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SIDEBAR

## Drawing a Line Between Enduring Harm and Legitimate Fear

By [ADAM LIPTAK](#)

When Alima Traore was a young girl in [Mali](#), parts of her genitalia were cut off, which is the custom there.

“In my country, usually there is an old lady who does circumcision,” said Ms. Traore, who is 28, lives in Maryland and works as a cashier. “They have a small knife that they cut the intimate parts with. It is very atrocious.”

In September, the Board of [Immigration](#) Appeals rejected Ms. Traore’s plea for asylum and ordered her sent back to Mali. It ruled that she did not face persecution there, because the cutting, while “reprehensible,” could not be repeated. “The loss of a limb also gives rise to enduring harm,” the board said, but it would not be a good enough reason to grant asylum.

The board also said that Ms. Traore’s fear that any daughters she might have would be subjected to similar barbarity was of no moment. Nor did it matter that Ms. Traore’s father has said he will force her to marry a first cousin — his sister’s son.

“My decision is irrevocable,” her father, Elhadj Traore, wrote to her in 2004. “The dowry has been paid, and all the Traore clan agrees. The animal sacrifice has been made for the village.”

Lauri Steven Filppu, writing for a three-member panel of the immigration board, was measured in his sympathy.

“It is understandable,” he wrote, that Ms. Traore, “an educated young woman, would prefer to choose her own spouse rather than acquiesce to pressure from her family to marry someone she does not love and with whom she expects to be unhappy. The respondent has also expressed valid concerns about possible birth defects resulting from a union with her first cousin.”

“While we do not discount the respondent’s concerns,” Mr. Filppu continued, “we do not see how the reluctant acceptance of family tradition over personal preference can form the basis” for allowing Ms. Traore to stay in the United States.

Karen Musalo, the director of the Center for Gender and Refugee Studies at Hastings College of the Law, said that reasoning was the product of a judicial system dominated by men.

“Are women’s rights human rights?” Professor Musalo asked. “Isn’t it a human right not to be forced into a marriage?”

Last week, Ms. Traore’s lawyers filed a motion for reconsideration. They noted that the logic of the board’s decision was not always easy to follow.

The board acknowledged, for instance, that women who have been subjected to forced sterilization are routinely granted asylum even though that procedure, like [genital cutting](#), cannot be repeated. The board, which is part of the Justice Department, rejected the reasoning of a 2005 decision by the federal appeals court in California, which refused to deport a woman who had been subjected to genital cutting in Somalia.

“Like forced sterilization,” Judge Stephen Reinhardt wrote for a unanimous three-judge panel of the United States Court of Appeals for the Ninth Circuit, “genital mutilation permanently disfigures a woman, causes long-term health problems,

and deprives her of a normal and fulfilling sexual life.”

That is an understatement, Professor Musalo said.

“The kind of physical and psychological devastation that goes along with female genital cutting is profound,” Professor Musalo said. “It results in sex that is absolutely torturous, that not only has no pleasure but is a locus point of pain and agony.”

Ms. Traore used simpler language.

“I don’t feel great in my body,” she said. “A woman needs to be complete.”

Professor Musalo had a theory about why the board treated forced sterilization differently from genital cutting. Sterilization affects procreation and motherhood, which are valued by men. Genital cutting, by contrast, affects only women’s sexual pleasure and autonomy.

The board, for its part, said the differing treatment of forced sterilization and genital cutting was required by a federal law. But the law said nothing about whether courts must grant asylum to past victims of either kind of abuse, a fact Mr. Filppu of the immigration board recognized in a 2003 dissent. In the September decision and in earlier cases, the immigration board referred to the procedure as F.G.M., for female genital mutilation. The abbreviation bothered Judge Reinhardt.

“We see no need for using initials rather than the full three-word phrase,” he wrote in the 2005 decision. “We are short neither of paper nor of ink. The use of initials, if it has any effect, serves only to dull the senses and minimize the barbaric nature of the practice.”

Some 95 percent of women in Mali have undergone genital cutting, according to State Department reports. The procedure takes various forms, ranging from the removal of the clitoral hood to the excision of all of the external genitalia. Ms. Traore’s clitoris and vulva were removed.

The cutting is performed, a 2001 State Department report said, with “a special saw-toothed knife,” usually unsterilized and almost always without anesthesia. Some tribes in Mali believe, the report said, “that if the clitoris comes in contact with the baby’s head during birth, the child will die” or that “a man could be killed by the secretion of a poison from the clitoris upon its contact with the penis.”

Ms. Traore has lived here since 2000. She arrived on a tourist visa and stayed on a student visa, attending college and studying nursing. But her student visa expired in 2003.

She would like to stay.

“It is a better place for women than Mali, because in Mali women don’t have any voice,” she said. “Because it is the men who control.”

*Online: Court documents and an archive of Adam Liptak’s articles: [nytimes.com/adamliptak](http://nytimes.com/adamliptak).*