

ALERT SERIES

WOMEN

FEMALE GENITAL MUTILATION

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NOTE: This paper has been particularly written to address the information needs and issues of concern to U.S. Asylum Officers and other Immigration Officers. As such, it may not be exhaustive in its coverage of related human rights issues. To facilitate easy access to information, certain paragraphs, phrases and facts may have been repeated in several sections of this paper. Although a wide range of sources was consulted in preparing this document, only a few of the major sources are cited in the footnotes and bibliography of this document.

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PART I

Background

In Africa today, women's voices are being raised for the first time against genital mutilations still practiced on babies, little girls, and women. These voices belong to a few women, who...remain closely attached to their identity and heritage, but are prepared to call it in question when traditional practices endanger their lives and their health. They are beginning the delicate task of helping women free themselves from customs which have no advantage and many risks for their physical and psychological well-being, without at the same time destroying the supportive and beneficial threads of their cultural fabric.¹

The World Health Organization estimates that over eighty million infants, adolescents, and women have been subjected to female genital mutilation. These mutilations continue to be performed in more than thirty countries in Africa (including parts of Burkina Faso, Djibouti, Egypt, Ethiopia, Guinea Bissau, Kenya, Mali, Nigeria, Senegal, Sierra Leone, Somalia, and Sudan) and Asia (including parts of Indonesia, Malaysia, Oman, South Yemen, and the United Arab Emirates), as well as among immigrant communities in other countries.¹

The following are the types of female genital mutilation:²

- Circumcision, or cutting of the prepuce or hood of the clitoris is the mildest form of female genital mutilation and affects only a small percentage of the concerned women.
- Excision, or cutting/removal of the clitoris and all or part of the labia minora.
- Infibulation, or cutting of the clitoris, the whole of the labia minora and at least the anterior two-thirds and often the whole of the medial part of the labia majora. The two sides of the vulva are then stitched together with silk, catgut or thorns, and a tiny sliver of wood or reed is inserted to preserve an opening for urine and menstrual blood. The girl's legs are usually bound together from ankle to knee until the wound has healed, which may take up to 40 days.

¹World Health Organization, *Female Genital Mutilation: World Health Assembly Calls for the Elimination of Harmful Traditional Practices* (Geneva: WHO Office of Information, Press Release WHA/10, 12 May 1993), p. 1.

²Dorkenoo, Efu; Elworthy, Scilla, *Female Genital Mutilation: Proposals for Change* (London: Minority Rights Group, April 1992), p. 7.

Health and Socio-cultural Consequences

Female genital mutilation is performed on infants, children, adolescents, and adult women. It is usually performed with unsterilized instruments (such as razor blades, knives, broken glass/shells) and without anesthesia. The following is a characteristic description of the genital mutilation (infibulation) of a 7-year old girl:

Her mother had carefully dressed and perfumed her for the ceremony. Eggs were broken over her head for fertility. A dozen strong hands held her still... Something sharp -- a flint, a piece of broken glass, possibly a razor -- was used to slice off her clitoris. Then, the inner lips of her vagina were cut loose and surrounding flesh was scraped away. Finally, the outer lips were sewn tightly shut with catgut and acacia thorns...There was no anesthesia. Not allowed to cry, she was told to bite on a stick of wood to bear the pain. For weeks, her legs were tied together, held motionless, while her wound healed.²

These genital mutilations have serious, and often fatal, consequences. Immediate consequences can include excruciating pain, hemorrhage, tetanus, vesicula-vaginal fistulae (rupture of the vaginal walls), septicemia, and death. The long-term consequences can include scarring, infertility, painful sexual intercourse, long and obstructed labor, chronic uterine and vaginal infections, HIV infection from contaminated instruments, bladder incontinence, dysmenorrhea, and obstruction of the flow of menstrual blood. During childbirth, the risks of maternal death, stillbirths, hemorrhage, and infection are greatly increased.³

In May 1993, the World Health Organization's Forty-Sixth World Health Assembly unanimously adopted a resolution on *Maternal Child Health and Family Planning for Health*

³World Health Organization, *Female Genital Mutilation: World Health Assembly Calls for the Elimination of Harmful Traditional Practices* (Geneva: WHO Office of Information Press Release WHA/10, 12 May 1993), p. 1. Dorkenoo, Efua ; Elworthy, Scilla, *Female Genital Mutilation: Proposals for Change* (London: Minority Rights Group, April 1992), p. 8-10.

which highlights the importance of eliminating harmful traditional practices, such as female genital mutilation, which "...restrict the attainment of the goals of health, development and human rights for all members of society."⁴

It should be recognized that female genital mutilation is performed on infants, children, adolescents, single, married, pregnant, and post-partum women. The justifications for female genital mutilation vary across ethnic groups; tradition, culture and religion are among the complex reasons invoked for this harmful practice. It has been used to control women's sexuality, and in certain instances, to create the appearance of virginity. In some communities, it is performed on infants, or as an initiation rite for pre-pubescent girls. In certain societies, the procedure is performed during pregnancy in the belief that a newborn will die when its head touches the clitoris. In other instances, women are expected to undergo the procedure following the birth of each child. In most societies where female genital mutilation is practiced, the practice is also a prerequisite for marriage. To ensure that a woman's family receives the requisite "bride price" from the groom's family, the bride must be able to prove that she has undergone female genital mutilation.⁵

On a strictly practical level, a bride price cannot be obtained if a girl is not _pure._

In Nigeria, the operation serves the purpose of enabling the potential mother-in-law of discovering whether or not the girl is a virgin: _If she is found not to be a virgin, the husband-to-be has the right to reject her and refuse to go along with the marriage. A row ensues and a refund of the dowry has to be made._⁶

A woman who has not undergone genital mutilation may be considered a social outcast or

⁴World Health Organization, *Female Genital Mutilation: World Health Assembly Calls for the Elimination of Harmful Traditional Practices* (Geneva: WHO Office of Information, Press Release WHA/10, 12 May 1993), p. 1.

⁵Dorkenoo, Efua; Elworthy, Scilla, *Female Genital Mutilation: Proposals for Change* (London: Minority Rights Group, April 1992), pp. 12-14. El Dareer, Asma, *Woman, Why Do You Weep? Circumcision and its Consequences* (London: Zed Press, 1982), pp. 12-76. In certain Asian and European countries, tradition has required women to bring a dowry to marriage (this practice is still in effect in some countries), whereas in most African countries, the tradition has been (and in many cultures still is) for men to bring a "bride price" to the marriage.

⁶Dorkenoo, Efua; Elworthy, Scilla, *Female Genital Mutilation: Proposals for Change* (London: Minority Rights Group, April 1992), p. 14.

as someone who has _destroyed the family honor_ and deserves to be killed.⁷ In developing countries where single woman have no independent means of economic support and where women are socialized to believe that marriage and motherhood are a duty, refusal to undergo this practice can have dire consequences. It is for this reason, perhaps, that women in the societies concerned have only recently begun to protest a practice which is viewed with shock and horror by outsiders.

Female genital mutilation has been continued and condoned in the name of religion, culture, and tradition. Female genital mutilation is often justified under the pretext of adherence to religious practices and frequently cited as an Islamic religious practice. According to Dr. Taha Ba'asher of the World Health Organization, this argument has been refuted by leading Islamic theologians. Female genital mutilation is neither supported by the Koran nor practiced in Saudi Arabia, the cradle of Islam. It is an ancient ritual, dating from around the fifth century B.C., which is currently practiced by Muslims, Christians, and adherents of traditional religions alike in Africa and Asia.⁸ Certain practitioners/advocates of female genital mutilation claim to be guided by their own interpretation of Islam, or by other faiths, or are deliberately manipulating religion to provide a rationale for violence against women. Thus, women opposing the practice may be targeted because of their perceived rejection of religious principles or beliefs.

According to the Minority Rights Group, few African countries have officially condemned female genital mutilation and still fewer have enacted formal legislation against the practice. Official declarations against the practice have been made by the Presidents of Benin, Gambia, Burkina Faso and Senegal. Some form of legislation against female genital mutilation

⁷World Health Organization, *Female Genital Mutilation: World Health Assembly Calls for the Elimination of Harmful Traditional Practices* (Geneva: WHO Office of Information Press Release WHA/10, 12 May 1993), p. 1.

⁸Dorkenoo, Efua ; Elworthy, Scilla, *Female Genital Mutilation: Proposals for Change* (London: Minority Rights Group, April 1992), p. 12-13. Taba, A.H., "Female Circumcision," *World Health* (Geneva: World Health Organization, May 1979).

exists in Sudan, Egypt, Somalia and Kenya. In reality, however, this legislation often does not protect women against the practice. While the Kenyan legislation provides for the arrest of a traditional practitioner who performs these mutilations, the legislation in Sudan and Egypt permits partial removal of the clitoris, and the Somali legislation is only in the form of a proposed bill to eradicate female genital mutilation.⁹ Therefore, it remains practically true that women have little legal recourse and may face threats to their freedom, threats or acts of physical violence, or social ostracization for refusing to undergo this harmful traditional practice or for attempting to protect their female children.

PART II

International Condemnation of Female Genital Mutilation

Female genital mutilation and human rights violations against women have been discussed in various United Nations bodies:

- In June 1993, the United Nations World Conference on Human Rights stressed the need to work toward the elimination of violence against women, and called upon the General Assembly to adopt the *Draft Declaration on the Elimination of Violence against Women*:

In particular, the World Conference stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices,

⁹Dorkenoo, Efua ; Elworthy, Scilla, *Female Genital Mutilation: Proposals for Change* (London: Minority Rights Group, April 1992), p. 11-12. Letter from Berhane Ras-Work, President, Inter-African Committee for the Eradication of Traditional Practices Affecting the Health of Women and Children in Africa to Kaye Stearman, Deputy Director, Minority Rights Group (Geneva: *Inter-African Committee for the Eradication of Traditional Practices Affecting the Health of Women and Children*, 1 June 1992), p. 1.

cultural prejudices and religious extremism.³

In addition, the final document of the World Conference states that "it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."¹⁰

The final *Declaration on the Elimination of Violence against Women*, adopted by United Nations General Assembly Resolution 48/104 on December 20, 1993, recognizes that violence against women, including female genital mutilation, is a human rights violation by:

[a]ffirming that violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, and concerned about the long-standing failure to protect and promote these rights and freedoms in relation to violence against women...¹¹

- Article 2 of the *Declaration on the Elimination of Violence Against Women* explicitly states:

Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women...¹²

- The United Nations High Commissioner for Refugees *Executive Committee Conclusion 73 (1993) on Refugee Protection and Sexual Violence*:

[s]upports the recognition as refugees of persons whose claim to refugee status is based on a well-founded fear of persecution,

¹⁰United Nations General Assembly, *Vienna Declaration and Programme of Action, Note by the Secretariat*, 12 July 1993, A/CONF.157/23, p. 5, para. 5.

¹¹United Nations General Assembly, *Declaration on the Elimination of Violence Against Women* (Geneva: U.N. General Assembly, "A/RES/48/104," 23 February 1994), p. 2. United Nations General Assembly, *Vienna Declaration and Programme of Action, Note by the Secretariat*, 12 July 1993, "A/CONF. 157/23," p. 18-20.

¹²United Nations General Assembly, *Declaration on the Elimination of Violence Against Women* (Geneva: U.N. General Assembly, "A/RES/48/104," 23 February 1994), article 2, p. 3. United Nations General Assembly, *Vienna Declaration and Programme of Action, Note by the Secretariat*, 12 July 1993, "A/CONF. 157/23," p. 18-20.

through sexual violence, for reasons of race, religion, nationality, membership of a particular social group or political opinion.¹³

- The United Nations Committee on the Elimination of All Forms of Discrimination Against Women has "adopted" *General Recommendation No. 14, Female Circumcision*. In this 1990 recommendation, the Committee is:

[n]oting with grave concern that there are continuing cultural, traditional and economic pressures which help to perpetuate harmful practices, such as female circumcision...¹⁴

- The United Nations Population Fund held a series of discussions in Ottawa and their recommendations, included in the 1994 *Report of the Round Table on Women's Perspectives on Family Planning, Reproductive Health and Reproductive Rights*, will be forwarded to the 1994 International Conference on Population and Development in Cairo. These recommendations explicitly recognize "reproductive rights as human rights" and discuss "genital mutilation" and "culture":

Reproductive Rights as Human Rights:

1. Governments, the international community and non-governmental organizations should work towards implementing fully the Convention on the Elimination of All Forms of Discrimination Against Women and other human rights conventions that guarantee women their rights, particularly those that relate to sexual and reproductive health. They should also collaborate with the Committee on the Elimination of Discrimination Against Women in formulating general recommendations and guidelines on those instruments. Special attention should be paid to the implementation of recommendations contained in the Vienna Declaration and Programme of Action relating to women's sexual and reproductive health and women's rights.

Genital Mutilation:

¹³United Nations High Commissioner for Refugees, "Executive Committee Conclusion No. 73 (XLIV) Refugee Protection and Sexual Violence," *Report of the 44th Session* (Geneva: Office of the United Nations High Commissioner for Refugees, U.N. Doc. "A/AC.96/821 (1993)," para. 21 (d). Immigration and Refugee Board, *Guidelines Issued By the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Canada: Immigration and Refugee Board, 9 March 1993), p. 1.

¹⁴United Nations Committee on the Elimination of Discrimination Against Women, "Female Circumcision," *General Recommendation No. 14*, Ninth Session, 1990, p. 80.

8. Genital mutilation is a major lifelong risk to women's reproductive health and a violation of the rights of girls and women. Governments should vigorously act to stop that practice and to protect the right of women and girls to be free from such unnecessary and dangerous procedures.

Culture:

10. ...In the development of policies and programmes, all parties are called upon to ensure that culture and tradition do not justify practices or procedures that impede the development of girls and women, jeopardize their health, limit their freedom or threaten their security.¹⁵

In addition, the imposition of female genital mutilation may infringe on human rights protected under the following international legal instruments:

- The *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* prohibit all acts of torture and cruel, inhuman or degrading treatment or punishment.¹⁶

¹⁵United Nations Population Fund, *Report of the Round Table on Women's Perspectives on Family Planning, Reproductive Health and Reproductive Rights, Ottawa, Canada, 26-27 August 1993* (New York: International Conference on Population and Development, 1994), pp. 2, 4-5.

¹⁶The *Declaration on the Elimination of Violence Against Women* notes that the following rights are protected under the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment*:

- . The right to life (Universal Declaration of Human Rights, Article 3 and International Covenant on Civil and Political Rights, Article 6)
- . The right to equality (International Covenant on Civil and Political Rights, Article 26)
- . The right to liberty and security of person (Universal Declaration of Human Rights, Article 3 and International Covenant on Civil and Political Rights, Article 9)
- . The right to equal protection under the law (International Covenant on Civil and Political Rights, Article 26)
- . The right to be free from all forms of discrimination (International Covenant on Civil and Political Rights, Article 26)
- . The right to the highest standard attainable of physical and mental health (International Covenant on Economic, Social and Cultural Rights, Article 12)
- . The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment (Universal Declaration of Human Rights, Article 5 and International Covenant on Civil and Political Rights,

- The 1979 *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) is the most comprehensive piece of international human rights legislation for women. It addresses "...the right of half of humanity to protection from oppressive practices embedded in laws and customs..."¹⁷ Article 5 of CEDAW explicitly recognizes that culture cannot continue to be used as a justification for human rights violations against women:

Article 5: State Parties shall take all appropriate measures:

(a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary superiority of either of the sexes or on stereotyped roles for men and women;¹⁸

Article 7 and Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)

United Nations General Assembly, *Declaration on the Elimination of Violence Against Women* (Geneva: U.N. General Assembly, "A/RES/48/104," 23 February 1994), Article 3, p. 3.

¹⁷Eisler, Riane, "Human Rights: Towards an Integrated Theory for Action," *Feminist Issues* (Rutgers: Feminist Forum, Inc., Spring 1987), p. 26.

¹⁸*Convention on the Elimination of All Forms of Discrimination against Women*, Part 1, Article 5, adopted Dec. 18, 1979, G.A. Res. 34/180. U.N. GAOR, 34th Session, Supp. No. 46, at 194, U.N. Doc. A/RES/34/46 (1980). *African [Banjul] Charter on Human and People's Rights*, adopted June 27, 1981, O.A. U. Doc. CAB/LEG/67/3/Rev.5 (1981) (entered into force October 21, 1986), Articles 4, 5 and 18.

- It should be recognized that female genital mutilation violates the rights of children, as well as adult women. Article 24 (3) of the 1990 United Nations *Convention on the Rights of the Child* states:

State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.¹⁹

Article 21 of the *African Charter on the Rights and Welfare of the Child* provides:

[p]rotection against harmful social and cultural practices.

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) those customs and practices prejudicial to the health or life of the child; and

(b) those customs and practices discriminatory to the child on the grounds of sex or other status.²⁰

- The campaign against female genital mutilation, on a grass-roots level within Africa and on a policy level with national and international organizations, has been spear-headed, *inter alia*, by the Inter-African Committee for the Eradication of Traditional Practices Affecting the Health of Women and Children in Africa. According to its President, Berhane Ras-Work, a universal concept of human rights which incorporates women's rights is critical to the eradication of female genital mutilation. African leaders have condemned female genital mutilation and a few African countries have passed legislation against the practice. Yet, the force of custom remains stronger than the force of law.²¹
- European nations, including Belgium, France, Netherlands, Norway, Sweden, Switzerland and the United Kingdom, have passed legislation against female genital

¹⁹*Convention on the Rights of the Child*, Article 24 (3), adopted November 20, 1989, G.A. Res. 44/45, U.N. Doc. A/44/736 (1989) (entered into force September 2, 1990). United Nations General Assembly, *Adoption of the Final Documents and Report of the Conference, Report of the Drafting Committee, Addendum, Final Outcome of the World Conference on Human Rights*, 24 June 1993, "A/CONF.157/DC/1/Add.1," p. 23, para. 3.

²⁰Naldi, Gino J., ed., "African Charter on the Rights and Welfare of the Child," *Documents of the Organization of African Unity* (London: Mansell, 1992), p. 191.

²¹Ras-Work, Berhane, President, Inter-African Committee for the Eradication of Traditional Practices Affecting the Health of Women and Children in Africa, personal interview, May 1993 and 22 February 1994.

mutilation. In several of these countries, it has been designated as child abuse.²²

- In the United States, Representative Patricia Schroeder has been working to pass legislation (H.R. 3247) against female genital mutilation.

PART III

UNHCR and Canadian Considerations for Women Seeking Asylum or Refugee Status⁴

To be eligible for asylum or refugee status based on fear of female genital mutilation or harm to be suffered for opposition to the practice or refusal of the practice, a woman must establish that the treatment she fears constitutes persecution, that her fear of that treatment is well-founded, and that the harm will be inflicted on account of one of the five grounds listed in the internationally-accepted refugee definition: race, religion, nationality, membership in a particular social group or political opinion.

²²"Women: Dutch Government Ends Debate on Circumcision Proposal," *Inter/Press Service* (London: 11 November 1992), p. 83. Dorkenoo, Efua ; Elworthy, Scilla, *Female Genital Mutilation: Proposals for Change* (London: Minority Rights Group, April 1992), p. 11.

UNHCR Executive Committee Conclusions

- In its 1985 Conclusion No. 39(k) (XXXVI), on Refugee Women and International Protection, the Executive Committee of the UNHCR explicitly:

[r]ecognized that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a particular social group within the meaning of Article 1A(2) of the 1951 United Nations Refugee Convention.⁵
- In response to Executive Committee Conclusion No. 64(b) (XLI), on Refugee Women and International Protection (1990), which "[i]nvites UNHCR to develop comprehensive guidelines on the protection of refugee women as a matter of urgency...", the High Commissioner issued *Guidelines on the Protection of Refugee Women* (document EC/SCP/67). Paragraphs 94 and 102 of the *Guidelines* explicitly call female genital mutilation a "harmful practice."²³
- In response to a request for advice on their position on female genital mutilation as a ground for refugee status, the UNHCR Division of International Protection explained that the *Guidelines*:

...encourage the use of the "particular social group" category to encompass the circumstances of certain women -- circumstances which may form the basis of an asylum claim. The guidelines state that a woman's claim to refugee status can be based on severe discrimination, on the ground of sex, that rises to the level of "persecution for transgressing social mores" (para. 56). In cases where FGM is an accepted and compulsory practice, women who refuse to undergo it or to have their children undergo it may be considered to have transgressed social mores, and depending on the particular circumstances, their treatment as a result may amount to persecution.²⁴
- In its 1993 Conclusion No. 73(d) on Refugee Women and Sexual Violence, the UNHCR Executive Committee:

²³United Nations High Commissioner for Refugees, *Guidelines on the Protection of Refugee Women* (Geneva: Office of the United Nations High Commissioner for Refugees, July 1991). Executive Committee Conclusion No. 64(b) (XLI) "Refugee Women and International Protection," contained in the UNHCR/Centre for Documentation on Refugees Database "EXCOM Conclusions database."

²⁴United Nations High Commissioner for Refugees, *Memorandum: Female Genital Mutilation* (Geneva: UNHCR Division of International Protection, SUS/HCR/011 Washington [UNHCR], 10 May 1994), para. 5.

[s]upports the recognition as refugees of persons whose claim to refugee status is based on a well-founded fear of persecution, through sexual violence, for reasons of race, religion, nationality, membership of a particular social group or political opinion.²⁵

- The UNHCR Division of International Protection has concluded "that FGM, an act which causes severe pain as well as permanent physical harm, amounts to a violation of human rights, including the rights of the child, and can be regarded as persecution. The toleration of these acts by the authorities, or the unwillingness of the authorities to provide protection against them, amounts to official acquiescence. Therefore, a woman can be considered a refugee if she or her daughters/dependents fear being compelled to undergo FGM against their will; or [if] she fears persecution for refusing to undergo or to allow her daughters to undergo the practice."²⁶

The Executive Committee's conclusions are particularly relevant in cases of female genital mutilation, which has been performed for centuries and has become deeply entrenched in the traditional practices of these societies. Women who oppose this practice, or attempt to protect their female children from it, are clearly transgressing the social mores of their societies.

Canadian Guidelines

- In March 1993, the Chairperson of the Canadian Immigration and Refugee Board issued ground-breaking guidelines for *Women Refugee Claimants Fearing Gender-Related Persecution* which have important implications for women in Canada fleeing gender-based persecution and violence. These guidelines explicitly recognize that women can face such persecution irrespective of their own actions and solely because of their membership in a particular social group: women.⁶

More importantly, the Canadian guidelines build on the UNHCR Executive Committee resolution by discussing women:

²⁵United Nations High Commissioner for Refugees, "Executive Committee Conclusion No. 73 (XLIV) Refugee Women and Sexual Violence," *Report of the 44th Session* (Geneva: Office of the United Nations High Commissioner for Refugees, U.N. Doc. "A/AC.96/821 (1993)," para. 21 (d).

²⁶United Nations High Commissioner for Refugees, *Memorandum: Female Genital Mutilation* (Geneva: UNHCR Division of International Protection, SUS/HCR/011 Washington [UNHCR], 10 May 1994), para. 7.

...who fear persecution as the consequence for failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin. Such laws and practices, by singling out women and placing them in a more vulnerable position than men, may create conditions precedent to a gender-defined social group.²⁷

- The Canadian guidelines raise the following issue which is critical to assessing asylum claims based on female genital mutilation and other forms of sexual violence:

Under what circumstances does sexual violence, or a threat thereof, or other prejudicial treatment towards women constitute persecution as that term is jurisprudentially understood?²⁸

The Canadian guidelines enumerate grounds other than membership in a particular social group which are particularly important for women who oppose the practice of female genital mutilation. These grounds are political opinion and religion:

Political Opinion: A woman who opposes institutionalized discrimination of women, or expresses views of independence from male social/cultural dominance in her society, may be found to fear persecution for reasons of imputed political opinion (i.e., she is perceived by the established political/social structure as expressing politically antagonistic views). Two considerations are of paramount importance when interpreting the notion of "political opinion":

- (1) In a society where women are "assigned" a subordinate status and the authority exercised by men over women results in a general oppression of women, their political protest and activism do not always manifest themselves in the same way as those of men.

²⁷ Immigration and Refugee Board, *Guidelines Issued By the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Canada: Immigration and Refugee Board, 9 March 1993), p. 3.

²⁸ Immigration and Refugee Board, *Guidelines Issued By the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Canada: Immigration and Refugee Board, 9 March 1993), p. 1.

- (2) The political nature of oppression of women in the context of religious laws and ritualization should be recognized. Where tenets of the governing religion in a given country require certain kinds of behaviour exclusively from women, contrary behaviour may be perceived by the authorities as evidence of an unacceptable political opinion that threatens the basic structure from which their political power flows.²⁹

In the last decade, many women in the concerned societies have begun to protest a practice which has been viewed with shock and horror by outsiders. Feminists who advocate recognition of female genital mutilation as a basic violation of human rights have encountered opposition from those who view these attempts as cultural condemnation, cultural imperialism, and/or "Western" feminism.

As a result, African women who oppose female genital mutilation, or try to protect their female children, are frequently denounced by family, friends, and society as "Western" feminists and may face threats to their freedom, threats or acts of physical violence, and social ostracization. According to Nahid Toubia of the Population Council, "...when African and Arab women speak out against FGM, they are accused by conservatives of aligning with the West to undermine the traditional (and religious) values of their societies."³⁰

According to the Canadian guidelines, women who oppose the practice of female genital mutilation may also come under the following grounds:

Religion: In the context of the refugee definition, the notion of religion may encompass, among other freedoms, the freedom to hold a belief system of one's choice or *not to hold* a particular belief system... In certain states, the religion assigns certain roles to women; if a woman does not fulfill her assigned role and is

²⁹Immigration and Refugee Board, *Guidelines Issued By the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Canada: Immigration and Refugee Board, 9 March 1993), p. 4.

³⁰Toubia, Nahid, *Female Genital Mutilation: A Call for Global Action* (New York: Women, Ink, 1993), p. 35.

punished for that, she may have a well-founded fear of persecution for reasons of religion. A woman may also be perceived as expressing a political view (and have a political view imputed to her) because of her attitude and/or behavior towards religion.³¹

³¹Immigration and Refugee Board, *Guidelines Issued By the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Canada: Immigration and Refugee Board, 9 March 1993), p. 4.

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⁴Specific considerations for U.S. Asylum Officers adjudicating claims from female asylum applicants are currently under development by INS; these may address female genital mutilation and other gender-based or gender-related asylum claims.

⁵United Nations High Commissioner for Refugees, "Executive Committee Conclusion No. 39 (XXXVI) Refugee Women and International Protection," *Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR* (Geneva: Office of the United Nations High Commissioner for Refugees, 1992), p. 84.

⁶Immigration and Refugee Board, *Guidelines Issued By the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Canada: Immigration and Refugee Board, 9 March 1993), pp. 1-20.