat deze inspanningen weinig tot geen resultaat hebben gehad in termen van het aantal gevallen van vrouwenbesnijdenis in bepaalde bevolkingsgroepen, en het probleem
zelfs hebben verergerd. Culturele factoren spelen een rol omdat vele vrouwen denken dat ze niet zullen kunnen trouwen als ze niet besneden zijn, en mannen, op hun beurt, mogen vaak geen onbesneden vrouw trouwen of willen dat zelf niet. Onder de Gogo verloopt vererving via de mannelijke lijn hetgeen ongetrouwde vrouwen vaak verhindert om te erven of zelfs te overleven. Besnijdenis wordt als sine qua non voor het huwelijk gezien, en maakt deel uit van een reeks van rituelen die de adolescentie overbruggen.

Ik heb getracht de perceptie van Gogo vrouwen en mannen te onderzoeken met betrekking tot vrouwenbesnijdenis. Behalve direct vragen naar besnijdenis en de relevantie daarvan, heb ik ook gevraagd naar huwelijk en familie, nationale wet- en regelgeving en hervormingspogingen. Het onderzoek ging uit van casus waarbij werd ingegaan op een specifieke kwestie en werd gezocht naar diepe en bedachtzame antwoorden. Ik heb ervoor gekozen om goed geplaatste informanten uit de gemeenschap te interviewen, zoals bij voorbeeld praktiserende medici, rechtshandhavers en leden van het tribunaal, een lokale gerechtelijke instantie. Ik heb me gericht op kwalitatieve informatie, waarbij de respons werd bezien op consistentie en thema’s. Dit heeft geresulteerd in een gemodificeerde benadering van de ‘grounded theory approach’ van Charmaz (2006) die onderzoekers in staat stelt om nieuwe concepten te identificeren en theorie te ontwikkelen gedurende het interviewproces. Dit verschaf een alomvattend begrip van persoonlijke en gemeenschapskwesties, en maakt theorievorming mogelijk terzake van de mogelijke oplossing van dergelijke kwesties. Door middel van een reeks van semi-gestructureerde, gerichte interviews, heb ik gepoogd om vrouwenbesnijdenis te begrijpen alsook conflicterende regelgeving terzake van vrouwenbesnijdenis. Ik heb de sneeuwbalmethode gebruikt om 30 deelnemers te interviewen. De deelnemers waren ouder dan 18 jaar, stemden in met het interview
overeenkomstig de beste onderzoekspraktijken. Vrouwelijke studenten in de sociale wetenschap, vloeiend in het Swahili, voerden de interviews uit, transcribeerden en vertaalden deze. De interviews verzamelden data over de geschiedenis en achtergrond van de deelnemer, gemeenschapswaarden en ervaringen, en haar reflecties over de nevenschikking van regelgeving en persoonlijke ervaring.

Vragen werden herhaaldelijk gesteld, in wisselende vorm, om betrouwbaarheid te verzekeren. Tegelijk werd de gelijkenis van antwoorden gemeten gedurende de data-analyse om aldus betrouwbaarheid onder de respondenten te verzekeren. Antwoorden werden vergeleken met de gepubliceerde resultaten van vergelijkbare interviews en bleken daarmee consistent te zijn. Ofschoon er variaties waren onder de deelnemers, was sprake van overkoepelende gelijkenissen in velerlei opzicht hetgeen aantoont dat de meerderheid van de Gogo van deze groep dezelfde overtuigingen zijn toegedaan wat betreft het belang van vrouwenbesnijdenis, de rol van wetgeving die deze praktijk verbiedt, en de invloed van hervormingsinspanningen om deze praktijk te beëindigen.

De resultaten waren opmerkelijk consistent. Thema’s omvatten het grotere goed van de gemeenschap, het respecteren van traditionele gewoonten, en het bewustzijn van de afstand in termen van ruimte en ideologie tussen een lokale Gogo gemeenschap en de nationale overheid. Ofschoon cultuur voortdurend in ontwikkeling is, blijven de Gogo trouw aan vele traditionele rituelen. Mijn bevinding is dat zij geloven dat dit hetgeen is wat hen als een volk definieert. Terwijl vele respondenten de verandering die zich constant voordoet in de gemeenschap erkenden, benadrukten vrijwel allen het belang van het handhaven van de lokale identiteit. Zij
gaven aan dat huwelijk en familie van eminent belang zijn voor de Gogo, en gaven voorbeelden van het ondergeschikt maken van persoonlijke desiderata aan het grotere goed. Vele mannen verklaarden een groot gevoel van trots te hebben over het succes van de familie, en een grote verantwoordelijkheid te voelen om voor het grotere familieverband te zorgen en deze te beschermen. Vele vrouwen verklaarden, vergelijkbaar hiermee, dat hun status, zowel sociaal als fysiek, een weerslag heeft op hun eigen en aangetrouwde familie en de gemeenschap in het algemeen.

Er was een algeheel gevoel van afstand van de voornaamste stedelijke gebieden die werd geassocieerd met een gevoel van anders zijn en ressentiment *vis-à-vis* inmenging van buitenaf. Terwijl de meeste participanten op een of andere manier hadden geparticipeerd in vrouwenbesnijdenis, zagen zij zichzelf niet als wetsovertreders, in tegendeel, zij ervoeren de lokale gewoonte als de prevalerende. Sommige respondenten gaven aan dat de nationale wetten tegen besnijdenis het alleen maar moeilijker maakten om de daartoe benodigde materialen te verkrijgen en de procedure veilig uit te voeren. Er was enige indicatie dat de gemeenschap open staat voor verandering in de toekomst. Leden van de jongere generatie stelden dat het ritueel iets van zijn greep op de gemeenschap had verloren en nadelen heeft. De praktijk kan veranderen, maar er was geen indicatie dat dit op korte termijn zal plaatsvinden. De verandering zal hoogstwaarschijnlijk intern gedreven zijn, niet extern door de overheid.

Op basis van de literatuur en de interviews, heb ik specifieke aanbevelingen geformuleerd over de wijze waarop de kwestie van vrouwenbesnijdenis het beste kan worden aangepakt. Het werk van Pimentel volgend, heb ik een ‘gelijke waardigheid benadering’ gekozen die uitgaat van het
belang van gewoonrecht. Door het erkennen van gewoonterechtelijke instituties, worden
gemeenschapswaarden en publiek vertrouwen gehandhaafd en kan elk juridisch kader de eigen
respectieve praktijken reguleren. Ik heb voorgesteld om de positie die vrouwen in de
gemeenschap hebben te versterken door middel van bij voorbeeld mobiliteit, scholing, en
eigendomsrechten het gebrek waaraan de praktijk van vrouwenbesnijdenis lijkt te bestendigen.
Dienovereenkomstig heb ik voorgesteld dat lokale gevoeligheden worden verbonden met
internationale mensenrechten doelen. Internationale hervormingsspogingen moeten binnen het
bestaande kader plaatsvinden op een respectvolle en waardige wijze. Ik heb ook indirecte
hervorming voorgesteld zoals het voorzien in schone chirurgische instrumenten en medische
interventie. Ofschoon deze niet de juridische kwestie van vrouwenbesnijdenis adresseren, zijn ze
wel gericht op de grotere doelen van veiligheid en reinheid. Ik heb geconcludeerd dat een
adequaat begrip van vrouwenbesnijdenis en de waarde ervan is vereist alvorens wordt gepoogd
dit te veranderen. De lokale gemeenschap moet worden bezien op een respectvolle, non-
imperialistische wijze die oog heeft voor gemeenschapswaarden en –behoeften.

Gebruik makend van de casus en gepubliceerde literatuur, heb ik nog algemener conclusies
getrokken en aanbevelingen gedaan. Ik heb het algemene gebrek aan succes van vele
rechtshandhavers terzake van het afdwingen van nationale wetten die indruisen tegen lokale
gewoonten en praktijken gebruikt om algemene aanbevelingen te doen over de wijze waarop
botsingen tussen nationale en lokale wetgeving kunnen worden behandeld. Ik heb voorgesteld
dat integratie, die oplossingen op nationaal niveau incorporeert met instandhouding van unieke
lokale kenmerken, het beste situaties als die van vrouwenbesnijdenis kan dienen. Wetten moeten
bijgevolg worden bezien als legitiem willen burgers deze respecteren, en ik heb voorgesteld dat
het legitimiseren van wetten een proces is van het actief investeren in gemeenschapsparticipatie. In plaats van het zich richten op bestraffing of beloning om gedrag te veranderen, dienen wetgevers met lokale gemeenschappen te werken teneinde legitimiteit te verzekeren. Door consultatie van lokale autoriteiten, directe betrokkenheid met de doelpopulatie, het in de overwegingen betrekken van lokale gevoeligheden en waarden, en het adresseren van structurele kwesties zoals scholing, mobiliteit en kansen, heb ik gesteld dat nationale wetten aan legitimiteit kunnen winnen. Als gevolg daarvan, zal hoogstwaarschijnlijk ook sprake zijn van een grotere mate van naleving van deze wetten.


Vrouwenbesnijdenis wordt door westerlingen vaak afgeschilderd als een schadelijke praktijk zonder voordelen. Deze studie geeft echter inzicht in de wereld van degenen die met deze
praktijk leven, en toont het belang en de betekenis ervan aan. Dit geeft wetgevers, onderzoekers en rechtshandhavers de mogelijkheid om de niet-naleving niet door een strafrechtelijke maar door een culturele lens te bezien. Dit kan worden veralgemeneerd naar vele andere wetten en verboden gedragingen. Wat het meest belangrijke is voor de juridische autoriteiten is het begrijpen dat de botsing in de kern een verschil in waarden betreft. Het belang van gewoonte en de betekenis van het gedrag voor de gemeenschapsleden moet niet over het hoofd worden gezien of ondergewaardeerd worden. Wanneer interventies worden gepleegd, dienen deze plaats te vinden binnen deze waarde kaders. Culturele relevantie dient altijd een kernoverweging te zijn en adequaat te worden gevat, zelfs wanneer deze vreemd zijn of een anathema voor wetgevers en beleidsmakers. Lokale autoriteiten moeten betrokken worden bij de wetgeving en het handhavingsproces, doelpopulaties moeten worden geconsulteerd en worden betrokken bij het implementeren van veranderingen, en wetten dienen bestaande structuren te accommoderen. In aanvulling hierop, stel ik voor dat wetgevers structurele kwesties die zijn gerelateerd aan een voorliggende juridische kwestie in ogenschouw nemen; bij voorbeeld, het in aanmerking nemen van kwesties van gezondheid, veiligheid, scholing en hulpbronnen in de gemeenschap. Als deze eenmaal zijn geadresseerd, is het waarschijnlijk dat ermee geassocieerde gedragingen meer vatbaar zijn voor verandering.

Ten slotte, is er weinig experimenteel onderzoek verricht dat is gericht op de wijze waarop nationale overheden kunnen omgaan met lokale autoriteiten in de hierboven aangegeven zin. Een experimentele studie zou meer definitieve antwoorden kunnen geven over het slagen of falen van dergelijke programma’s. Er is evenzeer weinig experimenteel onderzoek verricht naar de invloed van harde criminalisering in vergelijking met alternatieve interventies en hun effect op naleving en acceptatie door de gemeenschap. Een dergelijke studie zou het vermogen van wetgevers om
goede besluiten te maken terzake van de wijze waarop dergelijke wetten worden uitgevaardigd en gehandhaafd, vergroten. Dit onderzoek begint op dit pad door het onderzoeken van data vanuit een kwalitatief perspectief, het stellen van vragen en het verbinden van thema’s. Door het voortzetten van onderzoek op dit gebied, zullen instituties zoals kennisinstellingen, organisaties op het gebied van sociale rechtvaardigheid en overheden niet alleen kennis opbouwen maar waarschijnlijk ook de levens verbeteren van degenen die worden geraakt door dergelijke praktijken.