

## **“Twice Oppressed”:**

# **Third World<sup>1</sup> Women and the Prospects for Multi-Cultural Feminism**

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<sup>1</sup> Despite its false claim to unitary representation and its anachronistic and pejorative connotations, in the context of feminism, the phrase “Third World” has been appropriated insofar as it “intentionally foregrounds a history of colonization and contemporary relationships of structural dominance between first and third world peoples.” Chandra Talpade Mohanty, Ann Russo, Lourdes Torres, eds. *Third World Women and the Politics of Feminism*. (Bloomington and Indianapolis 1991), x.

**Global interactions** increasingly rely on law to govern them. Today, numerous rules dominate the interactions between states and non-state parties. International courts and dispute settlement mechanisms are in place to ensure compliance with commonly agreed norms.

**International Law**, however, is complex and often lacks universal acceptance. Worse, its influence is disproportionately strong on the poorest countries and countries in crisis. It is in situations of poverty and conflict where international law has the most impact - for better or worse. International legal structures can provide security, stability and access to economic support, but they can just as easily prevent timely and adequate assistance. Development and humanitarian actors must increasingly be aware of their potential as well as their pitfalls.

**Good Governance** is easily prescribed, but must become a mindset of all involved to make the system work. Less and least developed countries are often governed by constitutions that are complex and inaccessible for their citizens. Without acceptance by their subjects, they weaken and cease to safeguard the nation state against failure. Development assistance must provide more than just models and institutions to move these countries forward.

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## Introduction

The international human rights canon has been the object of two major critiques since its origins in the aftermath of the Second World War. The first critique considers the human rights project to be a Western undertaking that fails to address the experiences and needs of the Developing World.<sup>2</sup> The second critique, most often put forth by feminists,<sup>3</sup> is that the human rights discourse is an extension of a gendered international legal system that fails to take into consideration the voices of women.<sup>4</sup> The first criticism has been increasingly used as grounds for the rejection of the universality of human rights through the discourse of cultural relativism.<sup>5</sup> Because it denies an objective concept of truth, which is considered to be culturally contingent, cultural relativism enables a defense of local values, traditions, and practices on the basis that no objective standard exists for assessment of state or individual actions across cultures.<sup>6</sup>

Inherently, however, these two critiques are not mutually exclusive, and indeed, both share a common concern for the recognition of difference among people and, to varying degrees, for the assimilation of this recognition into an international legal

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<sup>2</sup> Virginia A. Leary. "The Effect of Western Perspectives on International Human Rights" in *Human Rights in Africa: Cross-Cultural Perspectives*, An-Na'im and Francis Deng, eds. (Washington, DC, 1990), p. 16.

<sup>3</sup> THE TERMS "FEMINIST," "WOMEN'S RIGHTS ADVOCATE/ACTIVIST," AND "HUMAN RIGHTS ADVOCATE/ACTIVIST" WILL BE USED INTERCHANGEABLY IN THIS ESSAY FOR THE SAKE OF READABILITY. THIS IS NOT TO SUGGEST THAT ALL WOMEN'S RIGHTS ADVOCATES ARE NECESSARILY FEMINISTS, OR THAT ALL HUMAN RIGHTS ADVOCATES ADEQUATELY RECOGNIZE THE INTEGRAL NATURE OF WOMEN'S RIGHTS AS HUMAN RIGHTS. RATHER, THE INTENTION OF THIS ESSAY IS TO FOCUS ON THOSE AREAS IN WHICH THESE THREE SOMEWHAT AMORPHOUS GROUPS COALESCE WITHIN THE FRAMEWORK OF THE WOMEN'S HUMAN RIGHTS MOVEMENT.

<sup>4</sup> Hilary Charlesworth, Christine Chinkin, and Shelley Wright. "Feminist Approaches to International Law." 85 AJIL 613 at pp. 614-5.

<sup>5</sup> Others, however, have maintained that *present* human rights standards are not cross-culturally legitimate, and have proposed the reform of these standards in light of non-Western concepts and values. Sudanese academic Abdullahi Ahmed An-Na'im for example, advocates what he refers to as a "constructive approach" to the problem of cultural legitimacy. See "Problems of Universal Cultural Legitimacy for Human Rights" in An-Na'im and Deng, *supra* note 2.

<sup>6</sup> Tracy E. Higgins. "Anti-Essentialism, Relativism, and Human Rights." 19 Harvard Women's Law Journal 89 (1996), at p. 96.

framework. Consequently, in order to avoid committing the same essentialist sins that are the subject of their respective challenges, each critique must be subject to an evaluation of its internal acceptance of diversity. This essay will evaluate the multicultural claims of the women's human rights movement in light of the feminist project's goals of (re)discovering and disseminating alternatives to the dominant androcentric discourse founded on the historically silenced voice of women.<sup>7</sup> I will argue that in their efforts to secure universal respect for the human rights of women, western human rights advocates have too often marginalized and in some cases even ignored the voices of the women of the developing world.

Part I will offer a brief survey of the mainstream feminist critique of international human rights discourse and explore the response to this critique by Third World feminists. Part II will assess the latter's claims through the case study of Muslim women, arguing that the Western focus on the issues of *hijab* and female genital cutting too often overlooks the more pervasive and fundamental concerns of Muslim women, including health, education, and poverty alleviation (which I will collectively refer to as the right to development) and the reform of personal status laws. In the Conclusion, I will argue that in order for women around the world to be accorded their fundamental human dignity, the human rights movement must recognize and respect the plurality of women's voices and experiences worldwide. In response to relativist challenges, I maintain that the international community has a vital role to play in the promotion of human rights worldwide, but that this role must always acknowledge the importance of an internal

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<sup>7</sup> For an influential, albeit somewhat essentialist approach, see Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development*. (Cambridge, MA 1982)

critique that promotes the primary agency of women in addressing violations within their own communities.

### I. Critique and Counter-Critique

#### **A. The Mainstream Feminist Critique of International Human Rights**

Although feminist jurisprudence is not a monolithic entity, a central theme that runs through multiple schools of thought is the need to challenge what Charlesworth, et al refer to as the “abstract rationality” of law, and to contextualize it in order to analyze its actual effects on women’s rights.<sup>8</sup> Fundamental to this process is the examination of women’s experiences, and the understanding that the *de facto* situation of women must be considered along with the *de jure* rights provisions. This approach is highlighted in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which explicitly validates this approach in its call for the implementation of “temporary special measures aimed at accelerating de facto equality between men and women.”<sup>9</sup>

Since the establishment of the United Nations, feminists and their supporters have struggled to oblige the organization and its component human rights corpus to legally recognize women’s rights as human rights. In addition to contributions of women acting as states’ delegates to the United Nations Conference on International Organization in 1945, numerous nongovernmental women’s organizations played an important role in

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<sup>8</sup> Charlesworth, Chinkin, and Wright, *supra* note 4, at pp. 613-4.

<sup>9</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 4. G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46

lobbying for the inclusion of equality provisions and for the replacement of such androcentric terms and phrases as “rights of man” with more gender-neutral references.<sup>10</sup>

In the succeeding decades, women’s human rights have indeed achieved at least *de jure* realization both through the inclusion of equality and non-discrimination provisions in the International Bill of Rights<sup>11</sup> and through the adoption of a number of declarations and treaties specifically addressing women’s rights.<sup>12</sup> Nevertheless, several major obstacles continue to exist to the *de facto* realization of rights for women. Two of the most pernicious of these barriers are the public/private divide and cultural relativism.

The division of existence into private and public spheres is linked to the inherent androcentric origins and nature of international law. Chiefly concerned with the public sphere – with regulating the behavior of states – international human rights law in particular has failed to address the violations that most affect women for both organizational reasons – the marginalization or outright exclusion of women from political power – and for normative reasons insofar as women suffer from oppression by private actors who have not traditionally been recognized as subjects of international law.<sup>13</sup> The discourse of cultural relativism not only challenges the essence of universal standards of human rights, but it also poses specific challenges to the human rights of women, whose traditional roles tend to be closely linked to notions of culture, religion,

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<sup>10</sup> Arvonne Fraser. “Becoming Human: The Origins and Development of Women’s Human Rights.” 21 Human Rights Quarterly 853 (Issue 4, Nov. 1999) at pp. 885-886.

<sup>11</sup> The Universal Declaration of Human Rights (UDHR), Article 2, GA Res. 217A; the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 2 (2), 3, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights (ICCPR), Articles 2 (1), 26, 993 U.N.T.S. 171.

<sup>12</sup> In addition to CEDAW, *supra* note 8, these treaties include the Convention on the Political Rights of Women, 193 U.N.T.S. 135; the Declaration on the Elimination of Violence Against Women, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. res. 3318 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 146, U.N. Doc. A/9631 (1974).

<sup>13</sup> Charlesworth, Chinkin, and Wright, *supra* note 4, at pp. 621-634.

family, and society.<sup>14</sup> This symbolic role and the resultant impediments to progressive improvements of women's rights is compounded by the fact that it is mostly men who are interpreting culture in defense of practices that violate women's rights.<sup>15</sup>

### B. The Third World Feminist Counter-Critique

During the 1970s and 1980s, black feminists, particularly in the US and UK,<sup>16</sup> increasingly challenged the fundamental nature of feminism as a project based on, and therefore responsive to, the experiences and needs of "a select group of college-educated, middle and upper class, married white women."<sup>17</sup> For early feminists, the goal of the project was often to escape from the boredom of housework and to attain the freedom to enter the workforce on equal terms with men. Black feminists like bell hooks, however, pointed out that when these white women went to work, it was non-white and poor white women who would be hired to take care of their homes and children.<sup>18</sup>

Thus, mainstream feminism limited the scope of its concerns to those most often relevant to the experiences of a certain group of women, in the process neglecting the voices of women of different races and classes. Even when they did address concerns of more universal relevance to women, such as rape and domestic violence, mainstream feminists interpreted them based only on their own experiences.<sup>19</sup> Mainstream feminism

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<sup>14</sup> Christine Chinkin. "Cultural Relativism and International Law" in Courtney Howland, ed. *Religious Fundamentalisms and the Human Rights of Women* (New York 1999), p. 57.

<sup>15</sup> Higgins, *supra* note 6, at p. 113. See also the following formulation of culture, which re-emphasizes the importance of hierarchies of power in negotiating culture. Abdullahi Ahmed An-Na'im, "State Responsibility Under International Human Rights Law to Change Religious and Customary Laws" in Rebecca Cook, ed. *Human Rights of Women: National and International Perspectives* (Philadelphia 1994), p. 173:

"Culture is constantly contested in a political struggle between those who wish to legitimize their power and privilege and those who need to challenge the status quo in order to redress grievances, realize their human dignity, and protect their well-being.

<sup>16</sup> See Ranu Samantrai. *AlterNatives: Black Feminism in the Postimperial Nation*. (Stanford 2002)

<sup>17</sup> bell hooks. *Feminist Theory from margin to center*. (Boston 1984), p. 1.

<sup>18</sup> *Ibid.*, p. 2.

<sup>19</sup> Higgins, *supra* note 6, at 99.

therefore represented an attempt at essentialism that ignored the importance or even the existence of factors of race, social class, religion, culture, sexuality, and other fundamental differences among women in the name of creating a broader base of support in the struggle for women's rights. For many black women, for example, these attempts at marking gender as the sole category of difference led to the perception that the feminist movement was anti-male, a position which repudiated the importance of "bonding between black women and men [as] part of anti-racist struggle" and "made feminism appear to be a movement that would enable white women to usurp white male power, replacing white male supremacist rule with white female supremacist rule."<sup>20</sup>

This understanding that non-white women were victims of double oppression, not just as women, but also as non-white – an experience that could be shared with other non-white males – was particularly relevant to women in the developing world. In emerging from colonialism, these women often found themselves trapped between the struggle for women's rights and the anti-colonial struggle, in which women's symbolic roles as guardians of culture and tradition were particularly important.<sup>21</sup> Therefore, the mainstream feminist critique outlined in the previous section was often inadequate to the experience and context of non-western women. The formation of an alternative to this critique was facilitated by networking between women of color from the First World and women from the developing world at international conferences held as part of the United Nations Decade for Women, and particularly at the International Women's Year conference in Mexico City in 1975 and the 1980 Copenhagen Conference on Equality,

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<sup>20</sup> hooks, *supra* note 17, at 18.

<sup>21</sup> Charlesworth, Chinkin, and Wright, *supra* note 4, at 619-20.



Development, and Peace.<sup>22</sup> While facilitating communication and cooperation, such encounters were also flashpoints in the struggle for a global articulation of feminism.<sup>23</sup>

## II. Case Study: Muslim Women and Human Rights

In reviewing what he considers to be the three major challenges to the human rights movement, Michael Ignatieff cites resurgent Islam as presenting a longstanding and – despite numerous attempts at reconciliation – still unresolved critique of the discourse.<sup>24</sup> Indeed, at UN Fourth Conference on Women held at Beijing in 1995, the rights of Muslim women were a central topic of discussion.<sup>25</sup> In this section, I will analyze two issues that are closely associated with Muslim women, focusing on an examination of the standard Western conception of, and reaction to, *hijab* and female genital cutting. After each, I will offer a proposed alternative with which Western feminists might become more deeply and meaningfully involved.

### A. Hijab

Perhaps no subject is as representative of Muslim women, and of the tensions and misunderstandings that exist between Muslims and non-Muslims, than that of the veil or *hijab*. The literal meaning of the Arabic word refers to the curtain or screen from behind which believers were enjoined to address the Prophet Mohamed's wives in the Qu'ran, but in contemporary usage, the word *hijab* has come to refer to Islamic head covering of a variety of types and styles.<sup>26</sup> Although there is a rich literature detailing Western,

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<sup>22</sup> See Cheryl Johnson-Odim. "Common Themes, Different Contexts: Third World Women and Feminism" in Mohanty, Russo, and Torres, *supra* note 1, especially at 317-18.

<sup>23</sup> See Higgins, *supra* note 6 at pp. 89-90, referring particularly to the 1995 Beijing Women's Conference.

<sup>24</sup> Michael Ignatieff. "The Attack on Human Rights" in *Foreign Affairs*. November/December 2001, pp. 102-4. The other sources of challenge he identifies come from East Asia and from within the West itself.

<sup>25</sup> Azizah al-Hibri. "Islam, Law, and Custom: Redefining Muslim Women's Rights." 12 *American University Journal of International Law and Policy* 1 (1997), pp. 1-2.

<sup>26</sup> Muslim Women's League. "An Islamic Perspective on Women's Dress." [www.mwlusa.org/publications/positionpapers/hijab.html](http://www.mwlusa.org/publications/positionpapers/hijab.html)

mainly European, travelers' encounters with the veiled women of the Orient, the images of veiled Muslim women has grown increasingly ubiquitous since the terrorist attacks of September 11, 2001 engendered more widespread interest in Islam.<sup>27</sup> Around the same time, the subject of human rights – and particularly women's rights – in Taliban-controlled Afghanistan became a central preoccupation in the West as the United States planned and justified its military response in that country. The evocative image that accompanied news reports and articles was most often that of an anonymous, silent Afghan woman hidden beneath her blue *burqa*. The reduction of Muslim women's identity and issues to an item of dress has been linked to a greater oversimplification of Islam in the Western media, a perspective that, for example, fails to recognize the significance of compulsory unveiling as a form of oppression.<sup>28</sup>

Even in Afghanistan, which, under Taliban control, enforced a uniquely extreme dress code for women, the disproportionate focus on the *burqa* by Western campaigning groups such as the Feminist Majority<sup>29</sup> was in effect a distraction from more important and immediate concerns. In 2001, the NGO Physicians for Human Rights conducted an investigation into the human rights conditions of Afghan women, with a particular focus on health.<sup>30</sup> In one portion of the study, researchers asked a sample population of female heads of household and close male relatives what issues they considered important to their human rights; only 28 percent of women and 22 percent of men responded that

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<sup>27</sup> Laila al-Marayati and Semeen Issa. "An Identity Reduced to a Burqa." LA Times Sunday Opinion, January 20, 2002, available at *Muslim Women's League*, [www.mwlnusa.org/publications/opinion/veil.html](http://www.mwlnusa.org/publications/opinion/veil.html)

<sup>28</sup> Ibid.

<sup>29</sup> The Feminist Majority Foundation's Gender Apartheid campaign was much criticized, particularly for selling swatches of *burqa* mesh for five dollars each. See for example *supra* note 27.

<sup>30</sup> Physicians for Human Rights. *Women's Health And Human Rights In Afghanistan*. [http://www.phrusa.org/campaigns/pdf/afghan\\_pdf\\_files/04\\_womens\\_rights.pdf](http://www.phrusa.org/campaigns/pdf/afghan_pdf_files/04_womens_rights.pdf)

freedom from punishment for violations of the dress code were important.<sup>31</sup> By contrast, the vast majority of respondents, both male and female, identified development issues as being of great importance, as will be discussed below.

## B. Development

*“The women in Kabul who come to human rights agencies seeking protection from the Taliban do not want to cease being Muslim wives and mothers; they want to combine their traditions with education and professional health care provided by a woman.”<sup>32</sup>*

The issues of health, education, and poverty alleviation that I have grouped into the heading of “development” are of deeper and more immediate concern to Muslim women around the world than is the debate over the veil. Nevertheless, Western commentators disproportionately cite Islam, among all world religions, as an impediment to development.<sup>33</sup> This misapprehension may be due in some part to a failure to recognize both the heterogeneous and dynamic nature of Islam itself, as well as the ability and desire of Muslims, as reflected in the above quotation from late 2001, to assimilate human rights values into their lives without discarding their own identities.

The Physicians for Human Rights survey referred to in the previous section found, not surprisingly, that the vast majority of both women and men rated basic needs such as food and shelter as very or extremely important. A more significant insight, however, was that legal guarantees for women’s rights and equal access to development for women, including health care, educational and economic opportunities, were “considered important nearly as frequently as basic needs.”<sup>34</sup> It is also interesting to note

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<sup>31</sup> “Women’s Rights, Community Health And Development Survey” in *supra* note 30, at p. 59

<sup>32</sup> Ignatieff, *supra* note 24 at p. 110.

<sup>33</sup> Women Living Under Muslim Laws. “With Her Feet on the Ground: Women, religion and development in Muslim communities.” *News and Views*, January 13, 2003. [www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-20149 &cmd\[189\]=x-189-20149](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-20149 &cmd[189]=x-189-20149)

<sup>34</sup> Physicians for Human Rights, *supra* note 31 at p. 61.

that the Afghan Women's Bill of Rights, drafted in Kandahar in early September 2003 by a diverse group of women's leaders and activists, begins with demands for education and health care and goes on to mention security and economic and political opportunities, but makes no mention of dress codes.<sup>35</sup> Whether or not the decision to exclude this issue was a political one intended to skirt a potentially divisive issue, its absence clearly indicates that the priorities of the women involved relate to needs considered more fundamental or vital.

Overcoming stereotyped and reductionist views of Islam and Muslim women are in the interest not only of those who would benefit from better-focused development strategies but also in the interest of human rights activists worldwide, who must urgently work towards bridging divides between First and Third Worlds and all other such categories which are currently constructed as dichotomous. These efforts might be guided by the gendered analysis of poverty inspired by the Beijing Platform for Action that was approved at the Fourth World Conference on Women, which focuses on analyzing the reasons women become impoverished and on implementing strategies towards women's empowerment as a means of combating these causes.<sup>36</sup> Since then, a new generation of studies have slowly begun to emerge which, although focusing on Muslim women, do not consider religion as the sole basis of identity, and instead examine other, more structural obstacles to equal access to development objectives, including lack of political will on the parts of governments to implement human rights

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<sup>35</sup> Women Living Under Muslim Laws. "Afghanistan: Women's Bill of Rights." *News and Views*, October 7, 2003. [www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-20342 &cmd\[189\]=x-189-20342](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-20342 &cmd[189]=x-189-20342).

<sup>36</sup> Christine Chinkin. "Gender, International Society, Law and Policy." Available online at [www.unu.edu-millennium-chinkin](http://www.unu.edu-millennium-chinkin), pp. 20-21, citing Beijing Declaration and Platform for Action, UN Doc. A/Conf.177/20, 17 October 1995, para. 49.

policies.<sup>37</sup> This approach, linked to a deeper understanding of the richness of Muslim identity, is advocated by the organizations and scholars that will be explored at greater length in Section D with regard to Personal Status laws.

### **C. Female Genital Cutting**

The World Health Organization (WHO) has estimated that between 100 and 140 million women throughout the world have undergone some form of Female Genital Cutting, or FGC.<sup>38</sup> Despite the fact that Egypt, Sudan, and Somalia, three countries where the practice is commonplace, are predominantly or officially Muslim states, Christians in Egypt, Sudan, and other African nations practice FGC, and the majority of Muslims do not engage in the practice.<sup>39</sup> Nevertheless, the practice is often associated with Islam, particularly because of recent well-publicized incidents involving refugees and immigrants living in the West.<sup>40</sup>

FGC is one of the most controversial and widely contested issues within the women's human rights movement; indeed, it is often raised as an example of cultural relativism and western imperialism in the context of the "mainstream" human rights movement. Even the practice's name itself is contested; this debate is in many ways representative of the failure of otherwise well-intentioned human rights activists in the West to properly engage and respond to the experiences and needs of the communities within the Developing World that sanction or at least condone the practice. In choosing

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<sup>37</sup> Women Living Under Muslim Laws, *supra* note 33, referring to the following USAID study: Katjasungkana, Nursyahbani (no date) 'The Indonesian Legal System and the Empowerment of Women'. Available at: [www.law.unimelb.edu.au/news/assets/Nursyahbanipaper.doc](http://www.law.unimelb.edu.au/news/assets/Nursyahbanipaper.doc)

<sup>38</sup> World Health Organization. *WHO Information Fact Sheets: FGM*. Fact Sheet No. 241, June 2000. [www.who.int/inf-fs/en/fact241.html](http://www.who.int/inf-fs/en/fact241.html)

<sup>39</sup> Muslim Women's League. "Female Genital Mutilation." [www.mwlnusa.org/publications/positionpapers/fgm.html](http://www.mwlnusa.org/publications/positionpapers/fgm.html)

<sup>40</sup> For example, see the following article about the conviction of a Malian Muslim female circumciser living in Paris: "World: Europe Woman jailed for 48 circumcisions" *BBC News*. Wednesday, February 17, 1999. <http://news.bbc.co.uk/1/hi/world/europe/281026.stm>

to refer to the practice as “cutting,” I have sought a common denominator between three types of commonly practiced procedures,<sup>41</sup> and have deliberately rejected three popular alternatives. The first, “circumcision,” is inadequate both in its denotation as only one form of cutting that is practiced, and in its connotation, which, at least in the West, invites parallels to the surgical removal of the foreskin of infant males, which is widely practiced and accepted as healthy in the US and elsewhere. For many of the same reasons, I also consider “surgery,” with its connotation of hospitals and surgeons, to be inappropriate.<sup>42</sup>

By far the most troublesome term, however, and the term which serves to underscore the conceptual and practical rifts between First and Third World Feminists regarding the practice, is “mutilation.” While evocative of the horror that many women experience, is not only an inadequate term insofar as it collapses differences between the three major types of cutting, but more importantly in light of the multicultural feminist project, is insensitive and dehumanizing to women who have undergone FGC<sup>43</sup> and insulting to parents who have sanctioned the cutting of their daughters.<sup>44</sup> African feminists in particular have argued that the Western campaign to eliminate what it calls mutilation, with its implied associations to African barbarism and the tendency to depict midwives and other practitioners and the mothers who sanction it as evil and sadistic, is

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<sup>41</sup> World Health Organization. *Female Genital Mutilation Programmes to Date: What Works and What Doesn't A Review.*, 1999, p.3. WHO/CHS/WMH/99.5. The WHO differentiates between three major types, which roughly correspond to the descriptive names in brackets: “Type I [**Circumcision** proper] - excision of the prepuce, with or without excision of part or all of the clitoris, Type II [**Excision**] - excision of the clitoris with partial or total excision of the labia minora, Type III [**Infibulation**] - excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening.”

<sup>42</sup> Hope Lewis. “Between *Irua* and ‘Female Genital Mutilation’: Feminist Human Rights Discourse and the Cultural Divide.” 8 *Harvard Human Rights Journal* 1 (1995), at p. 7.

<sup>43</sup> Makua Mutua. “The Complexity of Universalism in Human Rights.” Lecture delivered at *10<sup>th</sup> Annual Conference on “The Individual vs. the State,”* Central European University, Budapest, 14-16 June 2002. Available Online at [www.ceu.hu/legal/indy\\_vs\\_state/Mutua\\_paper\\_2002.htm](http://www.ceu.hu/legal/indy_vs_state/Mutua_paper_2002.htm)

<sup>44</sup> Kay Boulware-Miller. “Female Circumcision: Challenges to the Practice as a Human Rights Violation.” 8 *Harvard Women’s Law Journal* (1985), p. 165.

employing a racist and reductionist discourse that ignores more basic health and educational imperatives that could also lessen the occurrence of FGC.<sup>45</sup>

Although in the case of *hijab*, I proposed that Western advocates focus their attention instead on the more fundamental issue of development, in the case of FGC, both because of the scope and severity of the practice as well as the damage done to relations between Western and non-Western feminists over the issue, it is necessary for Western human rights advocates to take positive steps at reforming their approach towards this issue while also responding to other priorities expressed by non-Western women.

Isabelle R. Gunning, in her venerable statement on multicultural feminism, advocates the development of an ethos of “world travelling” in relation to “culturally challenging” practices such as FGC; central to this methodology is the imperative to contextualize both the practice in question as well as the observer’s own reaction, taking into account how he or she is perceived by the “other.”<sup>46</sup> Much to its credit, the WHO, at least on paper, has recognized the importance of health and other workers achieving “cultural competency by assessing their own values and biases . . . and by respecting the values, culture, and biases of others.”<sup>47</sup> This attitude must be implemented in practice, along with efforts aimed at replacing culturally significant practices with less harmful alternatives.

#### **D. Personal Status Laws**

*“The majority of Muslim women who are attached to their religion will not be liberated through the use of a secular approach imposed from the outside by international bodies or from above by undemocratic governments. The only way to resolve the conflicts of these women...is to build a solid Muslim feminist*

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<sup>45</sup> Lewis, *supra* note 42, pp. 25-33, especially pp. 28,29,33.

<sup>46</sup> Isabelle R. Gunning. “Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries.” 23 Columbia Human Rights Law Review 189 (1991-92), at p. 194

<sup>47</sup> World Health Organization, *supra* note 38, at p.6

*jurisprudential basis which clearly shows that Islam not only does not deprive them of their rights, but in fact demands these rights for them.*<sup>48</sup>

Unlike FGC, the personal status or family laws that govern rites of passage such as marriage and divorce affect most of the world's Muslim women, whether or not they live in Islamic, or even Muslim-majority countries. The laws themselves are based primarily on the *Qur'an* and on the *Sunna* (traditions and examples of the Prophet Mohamed), which together are referred to as *Shari'a*, but they also derive from the *fiqh*, or jurisprudence of scholars of the major schools of Islamic jurisprudence; while the former is considered divine and immutable, the latter is human and therefore subject to reinterpretation.<sup>49</sup> This issue extends to the core of the debate over Islam and Human Rights; in order to avoid establishing a false dichotomy between these two traditions, it is essential that both traditions be reinterpreted to achieve a mutually reinforcing cross-cultural validity.<sup>50</sup>

Progressive Islamic scholars such as Abdullahi Ahmed An-Na'im and Azizah al-Hibri have offered proposals for the reconstruction of the concept of *qawama*, or male guardianship over women, upon which other limitations on women's rights are justified.<sup>51</sup> Internationally, this principle has resulted in the reservations that many Muslim states have to Article 16 of CEDAW, which among other rights, relates to freedom to enter and dissolve a marriage on the same terms as men as well as equal rights regarding children.<sup>52</sup> The reinterpretation of the patriarchal traditions that limit women's

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<sup>48</sup> al-Hibri, *supra* note 25, at p.3

<sup>49</sup> al-Hibri, *supra* note 25, at pp. 6-9.

<sup>50</sup> Abdullahi Ahmed An-Na'im. "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives. A Preliminary Inquiry." 3 Harvard Human Rights Journal 13 (1990), especially at pp. 21-25.

<sup>51</sup> An-Na'im *supra* note 15 at pp. 181-184 and al-Hibri, *supra* note 25 at pp. 25-35

<sup>52</sup> See Jane Connors, "The Women's Convention in the Muslim World" in M. Yamani, ed. *Feminism and Islam: Legal and Literary Perspectives* (1996) and CEDAW, *supra* note 9, at Article 16.



rights must be undertaken in a way that respects the diversity both of women's experiences and their attitudes towards their faith. Organizations such as the US-based Muslim Women's League, for example, consider Islam the source of ideals of justice, but encourage cooperation with secular organizations with equivalent goals.<sup>53</sup>

### **Conclusion**

Respecting the agency of women to identify the human rights concerns they consider most troubling or immediate rather than imposing a Western agenda not only is respectful of the feminist project's own discourse on listening to historically silenced voices, but is also particularly significant in the Developing World, where the experience of colonialism, its symbolic associations, and collective memory make the importation of any discourse perceived as non-indigenous particularly vulnerable to criticism as a form of neo-imperialism. Western feminists and human rights activists have long focused on issues of symbolic importance to them, such as *hijab* and female genital cutting, to the detriment of issues such as development and legal reform that present the most immediate concerns to Third World women. By assuming a secondary, supportive role which implements the "world travelling" ethos described above and focuses on the needs that women in the Developing World describe as most fundamental, Western feminists will help empower women around the world to struggle for their human rights.

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<sup>53</sup> Muslim Women's League. "About Muslim Women's League." [www.mwlusa.org/about.html](http://www.mwlusa.org/about.html). See also the approach of Women Living Under Muslim Law Network, [www.wluml.org](http://www.wluml.org).

## Selected Bibliography

### Books and Journal Articles

- al-Hibri, Azizah. "Islam, Law, and Custom: Redefining Muslim Women's Rights." 12 *American University Journal of International Law and Policy* 1 (1997).
- An-Na'im, Abdullahi Ahmed. "State Responsibility Under International Human Rights Law to Change Religious and Customary Laws" in Rebecca Cook, ed. *Human Rights of Women: National and International Perspectives* (Philadelphia, 1994).
- \_\_\_\_\_. "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives. A Preliminary Inquiry." 3 *Harvard Human Rights Journal* 13 (1990)
- Boulware-Miller, Kay. "Female Circumcision: Challenges to the Practice as a Human Rights Violation." 8 *Harvard Women's Law Journal* (1985).
- Charlesworth, Hilary, Christine Chinkin, and Shelley Wright. "Feminist Approaches to International Law." 85 *AJIL* 613.
- Chinkin, Christine. "Cultural Relativism and International Law" in Courtney Howland, ed. *Religious Fundamentalisms and the Human Rights of Women* (New York, 1999)
- Connors, Jane. "The Women's Convention in the Muslim World" in M. Yamani, ed. *Feminism and Islam: Legal and Literary Perspectives* (1996).
- Engle, Karen. "International Human Rights and Feminism: When Discourses Meet." 13 *Michigan Journal of International Law* 517 (Spring 1992)
- Fraser, Arvonne. "Becoming Human: The Origins and Development of Women's Human Rights." 21 *Human Rights Quarterly* 853 (Issue 4, Nov. 1999)
- Gilligan, Carol. *In a Different Voice: Psychological Theory and Women's Development*. (Cambridge, MA, 1982)
- Gunning, Isabelle R. "Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries." 23 *Columbia Human Rights Law Review* 189 (1991-92)
- Higgins, Tracy E. "Anti-Essentialism, Relativism, and Human Rights." 19 *Harvard Women's Law Journal* 89 (1996).
- hooks, bell. *Feminist Theory from margin to center*. (Boston, 1984)

- Ignatieff, Michael. "The Attack on Human Rights" in *Foreign Affairs*, November/December 2001
- Lewis, Hope. "Between *Irua* and 'Female Genital Mutilation': Feminist Human Rights Discourse and the Cultural Divide." 8 *Harvard Human Rights Journal* 1 (1995)
- Mohanty, Chandra Talpade, Ann Russo, and Lourdes Torres, eds. *Third World Women and the Politics of Feminism*. (Bloomington and Indianapolis, 1991)
- Samantrai, Ranu. *AlterNatives: Black Feminism in the Postimperial Nation*. (Stanford, 2002)
- Virginia A. Leary. "The Effect of Western Perspectives on International Human Rights" in *Human Rights in Africa: Cross-Cultural Perspectives*, An-Na'im and Francis Deng, eds. (Washington, DC, 1990)

#### Online Resources and Publications

- al-Marayati, Laila and Semeen Issa. "An Identity Reduced to a Burqa." *LA Times* Sunday Opinion, January 20, 2002, available at *Muslim Women's League*, [www.mwlusa.org/publications/opinion/veil.html](http://www.mwlusa.org/publications/opinion/veil.html)
- BBC World. "Europe Woman jailed for 48 circumcisions." Wednesday, February 17, 1999. <http://news.bbc.co.uk/1/hi/world/europe/281026.stm>
- Chinkin, Christine "Gender, International Society, Law and Policy." Available online at [www.unu.edu-millennium-chinkin](http://www.unu.edu-millennium-chinkin).
- Muslim Women's League. "An Islamic Perspective on Women's Dress." [www.mwlusa.org/publications/positionpapers/hijab.html](http://www.mwlusa.org/publications/positionpapers/hijab.html)
- \_\_\_\_\_. "About Muslim Women's League." [www.mwlusa.org/about.html](http://www.mwlusa.org/about.html)
- \_\_\_\_\_. "Female Genital Mutilation." [www.mwlusa.org/publications/positionpapers/fgm.html](http://www.mwlusa.org/publications/positionpapers/fgm.html)
- Mutua, Makua. "The Complexity of Universalism in Human Rights." Lecture delivered at 10<sup>th</sup> Annual Conference on "The Individual vs. the State," Central European University, Budapest, 14-16 June 2002. Available Online at [www.ceu.hu/legal/indv\\_vs\\_state/Mutua\\_paper\\_2002.htm](http://www.ceu.hu/legal/indv_vs_state/Mutua_paper_2002.htm)
- Shaheed, Farida. "Constructing Identities - Culture, Women's Agency and the Muslim World." *Women Living Under Muslim Laws* (Dossier 23-24, July 2001). [www.wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-b8d9e7bb57afe44ac173650d33d2d395&cmd\[190\]=i-190-b8d9e7bb57afe44ac173650d33d2d395](http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-b8d9e7bb57afe44ac173650d33d2d395&cmd[190]=i-190-b8d9e7bb57afe44ac173650d33d2d395)

Physicians for Human Rights. *Women's Health And Human Rights In Afghanistan..*  
[www.phrusa.org/campaigns/pdf/afghan\\_pdf\\_files/04\\_womens\\_rights.pdf](http://www.phrusa.org/campaigns/pdf/afghan_pdf_files/04_womens_rights.pdf)

Women Living Under Muslim Laws. "With Her Feet on the Ground: Women, religion and development in Muslim communities." *News and Views*, January 13, 2003.  
[www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-20149  
&cmd\[189\]=x-189-20149](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-20149&cmd[189]=x-189-20149)

---

\_\_\_\_\_. "Afghanistan: Women's Bill of Rights." *News and Views*,  
October 7, 2003. [www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-20342  
&cmd\[189\]=x-189-20342](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-20342&cmd[189]=x-189-20342).

World Health Organization. *WHO Information Fact Sheets: FGM*. Fact Sheet No. 241,  
June 2000. [www.who.int/inf-fs/en/fact241.html](http://www.who.int/inf-fs/en/fact241.html)

---

\_\_\_\_\_. *Female Genital Mutilation Programmes to Date: What Works and What Doesn't A Review.*, 1999, WHO/CHS/WMH/99.5.

### International Human Rights Documents

*Beijing Declaration and Platform for Action*, UN Doc. A/Conf.177/20, 17 October 1995.

*Convention on the Political Rights of Women*, 193 U.N.T.S. 135.

*The Declaration on the Elimination of Violence Against Women*, G.A. res. 48/104, 48  
U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993)

*The Declaration on the Protection of Women and Children in Emergency and Armed  
Conflict*, G.A. res. 3318 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 146, U.N.  
Doc. A/9631 (1974).

*The International Covenant on Economic, Social and Cultural Rights*, U.N.T.S. 3.

*The International Covenant on Civil and Political Rights*, 993 U.N.T.S. 171.

*The Universal Declaration of Human Rights*, GA Res. 217A.