

A MULTI-LEVEL, INTEGRATED APPROACH TO ENDING FEMALE GENITAL MUTILATION/CUTTING IN INDONESIA

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INTRODUCTION

An excellent wife, who can find?
For her worth is far above jewels.
The heart of her husband trusts in her,
And he will have no lack of gain
Strength and dignity are her clothing,
And she smiles at the future.
She opens her mouth in wisdom,
And the teaching of kindness is on her tongue.¹

The words of King Lemuel's wise mother have been preserved and passed on to generations of young women, preparing them for the challenging, yet honorable duties of marriage and motherhood. In some cultures, however, the focus of a woman's preparation for marriage is not a preparation of the heart or mind; rather, the standards set for a woman to be an acceptable bride have digressed to physical alterations of her body.² Female circumcision is considered a requirement for presenting one's daughter as a pure and accepted woman in many societies.³

Female circumcision or female genital mutilation/cutting (FGM) is a cultural tradition in Indonesia.⁴ Although it was outlawed in 2006, the ban did not diminish the practice of FGM in Indonesia.⁵ Rather, it became a prevalent practice outside of hospitals, performed by traditional healers in unsanitary conditions.⁶ Indonesia represents a unique situation;

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¹ *Proverbs* 31:10–11, 25–26 (NASB).

² *Female Genital Mutilation*, WORLD HEALTH ORG. 13 (2000), available at http://whqlibdoc.who.int/hq/2000/who_fch_wmh_00.5_eng.pdf.

³ *Id.*

⁴ Meiwita Budiharsana et al., *Female Circumcision in Indonesia: Extent, Implications and Possible Interventions to Uphold Women's Health Rights*, POPULATION COUNCIL 8 (Sept. 2003), available at http://pdf.usaid.gov/pdf_docs/PNACU138.pdf.

⁵ Irfan Al-Alawi, *Indonesian Government's Backward Step on Female Genital Mutilation*, GATESTONE INST. (Sept. 26, 2011, 4:30 AM), <http://www.gatestoneinstitute.org/2452/indonesia-female-genital-mutilation>.

⁶ Lack of regulation and oversight contribute to the persistent practice of FGM in Indonesia. *Indonesia: Female Genital Mutilation Persists Despite Ban*, IRIN (Sept. 2, 2010),

although it is a secular democratic republic, it is largely Islamic and heavily influenced by ultra-conservative Islamic leaders.⁷ Influential Islamic leaders in Indonesia spoke out against the 2006 ban, arguing that male and female circumcision is essential to Islam.⁸ In response to this pressure, Indonesia's Ministry of Health issued regulation 1636/2010, which legalized FGM and included "guidelines" for how FGM should be performed.⁹

Although the United Nations passed Resolution 67/146 in December 2012, specifically condemning FGM in any capacity, the Indonesian government has continued to allow medicalized FGM.¹⁰ The Council of Indonesian Ulama (MUI)¹¹ demanded that the Indonesian government maintain the legality of female circumcision.¹² Although many international Islamic leaders condemn FGM, the highly influential religious leaders in Indonesia maintain that "[c]ircumcision is a part of the Islamic teachings that were recommended for Muslims, both male and female."¹³

Many organizations have helped to decrease the prevalence of FGM in various African nations, and similar steps must be taken in Indonesia to fight the prevalence of FGM.¹⁴ These organizations have been successful by focusing not only on legislation and government policy, but

<http://www.irinnews.org/report/90366/indonesia-female-genital-mutilation-persists-despite-ban>.

⁷ *Islam in Indonesia*, INDONESIA-INVS., <http://www.indonesia-investments.com/culture/religion/islam/> (last visited Apr. 6, 2015).

⁸ Al-Alawi, *supra* note 5. "Nadhlatul Ulama (NU, also spelled Nadhatul Ulama, and meaning 'Revival of Islamic Scholars') issued a religious opinion in 2010 approving FGM but advising against 'cutting too much.'" *Id.*

⁹ Abby Selden, *Female Genital Mutilation in Indonesia*, HOW SHE SCREAMS: A SAMA TATA FOUND. BLOG (Mar. 30, 2012), <http://samatatafoundationfgm.wordpress.com/2012/03/30/female-genital-mutilation-in-indonesia/>.

¹⁰ G.A. Res. 67/146, ¶ 4, U.N. DOC. A/RES/67/146 (Dec. 20, 2012); Al-Alawi, *supra* note 5.

¹¹ The Council of Indonesian Ulama, also known as the Majelis Ulama Indonesia (MUI), is Indonesia's top Muslim clerical body. *Council of Indonesian Ulama*, BERKLEY CENTER FOR RELIG. PEACE & WORLD AFF., <http://berkeleycenter.georgetown.edu/organizations/council-of-indonesian-ulama> (last visited Jan.

28, 2015). It is a national moderate Muslim clerical body that issues "fatwas" or religious rulings, for various contemporary issues and public policies. *Id.*

¹² *MUI Pushes Govt to Circumcise Girls*, JAKARTA POST (Jan. 22, 2013, 9:41 AM), <http://www.thejakartapost.com/news/2013/01/22/mui-pushes-govt-circumcise-girls.html>.

¹³ *Id.*

¹⁴ See, e.g., *Prevalence and Legal Framework*, DESERT FLOWER FOUND., http://www.desertflowerfoundation.org/wp-content/uploads/2014/07/Chart-FGM-Legal-Framework_english.pdf (last visited Mar. 29, 2015).

also on educating those practicing FGM and reaching out to communities.¹⁵ In addition to this multi-level approach, international pressure must be placed on Indonesia to end this practice. Professor Terry Hull of the Australian Demographic & Social Research Institute, Australian National University,¹⁶ asserts that female circumcision is, alarmingly, becoming more popular and brutal in Indonesia.¹⁷

Indonesia faces particular difficulty in eradicating FGM as it navigates opposing pressures from the international community and the MUI. The Indonesian government must take a firm stance against and work more effectively to eradicate FGM in order to fulfill its obligations and commitments to the United Nations Human Rights Committee and the international community. Due to Indonesia's unique political and religious composition, the Indonesian government must integrate community education and social programs that inform Indonesians on the dangers of FGM and the truth about its origins in addition to criminalizing all FGM procedures. This Note will focus on the often-overlooked practice of FGM in Indonesia, including the origins of the practice, the medicalization of FGM in Indonesia, why it maintains such a strong foothold in that nation, and the efforts that should be taken to eradicate FGM.

I. FEMALE CIRCUMCISION AND FEMALE GENITAL MUTILATION/CUTTING

FGM currently affects approximately 140 million girls and women internationally, and about 3 million women are at risk of undergoing FGM each year.¹⁸ FGM is largely the product of religious sects, tradition, and culture.¹⁹ As a result of these deeply ingrained conventions, various types of FGM are practiced in different communities and nations worldwide.²⁰

¹⁵ See generally MUTESHI J. & SASS J., FEMALE GENITAL MUTILATION IN AFRICA: AN ANALYSIS OF CURRENT ABANDONMENT APPROACHES (Dec. 2005), available at http://www.path.org/publications/files/CP_fgm_combnd_rpt.pdf.

¹⁶ Professor Terence H. Hull, AUSTRALIAN NAT'L UNIV., <https://researchers.anu.edu.au/researchers/hull-th> (last update Apr. 7, 2015).

¹⁷ *Debate in Indonesia Over UN Plan to Ban Female Circumcision*, ABC RADIO AUSTRALIA (Jan. 23, 2013, 10:07 PM), <http://www.radioaustralia.net.au/international/radio/program/asia-pacific/debate-in-indonesia-over-un-plan-to-ban-female-circumcision/1077806>.

¹⁸ Letter from Yasmeen Hassan, Global Dir., Equality Now and Listiyowati, Chairperson, Kalyanamitra, to U.N. Human Rights Committee 1 (June 13, 2013), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/EqualityNow1_Indonesia_HRC108.pdf; Press Release, United Nations, UN Agencies Unite Against Female Genital Mutilation (Feb. 27, 2008), available at <https://www.un.org/es/women/endviolence/pdf/FGM%20press%20release.pdf>.

¹⁹ See Budiharsana, *supra* note 4, at 8–9.

²⁰ See *Sexual and Reproductive Health: Female Genital Mutilation and Other Harmful Practices*, WORLD HEALTH ORG.,

A. *Types of FGM*

FGM is classified into four categories: Type I includes the most harmful and severe types of FGM, whereas Type IV generally includes less-severe types of FGM.²¹ Type I includes partial or complete removal of a woman's clitoris or prepuce, also called a "clitoridectomy."²² Type II is the partial or complete removal of the clitoris and labia minora, which sometimes includes excision of the labia majora.²³ Type III includes the narrowing of the vaginal orifice with a covering seal, which is created by cutting and appositioning the labia minora or the labia majora.²⁴ This type is sometimes accompanied by excision of the clitoris.²⁵ Type IV encompasses all other harmful FGM for non-medical purposes, including pricking, piercing, incising, scraping, and cauterization.²⁶

There are severe short-term and long-term consequences of FGM, the results of which may vary depending on what type of FGM is performed.²⁷ Short-term consequences may "include severe pain, shock caused by pain and/or excessive bleeding (hemorrhage), difficulty in passing urine and faeces" due to swelling, fluid retention, and infection.²⁸ Hemorrhaging and infection have led to death in some cases.²⁹ Long-term consequences of FGM are both physical and psychological.³⁰ Physically, women may experience dermoid cysts, abscesses, severe pain during sexual intercourse, chronic pelvic infections that can lead to chronic back and pelvic pain, urinary tract infections, menstruation problems, and even infertility in some cases.³¹ Additionally, there is an increased risk for childbirth complications, including postpartum hemorrhaging, necessary caesarean sections, and increased probability of tearing.³² Studies have

<http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/> (last visited Mar. 29, 2015).

²¹ *Media Centre: Female Genital Mutilation: Factsheet No. 241*, WORLD HEALTH ORG. (Feb. 2014), <http://www.who.int/mediacentrefactsheets/fs241/en/>; *see also An Update on WHO's Work on Female Genital Mutilation (FGM) Progress Report*, WORLD HEALTH ORG. 3 (2011), available at http://whqlibdoc.who.int/hq/2011/WHO_RHR_11.18_eng.pdf [hereinafter *WHO Progress Report*].

²² *WHO Progress Report*, *supra* note 21.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See id.* at 2–3.

²⁸ *Id.* at 2.

²⁹ *Id.* at 2–3.

³⁰ *See id.* at 3.

³¹ *Id.*

³² *Id.*

found higher death rates among infants whose mothers had been subjected to FGM.³³

Psychological effects of FGM include post-traumatic stress disorder, anxiety, depression, psychosexual problems, low self-esteem, and phobia.³⁴ When more severe types of FGM are performed, additional surgeries are generally necessary in order to open infibulations to enable sexual intercourse and childbirth.³⁵ Some countries practice “re-closure” at various times in a woman’s life.³⁶ FGM has absolutely no health benefits to women, but rather obstructs a woman’s natural development and functions.³⁷

B. Prevalence of FGM

Although this brutal procedure has been recognized as a major problem in various African countries, its prevalence in the Middle East and Southeast Asia is somewhat unclear due to the lack of information made available by the countries in those regions.³⁸ Researchers report that FGM is less severe in Southeast Asia compared to the practice in African nations;³⁹ many places in Southeast Asia practice either Type I or IV FGM.⁴⁰ However, the Gatestone Institute reports that “[e]ven a small wound on the genitals can lead to sexual, physiological[,] and physical problems.”⁴¹

Apart from the severity of this practice, the large percentage of the population it reaches is a cause for concern. FGM is practiced in numerous countries in Africa, the Middle East, and Southeast Asia.⁴² The estimated percentage of women in these countries affected by FGM spans from only 5% of women in Ghana and 20-35% of women in Cameroon, to 97% of women in Egypt.⁴³ Countries with the highest estimated prevalence of FGM include Djibouti (98%), Guinea (98%), Iraqi Kurdistan (72%), Mali (91-94%), Sierra Leone (90%), Somalia (98%), and Sudan (90%).⁴⁴

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Media Centre: Female Genital Mutilation, supra note 21.*

³⁸ *See WHO Progress Report, supra note 21, at 2.*

³⁹ Al-Alawi, *supra note 5.*

⁴⁰ William G. Clarence-Smith, *Islam and Female Genital Cutting in Southeast Asia: The Weight of the Past*, 3

FINNISH J. OF ETHNICITY AND MIGRATION 14, 14–16 (2008), available at http://etmu.fi/wp-content/uploads/2013/01/FJEM_2_2008.pdf; see also Budiharsana, *supra note 4, at 6.*

⁴¹ Al-Alawi, *supra note 5* (internal quotations removed).

⁴² *See Prevalence and Legal Framework, supra note 14.*

⁴³ *Id.*

⁴⁴ *Id.*

Although statistics concerning the severity and frequency of FGM in Indonesia are lacking, it is estimated that nearly 100% of women in Indonesia are subjected to FGM.⁴⁵

The United Nations Children's Fund (UNICEF) issued a major report on FGM, published in July 2013, which did not include Indonesia in its report because of insufficient data.⁴⁶ According to Efua Dorkenoo, advocacy director of Equality Now's FGM program, the "patchy data" from Indonesia results from a "reluctance to talk about the issue and strong pressure put on governments by religious leaders."⁴⁷ In various countries, such as Indonesia, official estimates are unavailable.⁴⁸

However, the Population Council in Jakarta performed a number of field studies in 2003 that surveyed about 2,660 female children from households in Indonesia.⁴⁹ According to the field study results, among the households interviewed with children aged 15-18, 86-100% of the female children were circumcised.⁵⁰ Additionally, FGM in Indonesia is divided between "symbolic only" circumcision, where there is no incision or excision, and "harmful" forms, which can include both incision and excision.⁵¹ It is estimated that about 28% of the cases studied were symbolic circumcisions, whereas 49% involved incision and 22% involved excision.⁵² The study concluded that "[FGM] practice in Indonesia certainly involves pain and real genital cutting in about three-quarters of cases."⁵³ When Amnesty International interviewed women and girls who had been subjected to FGM in Indonesia, a majority of Indonesian women had experienced FGM when they were infants, or chose to have FGM performed on their infant daughters.⁵⁴

Although many organizations and non-profit groups focus on eradicating FGM in African countries, little progress has been made in

⁴⁵ *Id.*; see also Letter from Yasmeen Hassan, *supra* note 18, at 1-2.

⁴⁶ See *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change*, UNICEF 3 (July 2013), available at http://www.unicef.org/esaro/FGM_Summary_11_July%281%29.pdf.

⁴⁷ Maria Caspani, *U.N. Pressures Indonesia to Stop Health Workers Performing FGM*, THOMSON REUTER FOUND. (Aug. 12, 2013, 15:44 GMT), <http://www.trust.org/item/20130812154402-2himf/>.

⁴⁸ Jasmine Abdulcadir et al., *Care of Women with Female Genital Mutilation/Cutting*, SWISS MED. WEEKLY (Jan. 6, 2011), <http://www.smw.ch/content/smw-2011-13137/>.

⁴⁹ Budiharsana, *supra* note 4, at 24.

⁵⁰ *Id.*

⁵¹ *Id.* at 40.

⁵² *Id.*

⁵³ *Id.* at 41.

⁵⁴ *Left Without a Choice: Barriers to Reproductive Health in Indonesia*, AMNESTY INT'L 18 (2010), available at <https://www.es.amnesty.org/uploads/media/asa210132010en.pdf>.

Indonesia and in the Middle East towards this end.⁵⁵ Organizations such as Equality Now emphasize the necessity of bringing the kind of activism that has been established in African countries, such as the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC), to Indonesia.⁵⁶

C. *Origins of FGM*

Identifying the origins of FGM is essential to effectively eliminating FGM in Indonesia. There are many theories regarding the origins of FGM.⁵⁷ Although many theories point to its religious roots, there are also several social and cultural reasons that may explain the practice of FGM, including a celebration for “coming of age,” a guarantee of male superiority, traditions ingrained in culture, beliefs about the health benefits of FGM, and the protection of virginity.⁵⁸ Most of the Indonesian women interviewed by Amnesty International reported that they understood female circumcision to be required for Muslims.⁵⁹ Other reasons they gave for the practice included ensuring that their daughter was clean (as female genitalia is considered dirty), to continue local practices, and to regulate or suppress the girl’s sexual desires as an adult.⁶⁰ FGM has not been addressed by the international community until relatively recently, in large part because FGM and similar practices were seen as “sensitive cultural issues falling within the spheres of women and family.”⁶¹ After the international community officially condemned FGM, however, the strong influence of Islamic authorities created a stronghold for FGM in Indonesia.⁶²

⁵⁵ See Caspani, *supra* note 47.

⁵⁶ *Id.*

⁵⁷ See Patricia A. Broussard, *Female Genital Mutilation: Exploring Strategies for Ending Ritualized Torture; Shaming, Blaming, and Utilizing the Convention Against Torture*, 15 DUKE J. GENDER L. & POL’Y 19, 29–34 (2008).

⁵⁸ *Id.*

⁵⁹ *Left Without a Choice*, *supra* note 54, at 18.

⁶⁰ *Id.*

⁶¹ Office of the High Comm’r for Human Rights, *Fact Sheet No. 23: Harmful Traditional Practices Affecting the Health of Women and Children*, UNITED NATIONS HUM. RTS (Aug. 1995), available at <http://www.ohchr.org/Documents/Publications/FactSheet23en.pdf>.

⁶² See *infra* text accompanying notes 65–91.

Indonesia has the largest Muslim population in the world,⁶³ and the influence of its various Islamic leaders is understandably high.⁶⁴ About 88% of the Indonesian population (about 212 million people) identifies as Muslim.⁶⁵ The majority of Indonesian Muslims practice Shafi'i Madhhab, which is also the school of Sunni Islam practiced by the Iraqi Kurds, most Egyptians, and other groups in the Middle East and Asia; FGM practice is concentrated in these regions.⁶⁶

Indonesia is highly influenced by the MUI. The MUI was created to “facilitate interactions between the secular Indonesian state and the majority Muslim community, encourage the involvement of religious authorities in national development, and enable interfaith cooperation.”⁶⁷ In recent years the MUI's influence has grown.⁶⁸ Some argue that the MUI's influence over the Indonesian government allows “hardline groups to press for greater state intervention to define orthodoxy and legislate morality.”⁶⁹ Recently, the Indonesian government has given in to pressure from the MUI on a number of issues,⁷⁰ including FGM.⁷¹

FGM has been largely associated with Islamic practices, although it is also practiced by some Christian groups and animists in African

⁶³ Drew Desilver, *World's Muslim Population More Widespread than You Might Think*, PEW RESEARCH CTR. (June 7, 2013), <http://www.pewresearch.org/fact-tank/2013/06/07/worlds-muslim-population-more-widespread-than-you-might-think/>.

⁶⁴ See Michael Buehler, *Islam and Democracy in Indonesia*, 11 INSIGHT TURK. 51 (2009), available at http://www.columbia.edu/cu/weai/pdf/Insight_Turkey_2009_4_Michael_Buehler.pdf.

⁶⁵ Farzaneh Roudi-Fahimi et al., *Demographic Trends in Muslim Countries*, POPULATION REFERENCE BUREAU (Apr. 2013), <http://www.prb.org/Publications/Articles/2013/demographics-muslims.aspx>.

⁶⁶ Maggie O'Kane & Patrick Farrelly, *FGM: 'It's Like Neutering Animals' – the Film That Is Changing Kurdistan*, THE GUARDIAN (Oct. 24, 2013, 2:00 AM), <http://www.theguardian.com/society/2013/oct/24/female-genital-mutilation-film-changing-kurdistan-law>.

⁶⁷ *Council of Indonesia Ulama*, supra note 11.

⁶⁸ See *Indonesia: Implications of the Ahmadiyah Decree*, INT'L CRISIS GROUP (Jul. 7, 2008), <http://www.crisisgroup.org/en/publication-type/media-releases/2008/asia/indonesia-implications-of-the-ahmadiyah-decree.aspx>.

⁶⁹ *Id.* (quoting Sidney Jones, Crisis Group Senior Adviser).

⁷⁰ See, e.g., Mathias Hariyadi, *Indonesian Ulama Again Demand Catholic Schools Teach Islam*, ASIANEWS.IT (Nov. 11, 2003), <http://www.asianews.it/news-en/Indonesian-ulema-again-demand-Catholic-schools-teach-Islam-29508.html>.

⁷¹ *Additional Submission to the United Nations Committee on Rights of the Child 66th Session: Medicalization of FGM in Indonesia*, TERRE DES FEMMES & WATCH INDONESIA, available at http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IDN/INT_CRC_NGO_IDN_16628_E.pdf (last visited Feb. 20, 2015).

countries.⁷² The validity of FGM is debated in Islamic circles.⁷³ The Minaret of Freedom Institute, a mainstream libertarian Islamic group, asserts that “clitoridectomy and infibulation should be considered *harâm* (prohibited) practices and opposition to it should be part of our ongoing mandate to fight against superstition and oppression.”⁷⁴ The Institute does not completely reject less invasive FGM procedures, reporting that “the mildest form of female circumcision . . . [should be placed] in the category of *makrûh* (disliked) practices.”⁷⁵ However, it addresses the fact that there is no religious or health benefit to FGM, and that “there is no justification for Muslims to engage in this painful and potentially harmful practice and it would be best to avoid it completely.”⁷⁶ Al Azhar Al Shareef, representing the Islamic Research Council, reported that after examining the issue of FGM, the Council unanimously agreed that “there is nothing in the foundations of Islamic jurisprudence or provisions stating that this practice [is] a required action, under any circumstance whatsoever . . . it is a harmful practice The harmful and dangerous impact of FGM on the health of young girls is well proven.”⁷⁷

Although the international Islamic community may condemn FGM, Islamic religious leaders in Indonesia have openly endorsed it.⁷⁸ The majority of Indonesian Muslims follow the religious school of mazhab Syafi'i, which maintains that circumcision for both men and women is “an obligatory practice.”⁷⁹ Others follow the school of mazhab Maliki, which “perceive[s] male circumcision as an obligatory rule but [female circumcision] merely as a symbolic gesture.”⁸⁰ Other religious leaders assert that female circumcision is “a sign of respect for women.”⁸¹

However these religious authorities may differ, in 1999, Islamic leaders in Central Java held that Islamic law requires female circumcision.⁸² The MUI opposed the government ban of FGM in 2006 and

⁷² *Religion or Culture?*, STOP FGM MIDDLE EAST, <http://www.stopfgmmideast.org/background/islam-or-culture/> (last visited Jan. 28, 2015).

⁷³ Imad-ad-Dean Ahmad, *Female Genital Mutilation: An Islamic Perspective*, MINARET OF FREEDOM INST. (2000), available at <http://www.minaret.org/fgm-pamphlet.htm>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Al Azhar Al Shareef, *Declaration of the Council Regarding Female Genital Mutilation*, in FGM IN THE CONTEXT OF ISLAM 25, 25 (June 28, 2007), available at http://egypt.unfpa.org/Images/Publication/2012_05/d9174a63-2960-459b-9f78-b33ad795445e.pdf.

⁷⁸ See Budiharsana, *supra* note 4, at 9.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

issued a religious opinion that approved of FGM in 2010.⁸³ The MUI chairman, Ma'ruf Amin, argued that “[t]he procedure for female circumcision according to Islamic teaching is removal of only the membrane, or in medical terms preputium [the clitoral hood] that covers the clitoris.”⁸⁴ [MUI]’s women’s branch, however, opposes FGM, and has publicly criticized the practice.⁸⁵

The influence of the MUI and its fatwas is high among Muslim Indonesians. In a 2003 study, most of the homes surveyed reported to be Islamic, and that the main reason for subjecting their daughters to FGM was religious duty.⁸⁶ However, the source of this religious duty was primarily taught by Islamic teachers or parents; those interviewed provided no specific provisions concerning female circumcision in any holy texts.⁸⁷ Additionally, many females in Indonesia fear that if they are not circumcised, they will be stigmatized or even labeled as a non-believer.⁸⁸ The declarations of the religious authorities in Indonesia have produced inertia, essentially slowing down activism in the region for ending any form of female circumcision.

II. CURRENT STATE OF FGM IN INDONESIA

Information regarding the practice or prevalence of FGM in Indonesia is not readily accessible.⁸⁹ Although there has been some research, many professional organizations will not include exact numbers of FGM prevalence in Indonesia due to a lack of data.⁹⁰ In 2003, a report showed that traditional birth attendants (TBA), traditional circumcision practitioners, and midwives provided the majority of FGM services in Indonesia.⁹¹ In the parts of Indonesia that have medicalized FGM, some hospitals and maternity clinics offer circumcision as part of the maternity service package.⁹² The age at which girls are circumcised generally ranges

⁸³ Al-Alawi, *supra* note 5; see Elizabeth Oktofani, *In Indonesia, Continuing Debate over “Female Circumcision,”* KHABAR SOUTHEAST ASIA (Mar. 5, 2013), http://khabarsoutheastasia.com/en_GB/articles/apwi/articles/features/2013/03/05/feature-03.

⁸⁴ Oktofani, *supra* note 83.

⁸⁵ Al-Alawi, *supra* note 5.

⁸⁶ Budiharsana, *supra* note 4, at 24.

⁸⁷ *Id.*

⁸⁸ *Id.* at 10.

⁸⁹ *Legislation and Other National Provisions: India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg,* INTER-PARLIAMENTARY UNION, <http://www.ipu.org/wmn-efgm-prov-i.htm> (last visited Jan. 28, 2015); see also *WHO Progress Report*, *supra* note 21, at 2.

⁹⁰ *WHO Progress Report*, *supra* note 21, at 2; see also Caspani, *supra* note 47.

⁹¹ Budiharsana, *supra* note 4, at 25.

⁹² *Id.* at 27.

from newborns to nine years of age, although there have been some reports of circumcision occurring later.⁹³

The types of FGM practiced in Indonesia are categorized as Type I (excision) and Type IV (unclassified).⁹⁴ In various areas, some traditional circumcision practitioners reported that the procedure involved scraping the girl's clitoris with no bleeding, whereas others reported that circumcision must be accompanied by bleeding to be official.⁹⁵ Other types of FGM include pricking, piercing, stretching, and various types of incision or excision.⁹⁶ Instruments of circumcision included knives, scissors, razor blades, needles, and metal coins.⁹⁷

A. 2006 Indonesian Ministry of Health Ban of FGM

In April 2006, the Indonesian Ministry of Health banned female circumcision.⁹⁸ A notice was sent to doctors and nurses, barring them from performing "slicing, cutting, or damaging the genital organs or . . . surroundings."⁹⁹ Sri Hermiyanti, the head of the Indonesian Ministry of Health's Family Health Directorate, said that "[h]urting, damaging, incising' and 'cutting' of the clitoris are not permitted under the ban, because '[t]hese acts violate the reproductive rights of these girls and harm their organs."¹⁰⁰ Although the international community saw this ban as a positive step, there is no penalty for those who continue to practice FGM.¹⁰¹

Regardless of the ban, "the practice continues unabated in hospitals and health centres."¹⁰² In 2010, a midwife at a state hospital in Jakarta reported that she cuts female newborns when their mothers request it.¹⁰³ According to research from Yarsi University, "most incidents happen in secret, sometimes unhygienic, back-street operating rooms."¹⁰⁴ In 2010, as a response to the high risk of infection and other complications resulting from underground FGM operations, the Indonesia Ministry of Health

⁹³ *Id.*

⁹⁴ *Id.* at 28.

⁹⁵ *Id.* at 29.

⁹⁶ *Id.* at 28.

⁹⁷ *Id.* at 31.

⁹⁸ *Indonesia: Indonesian Government Imposes Ban Against Female Genital Cutting*, THE FEMALE GENITAL CUTTING EDUC. AND NETWORKING PROJECT (Oct. 9, 2006), <http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1160573550&ucat=1&>

⁹⁹ *Female Genital Mutilation Banned in Indonesia*, PRAVDA.RU (June 10, 2006), http://english.pravda.ru/news/science/06-10-2006/84911-female_circumcision-0/#.VLpu8SvF-1Q.

¹⁰⁰ *Indonesian Government Imposes Ban*, *supra* note 98 (quoting Sri Hermiyanti).

¹⁰¹ *Id.*

¹⁰² *Indonesia: Female Genital Mutilation*, *supra* note 6.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

legalized FGM throughout the country in an attempt to regulate the procedure.¹⁰⁵

B. 2010 Indonesian Ministry of Health Regulation 1636/2010

In November 2010, Indonesia's Ministry of Health enacted regulation 1636/2010, which effectively legitimized FGM by certain medical professionals.¹⁰⁶ Indonesian authorities felt this decision was appropriate, particularly because of the "[fear] that community members who want to circumcise female babies will . . . go to traditional healers for this procedure, and it will increase the number of [medical] complications."¹⁰⁷ This regulation was announced in order to regulate the practice and avoid unsanitary and harmful conditions.¹⁰⁸ The government's move to legitimize FGM was an attempt to reduce public health risks, as evidence showed that Indonesians would turn to "makeshift operations that use non-sterile equipment" which would lead to infection, including the spread of HIV and Hepatitis B.¹⁰⁹

The Indonesian Ministry of Health regulates FGM with "strict medical guidelines" and allows only trained doctors, midwives, and nurses to perform FGM.¹¹⁰ This regulation is considered to be a positive step by the Director of Mother's Health at the Indonesian Ministry of Health, who has ensured that trained "health professionals" will perform FGM as opposed to traditional healers.¹¹¹ Indonesian authorities argue that if medical professionals carry out the procedure, the female's reproductive system is guaranteed protection.¹¹²

The validation of FGM by governments and health departments has been termed "medicalisation" of FGM, and "is setting back global efforts to eradicate the ancient ritual."¹¹³ Indonesian authorities attempt to justify medicalization, arguing that the alternative, wherein parents may turn to "traditional circumcisers," could put girls' health in even greater

¹⁰⁵ See Al-Alawi, *supra* note 5.

¹⁰⁶ Selden, *supra* note 9; see, e.g., Hilman Handoni, *From Geneva for Jakarta: Recommendation of the UN HR Committee to Indonesia*, SHORT NEWS OVERVIEW INFID 3 (Sept. 2013), <http://infid.org/pdfdo/1378433853.pdf>.

¹⁰⁷ Al-Alawi, *supra* note 5; see Handoni, *supra* note 106.

¹⁰⁸ *What Was Your New Year's Resolution?*, 28 TOO MANY (Jan. 8, 2013), <http://28toomany.org/blog/2013/jan/8/what-was-your-new-years-resolution-we-have-much-to/>; see Caspani, *supra* note 46.

¹⁰⁹ Al-Alawi, *supra* note 5.

¹¹⁰ Wati Hermawati & Rina Saari, *National Assessment on Gender Equality and the Knowledge Society Indonesia Final Report*, CENTRE FOR SCIENCE & TECH. DEV. STUDIES INDONESIA INST. OF SCIENCES 17 (Jan. 31, 2011), available at http://wisat.org/data/documents/Indonesia_GE-KS_Final.pdf.

¹¹¹ Selden, *supra* note 9.

¹¹² Al-Alawi, *supra* note 5.

¹¹³ Caspani, *supra* note 47.

risk.¹¹⁴ Demand for FGM in Indonesia is high, and the regulation intends to prevent infection and complications resulting from FGM being carried out in “unhygienic, back-street operating rooms.”¹¹⁵ However, the government’s decision to legalize FGM was likely influenced by pressure from the MUI, as authorities did not legitimize the practice again until the MUI issued a fatwa asserting that female circumcision was a necessary tenant of Islam, and called for a reversal of the 2006 ban.¹¹⁶ This is yet another instance where the Islamic religious authority demonstrated its powerful influence over the Indonesian government.¹¹⁷ Indonesia’s move to medicalize FGM is controversial, as numerous United Nations bodies and the World Health Organization (WHO) have come out strongly against the medicalization of FGM.¹¹⁸

III. INTERNATIONAL PRESSURE ON A DEEPLY EMBEDDED TRADITION

The United Nations Office for Coordination of Humanitarian Affairs believes that Indonesia’s 2010 regulation will increase the frequency of FGM in Indonesia, as it appears that the government is validating the practice.¹¹⁹ The Guardian reports that internationally, medical professionals perform over 18% of FGM, and this number is increasing.¹²⁰ Efuia Dorkenoo reported that medicalization of FGM is increasing, and that by legitimizing FGM, Indonesia’s government could essentially be reversing efforts taken to end FGM.¹²¹ The WHO similarly maintains that medicalizing FGM is not the right step towards abandoning the practice.¹²² The WHO argues that

when health-care providers agree to perform FGM, they contribute to the persistence of the practice. Their acceptance to perform FGM adds a medical legitimacy to the practice, which can further contribute to institutionalization and even spread of the practice. It can also lead some health-care providers to develop a professional and financial

¹¹⁴ *Id.*

¹¹⁵ Hermawati & Saari, *supra* note 110, at 17–18.

¹¹⁶ *Female Circumcision on the Rise in Indonesia*, DISPATCH INT’L (June 14, 2013), <http://www.d-intl.com/2013/06/14/female-circumcision-on-the-rise-in-indonesia/?lang=en>.

¹¹⁷ *See, e.g.*, Hariyadi, *supra* note 70.

¹¹⁸ *See* O’Kane & Farrelly, *supra* note 66; *see also* UNFPA-UNICEF, *Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change*, i, viii (2012), http://www.unfpa.org/sites/default/files/pub-pdf/UNICEF-UNFPA%20Joint%20Programme%20AR_final_v14.pdf [hereinafter *Joint Programme on FGM*].

¹¹⁹ Al-Alawi, *supra* note 5.

¹²⁰ O’Kane & Farrelly, *supra* note 66.

¹²¹ David Smith, *‘Medicalisation’ Brings Setbacks for Anti-FGM Efforts*, INT’L FED’N OF GYNECOLOGY & OBSTETRICS (Aug. 14, 2013), <http://www.figo.org/news/medicalisation-brings-setbacks-anti-fgm-efforts-0013639>.

¹²² *WHO Progress Report*, *supra* note 21, at 5.

interest in upholding the practice. Furthermore, medicalized FGM does not necessarily contribute to harm reduction . . . [I]t ignores the long-term complications, including sexual, psychological and obstetrical complications.¹²³

The WHO has characterized medicalization as one of the most serious threats to eradicating FGM.¹²⁴ With the medicalization of FGM on the rise, Indonesia is contributing to the persistence of this dangerous practice.¹²⁵

A. *September 2012 Human Rights Council Report of the Working Group on the Universal Period Review, Indonesia*

The Human Rights Council (HRC) is an inter-governmental body that is part of the United Nations system and is “responsible for the promotion and protection of all human rights around the globe.”¹²⁶ When Indonesia was reviewed by the HRC in 2012, the Council made 180 recommendations to the Indonesian government concerning the condition of various human rights.¹²⁷ In an addendum to the HRC recommendations, Indonesia accepted 150 recommendations, including Recommendation 109.27, wherein the government of Indonesia agreed to continue to “facilitate dialogue among related stakeholders including civil society organizations, religious[,] and community leaders on the issue of female circumcision with a view to eliminating practices of female genital mutilation.”¹²⁸ However, Indonesia did not accept Recommendation 109.26, which recommended a complete ban of any kind of FGM.¹²⁹ The government explained that

female circumcision is performed in certain communities mostly for symbolic purposes and does not involve any form of genital mutilation. The cases of female circumcision beyond symbolic act [sic] are isolated cases and performed by traditional circumcision practitioners. The regulation of the Ministry of Health of November 2010 was issued to

¹²³ *Id.* at 5–6.

¹²⁴ *Joint Programme on FGM*, *supra* note 118, at 38.

¹²⁵ Caspani, *supra* note 47.

¹²⁶ Office of the High Comm’r for Human Rights, *United Nations Human Rights Council*, UNITED NATIONS HUM. RTS., <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx> (last visited Jan. 19, 2015).

¹²⁷ U.N. H.R.C., Rep. of the Working Grp. on the Universal Periodic Review: Indonesia, May 21–June 4, 2012, U.N. Doc. A/HRC/21/7, at 14–24 (July 5, 2012). The HRC recommendations include the “Conclusions and/or Recommendations” 108.1–108.144 and 109.1–109.36; *see also* Human Rights Council Res. 21/105, Rep. of the Human Rights Council, 21st Sess., Sept. 10–28, Nov. 5, 2012, U.N. GAOR, 67th Sess., Supp. No. 53A, U.N. Doc. A/67/53/Add.1, at 83–84 (2012) (adopting the Report of the Working Group on the Universal Periodic Review).

¹²⁸ U.N. H.R.C., Rep. of the Working Grp. on the Universal Periodic Review: Indonesia Addendum, 21st Sess., U.N. DOC. A/HRC/21/7/Add.1, at 2 (Sept. 5, 2012) [hereinafter U.N. H.R.C., *Indonesia Addendum*].

¹²⁹ *Id.* at 2–3; *see also* Rep. of the Working Grp., *supra* note 127, at 24.

ensure a safe procedure, and by no means to encourage or promote the practice of female circumcision. The Government of Indonesia continues to raise public awareness on the possible harmful effects of the practices of female circumcision to women and girls.¹³⁰

Indonesia's assertions that only symbolic female circumcision is prevalent in Indonesia are false according to research from Amnesty International and Population Council Jakarta.¹³¹ By enacting a legal, medicalized form of FGM, the government of Indonesia is not upholding its commitment to the HRC to work to end FGM.

B. United Nations General Assembly Resolution 67/146 Intensifying Global Efforts for the Elimination of Female Genital Mutilations

On December 20, 2012, the General Assembly of the United Nations (UNGA) adopted its first resolution aiming to end FGM, with no vote, communicating unanimity.¹³² The UNGA recognized “that female genital mutilations are an irreparable, irreversible abuse that impact negatively on the human rights of women and girls . . . [it is] a harmful practice that constitutes a serious threat to the health of women and girls, including their psychological, sexual and reproductive health.”¹³³ The resolution calls on all countries to condemn not only FGM, but additionally “all harmful practices that affect women and girls.”¹³⁴ Additionally, the resolution called for the abandonment of FGM both within and outside medical institutions, specifically addressing the concern of the increasing number of FGM procedures occurring within hospitals.¹³⁵

The resolution urges countries to condemn all FGM procedures, to enact and enforce legislation against FGM, and to implement “awareness-raising and educational activities designed to promote a process of consensus towards the elimination of female genital mutilations.”¹³⁶ It goes on to explain that countries must review and revise school curriculum in order “to further integrate a comprehensive understanding of the causes and consequences of gender-based violence and discrimination

¹³⁰ U.N. H.R.C., *Indonesia Addendum*, *supra* note 128, at 3.

¹³¹ *Left Without a Choice*, *supra* note 54, at 18; Budiharsana, *supra* note 4, at viii; Abigail Haworth, *The Day I Saw 248 Girls Suffering Genital Mutilation*, THE GUARDIAN (Nov. 17, 2012, 7:05 EST), <http://www.theguardian.com/society/2012/nov/18/female-genital-mutilation-circumcision-indonesia>.

¹³² G.A. Res. 67/146, U.N. DOC. A/RES/67/146 (Dec. 20, 2012); Press Release, General Assembly, General Assembly Strongly Condemns Widespread, Systematic Human Rights Violations in Syria, as It Adopts 56 Resolutions Recommended by Third Committee, U.N. Press Release GA/11331 (Dec. 20, 2012).

¹³³ G.A. Res. 67/146, *supra* note 132, at 2.

¹³⁴ *Id.* ¶ 4.

¹³⁵ *Id.*

¹³⁶ *Id.* ¶¶ 4–5.

against women and girls.”¹³⁷ Essentially, FGM will only be completely eradicated by “a comprehensive movement that involves all public and private stakeholders in society.”¹³⁸

The language adopted in the resolution clearly shows that the United Nations General Assembly (UNGA) recognizes this problem will not be solved merely through government regulations; rather, the practice of FGM is cultural and traditional, and in order to fully eradicate FGM it must be attacked at the community, national, regional, and international levels.¹³⁹ The resolution mentions that progress has been made in a number of countries that have implemented a “common coordinated approach that promotes positive social change” on a multi-level scheme.¹⁴⁰

The UNGA representative of Burkina Faso spoke during its 67th session, emphasizing how mobilization against this practice required cooperation between the government and civil society.¹⁴¹ He urged governments to work to end FGM “by establishing programmes and projects, by adopting laws and . . . by making available the necessary human and financial resources.”¹⁴² Civil organizations, such as the “Inter-African Committee on Traditional Practices” should work to raise awareness to end FGM practices.¹⁴³

Although Resolution 67/146 was the first to specifically condemn FGM, it is not the first time the UN addressed women’s rights and protection.¹⁴⁴ The International Covenant on Civil and Political Rights (ICCPR) includes several articles that affect women’s rights, including “Articles 2(1) (non-discrimination), 3 (equality between men and women), 7 (prohibition of torture and cruel treatment or punishment), 24 (protection of minors)[,] and 26 (equal protection under the law).”¹⁴⁵ Indonesia is a party to the ICCPR, and as a state party it is obligated to submit reports to the Committee and update the Committee on how the

¹³⁷ *Id.* ¶ 6.

¹³⁸ *Id.* at 2.

¹³⁹ *Id.* ¶ 19.

¹⁴⁰ *Id.*

¹⁴¹ U.N. GAOR, 67th Sess., 60th plen. mtg. at 5, U.N. DOC. A/67/PV.60 (Dec. 20, 2012).

¹⁴² *Id.*

¹⁴³ *Id.* at 6.

¹⁴⁴ U.N. Press Release GA/11331, *supra* note 132.

¹⁴⁵ Letter from Yasmeen Hassan, *supra* note 18, at 1; *see also* International Covenant on Civil and Political Rights, art. 2, ¶ 1, art. 3, art. 7, art. 24, ¶ 1, art. 26, *opened for signature on* Dec. 19, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171, *available at* <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/v999.pdf> (entered into force Mar. 23, 1976) [hereinafter ICCPR].

government is implementing rights concerning the ICCPR.¹⁴⁶ Indonesia ratified the ICCPR with no reservations.¹⁴⁷

C. Other International Pressures on Indonesia to End FGM

Indonesia has developed into an emerging international power, and is a member of various humanitarian organizations.¹⁴⁸ Indonesia is a member of the World Health Assembly (WHA) of the WHO, which passed a 2008 resolution urging “all member states to accelerate work towards the elimination of FGM, to enact and enforce legislation against the practice and to prohibit performance of FGM by any person including medical professionals.”¹⁴⁹ The Indonesian Society of Obstetrics & Gynecology is part of the International Federation of Gynecology and Obstetrics (FIGO).¹⁵⁰ FIGO also passed a resolution in opposition to medicalization of FGM or any other performance of FGM by medical professionals.¹⁵¹

In its July 2012 review of the Indonesian government’s report on the elimination of discrimination against women, the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) brought attention to Indonesia’s validation and regulation of female circumcision through its 2010 Ministry of Health Regulation.¹⁵² CEDAW reported that “the government should harmonise laws and take steps to repeal discriminatory policies in the name of religion and morality that directly impact on gender-based violations of human rights against women.”¹⁵³ It asked Indonesia to provide more

¹⁴⁶ ICCPR, *supra* note 145, at art. 40 ¶¶ 1–2; Memorandum on Participants to the Int’l Covenant on Civil and Political Rights, UNITED NATIONS TREATY COLLECTION, Ch.4 Human Rights, at 2, available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV-4.en.pdf> [hereinafter ICCPR Memorandum].

¹⁴⁷ ICCPR Memorandum, *supra* note 146, at 2, 7.

¹⁴⁸ See *Brief History of D-8*, D-8 ORGANIZATION FOR ECON. COOPERATION, <http://www.developing8.org/About.aspx/> (last visited Feb. 5, 2015); see also Bruno Hellendorff & Manuel Schmitz, Note, *Indonesia: From Regional to Global Power?*, GRIP 2, 20 (2014), https://www.academia.edu/10046567/Indonesia_From_Regional_to_Global_Power.

¹⁴⁹ *Indonesia: End Government Legitimization of Female Genital Mutilation (FGM)*, EQUALITYNOW (Sept. 12, 2012), http://www.equalitynow.org/take_action/fgm_action431.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Press Release, Komnas Perempuan National Commission on Violence Against Women, Indonesia Still Has Homework To Do in the Advancement and Protection of Women’s Rights: CEDAW Committee Recommendations to Indonesia (Aug. 2, 2012), available at <http://www.komnasperempuan.or.id/en/2012/08/indonesia-still-has-homework-to-do-in-the-advancement-and-protection-of-women%E2%80%99s-rights-cedaw-committee-recommendations-to-indonesia/#more-5496>.

¹⁵³ *Id.*

documentation over the next two years to show what steps it was taking to end discrimination against women, specifically FGM.¹⁵⁴

In October 2013, the Italian Ministry of Foreign Affairs partnered with the United Nations Population Fund (UNFPA) and the United Nations International Children's Emergency Fund (UNICEF) to host a "high level meeting," to discuss measures aimed at fostering the implementation of "the resolution calling for a worldwide ban on female genital mutilation."¹⁵⁵ Alvilda Jablonko, an FGM Program Coordinator for No Peace Without Justice, stated that "in the fight against FGM it is fundamental to adopt a holistic and harmonised approach, founded on the understanding that FGM is a violation of human rights which must be addressed through the enactment of a comprehensive legislative framework."¹⁵⁶ Indonesia's Commissioner Neng Dara Affiah, on the National Commission on Violence against Women was in attendance at another high-level meeting in February 2013, which also possessed "the aim to foster concrete implementation of the resolution calling for a Worldwide Ban on FGM."¹⁵⁷ Each of these international pressures, however, appears to have no significant effect on Indonesia's legal stance on FGM.

IV. ENFORCEMENT OF UNITED NATIONS GENERAL ASSEMBLY RESOLUTION

Indonesia's 2010 Ministry of Health regulation is incompatible with the 2012 United Nations Resolution 67/146, which clearly asserts the UN's goals to eradicate even medicalized FGM.¹⁵⁸ In August 2013, the United Nations Human Rights Committee (OHCHR) recognized the violation by Indonesia and urged it to stop the medicalization of FGM.¹⁵⁹ OHCHR further "urged the country to pass legislation banning any form of FGM and to put in place penalties that reflect the 'gravity of this offence' . . . a serious human rights violation."¹⁶⁰ Additionally, Indonesia's

¹⁵⁴ *Id.*

¹⁵⁵ *Worldwide Ban on Female Genital Mutilation: High Level Event To Foster the Implementation of the UN Resolution*, NO PEACE WITHOUT JUST. (Oct. 22, 2013), <http://www.npwj.org/FGM/Worldwide-Ban-Female-Genital-Mutilation-High-Level-Event-foster-implementation-UN-resolution.htm>.

¹⁵⁶ *Id.*

¹⁵⁷ Emma Batha, *Activists Press Indonesia To Ban Genital Mutilation*, THOMSON REUTERS FOUND. (Feb. 12, 2013, 5:52 PM), <http://www.trust.org/item/?map=activists-press-indonesia-to-ban-genital-mutilation>; see generally *High Level Event on the Worldwide Ban on Female Genital Mutilation*, NO PEACE WITHOUT JUSTICE, <http://www.npwj.org/FGM/High-Level-Event-Worldwide-Ban-Female-Genital-Mutilation.html> (last visited Feb. 5, 2015).

¹⁵⁸ See discussion *supra* Part III(b).

¹⁵⁹ Caspani, *supra* note 47.

¹⁶⁰ *Id.*

National Commission on Violence against Women has urged the Minister of Health to revoke the regulation and to ban the practice of FGM immediately.¹⁶¹ Ellin Rozana, the executive director of the Indonesian Women's Institute ("Institute Perempuan"), has also spoken out against Indonesia's legalization of FGM.¹⁶² The Women's Institute is a "feminist, non-profit organization, dedicated to women's issues and women's rights advocacy work" in Indonesia.¹⁶³ Rozana argues that "no form of female circumcision can be justified on religious grounds" and that the 2010 Ministry of Health regulation legitimizing FGM should be rescinded.¹⁶⁴

UNGA decisions are not legally binding on member governments; however, the resolutions passed by this body are representative of world opinions on issues and "the moral authority of the world community."¹⁶⁵ Additionally, the UNGA can agree to bar a nation from voting, on advice from the credentials committee.¹⁶⁶ The UNGA can even oust a member state, upon recommendation by the Security Council for violating the UN Charter repeatedly.¹⁶⁷

In relation to the various UNGA violations by various nations across the globe, Indonesia's violation of Resolution 67/146 may not seem pressing.¹⁶⁸ However, the UNGA has condemned FGM in all of its forms, and without some kind of enforcement, the Resolution's purpose will be futile.¹⁶⁹ In addition to violating international law, many argue that Indonesia's medicalization of FGM undermines domestic laws that protect human rights, including a number of child protection laws and laws against domestic violence.¹⁷⁰

¹⁶¹ Batha, *supra* note 157.

¹⁶² Yuli Krisna, *Activists Demand Repeal of Regulation on Circumcision*, JAKARTAGLOBE (Apr. 20, 2013, 11:08 AM), <http://thejakartaglobe.beritasatu.com/news/activists-demand-repeal-of-regulation-on-circumcision/>; *see generally* About, INST. PEREMPUAN, <http://www.institutperempuan.or.id/> (last visited Feb. 18, 2015).

¹⁶³ INST. PEREMPUAN, *supra* note 162.

¹⁶⁴ Krisna, *supra* note 162.

¹⁶⁵ *United Nations General Assembly*, NUCLEAR THREAT INITIATIVE, <http://www.nti.org/treaties-and-regimes/united-nations-general-assembly/> (last visited Feb. 5, 2015).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Global Issues: Human Rights*, UNITED NATIONS, <http://www.un.org/en/globalissues/humanrights/> (last visited Feb. 5, 2015).

¹⁶⁹ Elizabeth Segran, *Female Genital Mutilation on the Rise Among Southeast Asian Muslims*, GLOBALPOST BLOG (Dec. 10, 2013, 01:01), <http://www.globalpost.com/dispatches/globalpost-blogs/rights/female-genital-mutilation-southeast-asia-muslims>.

¹⁷⁰ *Id.*

V. FUTURE EFFORTS TO ERADICATE FGM

According to one source, the legalizing or criminalization of FGM is inconclusive, as evidence shows that “the 2006 ban did little to prevent FG[M] from being practiced in hospitals.”¹⁷¹ FGM is considered a social norm in Indonesia, just as much as it is in parts of Africa; the difference is “the lack of awareness that FG[M] is an issue in Indonesia. There is a need to encourage the government to take positive action to tackle FG[M] (with community-based programmes, some legislation) as opposed to issuing guidelines which essentially condone the practice.”¹⁷²

Many organizations work from a multi-level approach to end FGM. The United Nations Population Fund (UNFPA) and UNICEF co-sponsor the Joint Programme on Female Genital Mutilation/Cutting, which works to educate communities about the severe consequences of FGM.¹⁷³ Although these organizations focus on African countries, they have been successful in a number of countries by working from a “social norms perspective and [with a] greater focus on promoting collective abandonment of the practice.”¹⁷⁴

A. Penalizing FGM

Enacting legal measures to combat FGM, such as criminal laws, child protection laws, civil laws, and remedies for victims of FGM are essential to show that a government disapproves of FGM. In 2003, the Population Council reported that medicalization had contributed to increased FGM in Indonesia.¹⁷⁵ Legislation banning FGM, even when performed by health care providers, would at least begin the process of eradicating FGM in Indonesia.

The Joint Programme has worked to support national legislation banning FGM in various nations, and where legislation against FGM already exists, the Joint Programme has supported the “[e]ffective enactment, enforcement and use of national policy and legal instruments to promote the abandonment of FGM/C.”¹⁷⁶ In 2012, the Joint Programme proposed a bill that improved the enforcement of the FGM ban to the Gambian National Assembly.¹⁷⁷ “The proposed bill was developed through a collaborative effort involving 7,000 people from the grassroots level,

¹⁷¹ Hermawati & Saari, *supra* note 110, at 17–18.

¹⁷² *Id.* at 18; *see also Joint Programme on FGM, supra* note 118, at 1, 18.

¹⁷³ UNFPA-UNICEF JOINT PROGRAMME ON FGM/C, Accelerating the Abandonment of Female Genital Mutilation/Cutting (Feb. 2012), <http://www.unfpa.org/sites/default/files/resource-pdf/FACT-SHEET-2012.pdf>.

¹⁷⁴ *Id.*

¹⁷⁵ Budiharsana, *supra* note 4, at 10.

¹⁷⁶ *Joint Programme on FGM, supra* note 118, at viii, 9.

¹⁷⁷ *Id.* at 9.

including women, men[,] and youth, religious and traditional leaders and security officials”¹⁷⁸ Efforts by the Joint Programme to enact effective legislation indicates the need to incorporate local knowledge and opinions into the proposed legislation for each particular country.

However, penalizing the procedure will likely not be effective unless it is integrated with a “broader process of social change.”¹⁷⁹ Many countries in Africa have passed laws with tough sentences for those performing FGM; nevertheless, a conference in Nairobi revealed that these laws alone are not working.¹⁸⁰ Authorities in these countries are not actively identifying or prosecuting individuals responsible for performing FGM.¹⁸¹ Although banning FGM is a strong first step for national governments to take, criminalizing it will not be enough to combat the practice. To eradicate FGM, governments must also work to educate its citizens on the harmful physical and psychological effects of FGM.

B. Education

In order to end the practice of FGM, people must understand the truth behind the tradition. Social programs must focus on educating Indonesians on the physical and psychological harm of FGM. Additionally, Indonesians must be educated on the origins of FGM, and taught how it is not grounded in any traditional Islamic or any other religious teachings.¹⁸² These changes will not be accomplished through legislation only, but must come from an integrated, multi-level approach.

Legislation is vital, but in order to effect real change, it must be followed by “strategic and action plans . . . to operationalize these advances.”¹⁸³ In countries where legislation banning FGM has recently been enacted, the Joint Programme worked to educate lawyers, magistrates, judges, and law enforcement officers on new legislation.¹⁸⁴ The Joint Programme sponsored campaigns to make people aware of the new legal status of performing FGM, especially in areas where FGM is prevalent.¹⁸⁵

In addition to enacting legislation and educating people about the legal status of FGM, efforts must be made to change the political perception of FGM at the local level. “The decision to stop FGM[] must

¹⁷⁸ *Id.*

¹⁷⁹ *WHO Progress Report*, *supra* note 21, at 5.

¹⁸⁰ Carla Mackenzie, *African Anti-FGM Laws Are Not Working, Say Officials*, INT’L FED’N OF GYNECOLOGY & OBSTETRICS (Nov. 1, 2013), <http://www.figo.org/news/african-anti-fgm-laws-are-not-working-say-officials-0013743>.

¹⁸¹ *Id.*

¹⁸² Budiharsana, *supra* note 4, at ix, 4.

¹⁸³ *Joint Programme on FGM*, *supra* note 118, at 11.

¹⁸⁴ *Id.* at 12.

¹⁸⁵ *Id.* at 13.

come from within a community; it must be made by women, men[,] and community leaders who together can affect and sustain this profound social change.”¹⁸⁶ The Joint Programme uses activities at the community level, such as “dialogues, discussions, workshops, and respectful communication,” aiming for all members of the community to participate.¹⁸⁷ The nature of the activities varies depending on the country and ethnic groups within countries.¹⁸⁸ There is no single product that will fit perfectly in every community; efforts must be tailored to the particular culture and community practices.¹⁸⁹

Many organizations have utilized various methods to engage communities in eradicating FGM. For example, Molly Melching founded Tostan, an organization which works to eliminate FGM in Senegal.¹⁹⁰ Melching expressed that “[w]omen do not want to harm their daughters; they want them to succeed – to be marriageable, to be welcomed into society – that’s why they do it.”¹⁹¹ Melching reports that the program has been successful by working at the grassroots level to educate villagers about the effects of FGM.¹⁹²

Villagers have come to the decision to abandon FGM/C on their own after learning some basic facts about the harm the practice inflicts on women and their children and, just as important, coming to the realization that people have the right to abandon a pervasive, deep-rooted, centuries-old tradition if that tradition is contrary to their best interests¹⁹³

C. *An Interdisciplinary Approach Without Criminalization*

Dr. Abdul Rashid Khan, a medical researcher who has worked in Malaysia, proffers a different argument for the eradication of FGM in Indonesia and similar nations.¹⁹⁴ Although he firmly opposes FGM, he believes that criminalizing FGM would only increase health risks because Indonesians would continue to practice it “underground.”¹⁹⁵ Rather, Khan asserts that medical professionals should perform “sterile, symbolic procedure[s]” while religious leaders simultaneously address the

¹⁸⁶ *Id.* at 18.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 19.

¹⁸⁹ *Id.*

¹⁹⁰ Kristin Helmore, *Ending Harmful Practices Through Community-led Social Change in Senegal*, UNITED NATIONS POPULATION FUND (Apr. 20, 2010), <http://www.unfpa.org/news/ending-harmful-practices-through-community-led-social-change-senegal>.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Segran, *supra* note 169.

¹⁹⁵ *Id.*

ideological foundations of the practice.”¹⁹⁶ Those who subscribe to this method draw a distinction between the elimination of FGM and the government simply prohibiting the practice. Suri Kempe, an activist from the Muslim, feminist organization Sisters in Islam, argues, “Prohibition is not going to get rid of the practice; if Muslims can’t do it one way, they will find another way to do it.”¹⁹⁷ These advocates believe that criminalizing FGM is the wrong initial step, but that the end of FGM in Indonesia must start at the grassroots.

However, others believe that criminalization must be a first step towards eliminating FGM.¹⁹⁸ They argue that by legalizing any form of FGM, the government is impliedly approving of the practice.¹⁹⁹ Moreover, those who believe that even symbolic female circumcision must be criminalized cite the difficulty and concerns of regulating the practice; if the practice of symbolic female circumcision is regulated, which some Indonesians understand to be a harmless paper cut or prick of the clitoral hood, how will this be regulated?²⁰⁰ “The claim that FGM can continue to be practised in ‘soft’ and non harmful ways is dangerously ambiguous and impracticable. It is no solution.”²⁰¹

Most FGM activists assert the need for criminalizing FGM, but also the equally important need to develop “national initiatives [that consider] the culture, traditions[,] and religion of [a particular nation].”²⁰² This will involve regional networks that are prepared “to support and help develop local initiatives for raising awareness, to work on strategies, to support local demands for legal change to banning FGM and to see the implementation of such laws.”²⁰³

Indonesia’s response to FGM will likely be influential in the region. There is some evidence that neighboring nations, including Malaysia, have begun implementing legal, medicalized forms of FGM in order to combat the underground procedures.²⁰⁴ As medicalization of FGM increases in this region, and the practice persists with the aid of the government, it may be more difficult to eradicate.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *See id.*

¹⁹⁹ *See id.*

²⁰⁰ Oliver M. Piecha, *Stop FGM – Also in the Middle East*, ASS’N FOR CRISIS ASSISTANCE & SOLIDARY DEV. COOPERATION (WADI), http://en.wadi-online.de/index.php?option=com_content&view=article&id=1067:stop-fgm—also-in-the-middle-east&catid=11:analyse&Itemid=108 (last visited Feb. 7, 2015).

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Malaysia Storm Over Female Circumcision*, AUSTRALIAN BROADCASTING CORP. (Dec. 7, 2012, 7:45 AM), <http://www.abc.net.au/news/2012-12-07/an-malaysia-debate-over-female-circumcision/4416298>.

VI. CONCLUSION: AN INTEGRATED APPROACH FOR INDONESIA

Efforts should be organized to focus on educating Indonesians about the harm that FGM inflicts on women and children. Although the government should certainly be pressured to ban FGM and to withdraw the 2010 Ministry of Health Regulation 1636/2010, more must be done to change the minds and hearts of the Indonesia people.²⁰⁵ As occurred after the first Indonesian ban on FGM, Indonesians will likely continue to practice FGM even if it is illegal due to its deep roots in the community. Religious leaders and government officials have a high influence on the Indonesian people's understanding of and desire to practice FGM.²⁰⁶ Unless Indonesians are properly educated about the origins and harmful effects of FGM, the government will likely have little success in eradicating this practice.²⁰⁷

Pursuant to UNGA Resolution 67/146, groups must work in communities, as well as at the national, regional, and international levels.²⁰⁸ United Nation member countries and special interest groups can pressure Indonesia to comply with the UN resolutions it is party to, in addition to helping the government adopt legislation to ban FGM. If a comprehensive plan is put in place, the government may be more willing to attempt to ban FGM again.

A comprehensive plan will involve engaging all people in communities, including religious leaders, respected individuals, and all family members. Any efforts to end FGM in Indonesia must include participation by influential religious groups in the region, including the MUI. Although known as a conservative Islamic clerical group, the MUI may be open to discussion with other Islamic leaders who stand against FGM. As evidenced by the efforts of the Joint Programme, Indonesia's unique religious and political situation must be taken into account when developing a plan to educate people on the harm inflicted by FGM.

The international community has placed some pressure on Indonesia's medicalization of FGM. Groups such as the WHO, Amnesty

²⁰⁵ In February 2014, the Indonesian Ministry of Health caved to international pressure and revoked its 2010 regulation allowing medical professionals to perform FGM. See *Indonesia: End Government Legitimization of Female Genital Mutilation (FGM)*, EQUALITYNOW (Sept. 12, 2012), http://www.equalitynow.org/take_action/fgm_action431 (updated on Sept. 3, 2014). While a step in the right direction, the revocation does not go far enough since it "does not expressly prohibit all forms of FGM." *Id.* Sadly, the new regulation states "any practice of FGM should be done with regard for the health and safety of the girl or woman." *Id.* Thus, Indonesia still lacks legislation "strictly prohibiting FGM" and the government can be seen as "tacitly endorsing a harmful practice that violates Indonesian girls' human rights." *Id.*

²⁰⁶ See *MUI Pushes Govt to Circumcise Girls*, *supra* note 12; see *Indonesia: Implications of the Ahmadiya Decree*, *supra* note 68.

²⁰⁷ See Mackenzie, *supra* note 180; see also Helmore, *supra* note 190.

²⁰⁸ G.A. Res. 67/146, ¶¶ 2, 7, 16–17, U.N. Doc. A/RES/67/146 (Dec. 20, 2012).

International, Equality Now, and others have worked to urge a governmental change of its stance on FGM.²⁰⁹ Additionally, in February of 2013, campaigners began confronting the Indonesian government about its non-compliance with the UN resolution prohibiting FGM.²¹⁰ The International Federation of Gynecology and Obstetrics reported that this instance “could be the first time that activists have used a UN resolution to lobby a government over FGM.”²¹¹

Ultimately, FGM persists in communities for a number of reasons, stemming from religious interpretations and deeply ingrained traditions.²¹² A multi-level approach that not only bans FGM but also educates citizens and influential leaders may be most effective in Indonesia. Generally, parents do not subject their daughters to FGM out of cruelty, but rather to make their daughters marriageable and successful in their community.²¹³ Educating parents about the true origins and harms of FGM may do more to help end FGM in Indonesia than the legislature ever could. However, these efforts will only be aided by a firm governmental stance against FGM, and governmental support for social groups that work to educate the public about FGM.

²⁰⁹ See, e.g., *WHO Progress Report*, *supra* note 21; see *Left Without a Choice*, *supra* note 54, at 9.

²¹⁰ Alexandra George, *Indonesian Campaigners Cite UN Resolution To Call For End to FGM*, INT'L FED'N OF GYNECOLOGY & OBSTETRICS (Feb. 14, 2013), <http://www.figo.org/news/indonesian-campaigners-cite-un-resolution-call-end-fgm-0013395>.

²¹¹ *Id.*

²¹² See discussion *supra* Part I(c).

²¹³ Helmore, *supra* note 190.