Responses to Female Genital Mutilation/Cutting in Europe¹

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Introduction

Migration from Africa to Europe has been an enduring characteristic of the post-war period. Beyond economic push-pull factors, migratory patterns have often reflected colonial links, with, for instance, citizens from Benin, Chad, Guinea, Mali, Niger and Senegal tending to choose France as their destination, while Kenyan, Nigerian and Ugandan citizens have traditionally preferred to migrate to the United Kingdom. In the 1970s, war, civil unrest and drought in a number of African states including Eritrea, Ethiopia and Somalia saw an influx of refugees to countries of Western Europe, some of which, such as Norway and Sweden, had been relatively unaffected by migration up to that point. There are also important gender dimensions to these patterns, and women are increasingly becoming migrants in their own right rather than elements of family units. In Italy for example, in 2000, 76.8 per cent of immigrants from Eritrea were women.²

All these migrant groups have brought with them practices and traditions that have enriched the culture of their host countries. One particular cultural practice, however, provoked and continues to provoke significant political and public debate in Europe: female genital mutilation or cutting (FGM/C).

In Europe there was a growing realisation in the course of the 1970s that that this practice was no longer confined to some 28 African states and a handful of countries elsewhere. Western European countries not only hosted women and children upon whom FGM/C had been performed, but were also home to others who were at risk of undergoing this procedure.³ Today, three of the ten largest citizenship groups applying for asylum in the European Union come from countries of Africa where FGM/C is practiced (Nigeria, Somalia and the Democratic Republic of Congo).⁴ One of the most tangible responses on the part of individual European states has been the use of legislative measures to prohibit the practice and punish those who carry out, aid or abet this act. This chapter not only discusses the various forms this legal response has taken, but also examines the varying degree of willingness among European states to prosecute those believed to have carried out or assisted in FGM/C.

¹ 'Réponses à la mutilation génitale des femmes/excision en Europe', in *Les mutilations génitales féminines en Suisse*, published by the Swiss National Committee for UNICEF, Zurich, 2004. Thanks to Francesca Moneti, Senior Project Officer, Child Protection at UNICEF Innocenti Research Centre (IRC) for her valuable comments on this paper and to Peggy Herrmann, Junior Professional Officer, for her research support. Thanks also to Eva Aguilera González of the Spanish National Committee for UNICEF for information regarding the situation in Spain. IRC is currently preparing an issue of the *Innocenti Digest* series on FGM/C.

² **3712 women out of a total of 4836 Eritrean immigrants.** Caritas (2001), Immigrazione, Dossier Statistico 2001, Nuovo Anterem, p136.

³ A procedure that represented a contravention of human rights under the 1966 International Covenant on Civil and Political Rights, and subsequently of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 1989 Convention on the Rights of the Child.

⁴ Figures refer to the EU prior to enlargement in 2004. Eurostat, New Asylum Applications EU by Main Group of Citizenship, January – September 2003

While legal measures offer one of the clearest indications of the position of individual states *vis-à-vis* the practice of FGM/C, they are not the only response and this chapter also emphasises the importance of preventive social and educational initiatives supported by governments, non-governmental organizations (NGOs) and professional groups such as health workers.

Legal approaches at the national level

In legal terms, the earliest decisive response to FGM/C came in 1982, when Sweden became the first country in Europe to legislate specifically against the practice. In that year the Swedish parliament approved a law (Act Prohibiting the Genital Mutilation of Women, 1982:316) affirming that "An operation may not be carried out on the outer female sexual organs with a view to mutilating them or bringing about some other permanent change in them [...] regardless of whether consent has been given for this operation or not." In 1998 this act was amended to make the penalties for those convicted of carrying out FGM/C more severe. Depending on the gravity of the consequences, under Swedish law a perpetrator can face a term of imprisonment of up to 10 years. The example of Sweden suggests that the willingness of a government to legislate on FGM/C is not a simple function of the numbers of women and girls at risk in a country. Even at the time of this amendment Sweden's migrant population from countries where FGM/C is practiced was comparatively small: in 1997 there were just under 32,000 immigrants from Eritrea, Ethiopia, Gambia, Kenya, Somalia and Uganda, of whom less than half were women.

An examination of national measures instituted to date indicates that legislators in Europe have tended to favour one of three responses to FGM/C: the introduction *ex nuovo* of specific legislation criminalizing the practice, the modification of existing legislation to make specific reference to this procedure, or the prohibition of FGM/C under existing general criminal laws pertaining to physical injury and abuse of minors. Indeed, after Sweden, the next country to respond in legal terms to FGM/C was France, which chose not to introduce specific legislation. Instead, in 1983 the French high court recognized that cases of FGM/C could be prosecuted under what was then article 312 of the Penal Code. Under the new French Penal Code introduced in 1994, article 222(9) deals with acts of violence resulting in mutilation and imposes a penalty of 10 years imprisonment. Article 222(10) states that when this crime is committed against a minor under the age of 15, the penalty is 15 years imprisonment, or 20 years when the act is carried out by a parent, caregiver or other person with authority over the child.

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⁵ STOPFGM!, "National Legal Commitments. Sweden", www.stopfgm.org/stopfgm/national/laws.jsp?idMenu=1,4&c=1

⁶ As a point of comparison, in the same year the UK hosted 303,454 immigrants from Egypt, Gambia, Ghana, Kenya, Nigeria, Sierra Leone, Tanzania and Uganda - a significantly larger population in absolute terms. In relative terms, these groups constituted 0.52 per cent of the total British population, while Sweden's groups accounted for 0.36 per cent of the country's population. Figures from Rahman, Anika & Nahid Toubia (2000), *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*, Zed Books, p 219 & p 231, and UNICEF (1998), *State of the World's Children 1998*, Oxford University Press

Other European countries which have chosen to adopt a similar position to that of France include Germany and the Netherlands. In Germany, the 2001 Penal Code does not specify FGM/C as a crime, but identifies "bodily injury", "dangerous bodily injury", "maltreatment of wards", "serious bodily injury" and "bodily injury resulting in death". In the Netherlands, the government has stated that articles 300-309 and 436 of the Penal Code are applicable to FGM/C. On the other hand, countries which have followed Sweden in introducing specific legislation on FGM/C include the United Kingdom (the Prohibition of Female Circumcision Act 1985 and Female Genital Mutilation Act 2003) and Norway (Law no. 74, 15 December 1995).

Countries that, while not introducing a new category of criminal act as regards FGM/C, have chosen to modify their existing legislation to make explicit reference to the practice include Belgium, Denmark and Spain. In Denmark, for example, law no 386 was approved on 28 May 2003, amending the Penal Code with a new section on FGM/C (section 245a) and imposing a penalty of 6 years imprisonment on anyone performing this procedure, with or without the woman's consent. In Italy, a modification to Article 583 of the Penal Code on personal injury is, at the time of writing, awaiting approval by the Senate, having been passed by the House of Deputies on 4 May 2004. This modification refers specifically to acts of genital mutilation intended to result in sexual conditioning and proposes a sentence of 6 to 12 years for those found guilty of such an act.

Specific legislation, together with legislation that is modified to make a specific reference to FGM/C, can be seen as a clear national affirmation that this practice is an unacceptable crime that cannot be justified in terms of "cultural relativism". For example, United Kingdom legislation explicitly rejects cultural values as a justification for FGM/C: "For the purpose of determining whether an operation is necessary for the mental health of a girl *it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual*" [my emphasis]. On the other hand, general legislation such as that in France, Germany and the Netherlands has the advantage that it minimizes the risk of singling out communities in which FGM/C is commonly practiced by introducing "special" laws.

The nature of legislation relative to FGM/C is an important dimension of the legal response to the practice in European states, however, a full understanding of this response also calls for an examination of the prosecutions brought under these various laws. For example, the apparently decisive position implied by the 1985 and 2003 Acts in the UK is not borne out by that country's prosecution record. To date there have been no prosecutions for FGM/C under the law. In Sweden, only one case had been brought to court by 2000, some 18 years after this country had taken the lead in addressing the issue in legal terms. In France, by the same date there had been 25 prosecutions for involvement in FGM/C using general legislation on criminal injury. In 1999, for

⁷ Rahman, Anika & Nahid Toubia, op cit., p. 187

⁸ Reported in UNFPA "UNFPA Global Population Policy Update", Issue no. 20, 5 April 2004.

⁹ STOPFGM!, "National Legal Commitments. United Kingdom", www.stopfgm.org/stopfgm/national/laws.jsp?idMenu=1,4&c=1

example, a Parisian court sentenced a Malian woman to eight years imprisonment for her mutilation of 48 girls between the ages of one month and ten years, while 27 parents who used her services were given suspended sentences.¹⁰

In commenting on the contrasting prosecution records of France and the United Kingdom as regards FGM/C, a report prepared for Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) points out,

In favour of the British approach are cultural sensitivity and a desire to work with minority communities without criminalizing them. An argument against the British approach is that it submits to cultural sensitivity at the expense of the health and security of the victims. The French approach has in its favour the protection of all children within the jurisdiction regardless or origin, even though it may lead to resentment and a refusal to engage with local authorities. ¹¹

Reliance on general criminal injury legislation does not necessarily mean that prosecutions will follow. As noted, the Dutch legislative position is similar to that in France, but to date there have been no prosecutions for FGM/C in the Netherlands.

Thus far the discussion has focused on legislation that responds to the threat that FGM/C may be carried out upon women and girls within the national territory of a European state. Additionally, governments have identified the danger that legal prohibition may result in families sending women and girls back to their country of origin in order to undergo FGM/C. Thus, for example, under Sweden's legislation, a person resident in Sweden who arranges for FGM/C to be performed on a woman or girl in another country can be sentenced under the law, even if the crime was committed abroad. United Kingdom legislation also extends to operations carried out abroad on women and children who are British nationals or permanent residents. Under the 1993 Act, parents found to have taken their daughters overseas for this operation face up to 14 years imprisonment. Similarly, Norway's 1995 Act applies both in Norway and abroad, meaning that any Norwegian national or resident who has carried out, or who has aided in carrying out this procedure, albeit outside Norwegian territory, is liable to prosecution under Norwegian law.

The growing awareness of the risk that girls and women, protected under the law of European states, may be taken abroad to undergo FGM/C is illustrated by the decision of Court no. 1 of Sant Feliu de Guixols in Girona, Spain on 13 May 2004 to prevent the father of 3 Gambian girls from taking his children back to Gambia. In Spain, those who practice FGM/C can be charged under Article 149 of the Penal Code, which deals with injury to the person. In September 2003, this article was modified under organic law no. 11/2003 to specifically incorporate FGM as an injury punishable by a term of imprisonment of between 6 and 12 years, with greater penalties if the act is carried out on a minor. In a decision that has provoked considerable public debate, the judge ruled that

¹¹ Banda, Fareda (2003), *National Legislation Against Female Genital Mutilation*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), p22

¹⁰ Wheeler, Patricia (2003), "Eliminating FGM: The role of the law", *The International Journal of Children's Rights*, 11: pp. 257-71, 2003

the girls, whose two older sisters had already undergone genital cutting during a trip to Gambia, should have their passports removed and only returned to them on reaching the age of 18. He also ruled that the girls should have a medical examination every six months to ensure that they did not undergo the procedure in Spain. Six weeks prior to this decision, the Paris assize court found a Guinean man and his two wives guilty of complicity in violence resulting in the mutilation of a minor after it was shown that both the man's daughters had been sent back to Guinea where they had been subjected to FGM/C. The man and two women were given five-year suspended sentences and the daughters were awarded damages. 13

European states have also had to take into account the issue of FGM/C as grounds for asylum. In 1994, the United Nations High Commission for Refugees issued a statement affirming that a woman could be considered a refugee if she or her daughter or daughters feared being forced to undergo FGM/C in their country of origin, or considered that they would face persecution if they refuse to submit to the practice, ¹⁴ a position supported by the European Commission. ¹⁵ Nonetheless, according to Amnesty International, in only a very small number of cases have women been granted asylum on these grounds. ¹⁶ The issue of asylum proved to be a stumbling block for the modification of Italy's penal code to refer to FGM/C. On 29 April 2004, the parliamentary vote on the law was postponed due to resistance to the recognition of refugee status to women who flee their countries because they or their daughters are at risk of FGM/C. ¹⁷

Legal approaches at the European level

FGM/C may be regarded as a violation of a number of articles of the 1950 European Convention on Human Rights. Article 3 states that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment" while Article 9 asserts that "[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others." These values are echoed in the 2000 Charter of Fundamental Rights of the European Union, with its emphasis on human dignity (Article 1), the right to respect for a person's physical and mental integrity (Article 3) and the assertion that no one shall be subjected to torture or to inhuman or degrading treatment or punishment (Article 4).

Despite this legal context, the significant developments regarding FGM/C at the national level in Western Europe have only been partly reflected in the activities of Europe's

¹⁷ "Infibulazione, scontro sul diritto d'asilo", *La Repubblica*, 30 April 2004, p. 23

¹² "Un juez prohíbe a tres niñas salir del para evitarles la ablación", *El Mundo*, 14 May 2004, p. 27; "Un juez prohíbe a tres niñas viajar a Gambia para evitar la ablación", *El Pais*, 14 May 2004, p. 36

¹³ Brissiaud, Caroline, "Cinq ans avec sursis pour l'excision de leurs filles en Guinée", *Libération*, 31 March 2004.

¹⁴ Wheeler, Patricia, op cit., p. 267

¹⁵ European Commission, Justice and Home Affairs, "The European asylum system caters for women's specific needs", http://europa.eu.int/comm/justice_home/fsj/asylum/women/fsj_asylum_women_en.htm ¹⁶ Amnesty International, "Female genital mutilation and asylum", from *Female Genital Mutilation – A Human Rights Information Pack* (1998), www.amnesty.org/ailib/intcam/femgen/fgm6.htm

institutions. The European Union has not legislated against FGM/C, however, under the EU Daphne Programme 2000-2003, the overall aim of which is to combat violence against women and children, FGM/C has been earmarked as an emerging problem. Of particular relevance to the theme of this chapter, the Daphne Programme has supported an extensive project on different legal approaches to FGM/C in Europe, coordinated by the International Centre for Reproductive Health at the University of Ghent, with the aim of proposing a European legislative strategy. The results of this project are due to be made available in the second part of 2004. ¹⁸

At a European level one of the most significant developments to date as regards legislation is Resolution 1247 of the Parliamentary Assembly of the Council of Europe (2001) on Female Genital Mutilation. Until this Resolution, the Council of Europe had taken no direct measures to address FGM/C in Europe, although it had supported a number of awareness-raising campaigns in developing countries. ¹⁹ The Resolution notes that "the practice appears to be becoming increasingly common in Council of Europe member states, especially among immigrant communities" on while the report accompanying this Resolution asserts that FGM/C in Europe cannot be justified on the grounds of cultural relativism: "The fact that sexual mutilation is a *traditional* practice in some of the countries of origin of immigrants to European Union countries, can in no way be considered as a justification for not preventing, prosecuting and punishing such brutality."

Under the Resolution, the Parliamentary Assembly urges governments, inter alia:

i. to introduce specific legislation prohibiting genital mutilation and declaring genital mutilation to be a violation of human rights and bodily integrity;

ii. to take steps to inform all people about the legislation banning the practice before they enter Council of Europe member states;

iii. to adopt more flexible measures for granting the right of asylum to mothers and their children who fear being subjected to such practices; [...]

v. to prosecute the perpetrators and their accomplices, including family members and health personnel, on criminal charges of violence leading to mutilation, including cases where such mutilation is committed abroad[.]²²

¹⁸ For more on the Daphne Programme, see European Commission, Justice and Home Affairs, "Daphne II - EU programme to combat violence against children, young people and women", http://europa.eu.int/comm/justice_home/funding/daphne/funding_daphne_en.htm

¹⁹ Eberhard, Christoph. "Le Droit et l'excision – Evaluation critique de la fonction de Justice et de la production du droit en France", presented at national conference, "Les violences à l'encontre des femmes et le droit en France", University of Paris 8, Saint Denis, 21 & 22 November 2000.

²⁰ Parliamentary Assembly of the Council of Europe, Resolution 1247 (2001), Female genital mutilation, para. 4

²¹ Committee on Women's Rights and Equal Opportunities, Draft Report to the European Parliament on Female Genital Mutilation (2001/2035 (INI)), 31 May 2001, "Explanatory Statement", p13

²² Parliamentary Assembly of the Council of Europe, Resolution 1247 (2001), Female genital mutilation, para. 11

Beyond legislation: the importance of education and support

Across Europe, the generally low level of prosecutions against perpetrators of FGM/C suggests a lack of willingness on the part of public prosecutors to bring to court a practice that is understood to be rooted in the culture and traditions of specific immigrant groups. It also undoubtedly reflects the sensitive and covert nature of this act. While individuals may not hesitate to denounce a serious physical assault against a woman or girl of their community which takes place on the street, there is often a reluctance in reporting an act of genital mutilation or cutting, both by those who are aware of such acts and by the women and girls who are victims of the practice. This is one of the limits of legal responses, for while they serve to demonstrate the opposition of a state to an act that is considered unconstitutional, criminal and contrary to the principles of human rights, it is increasingly apparent that such responses can only be effective when accompanied or, indeed, preceded by other measures. These measures must be aimed at introducing appropriate, culturally-sensitive support mechanisms in communities, empowering women and girls belonging to populations which have traditionally practiced FGM/C and raising awareness among professional and voluntary groups - including teachers, medical personnel, social workers and community volunteers - most likely to have contact with women and girls who are at risk of FGM/C. In the Netherlands, for example, the government has explicitly stated that its policy "must be geared towards prevention, with judicial intervention as a last resort"²³, a position entirely consistent with this country's prosecution record regarding this practice. In 2000, the Norwegian Parliament requested the government to prepare an action plan to combat FGM/C. This plan incorporates awareness raising initiatives regarding FGM/C including the legal situation; improved cooperation between various organisations and individuals working in this area; the introduction of preventive measures, including through health services in schools; and strengthening international cooperation on the issue.²⁴

The significance of social action aimed at prevention is recognized in the Resolution of the Parliamentary Assembly of the Council of Europe on Female Genital Mutilation. As well as calling for the introduction or strengthening of legal measures against FGM/C, it encourages member states "to conduct information and public awareness-raising campaigns to inform health personnel, refugee groups and all groups concerned by this question about the dangerous consequences of genital mutilation for their health, physical well-being and dignity of the women concerned, about their right to personal fulfillment and about the customs and traditions that are in contradiction with human rights". ²⁵

In addition, the Resolution observes that "non-governmental organizations (NGOs) will have a key role to play in combating genital mutilation by enabling girls and young women to become involved in local communities and helping to devise prevention

²³ Rahman, Anika & Nahid Toubia, op cit., p. 188.

²⁴ Norwegian Ministry of Children and Family Affairs (2003), *Governmental Actions Plan Against Female Genital Mutilation*, April 2003

²⁵ Parliamentary Assembly of the Council of Europe, Resolution 1247 (2001), Female genital mutilation, para. 11

programmes and information campaigns aimed at eradicating the practice." Some of the most active NGOs in the European arena include the Italian Association of Women in Development (AIDOS), Womens's Groups for the Abolition of Sexual Mutilation (GAMS) in France and Belgium, FORWARD in the UK and Germany, EQUIS in Spain, RISK in Sweden, The Somali Women's Organisation in Denmark and Pharos and FSAN in the Netherlands. These organizations are also among the founding members of Euronet-FGM, the European Network for the Prevention of Female Genital Mutilation. Euronet-FGM has the aim of improving the health of female immigrants in Europe and combating traditional harmful practices that have an impact on the health of women and children.

Health workers and medical personnel constitute another important group as regards the prevention of FGM/C. Throughout Europe FGM/C has been classified as unethical by national deontological codes, thus forbidding registered doctors to support or carry out such practices. In Italy, for example, the Italian medical association has inserted a specific reference in it deontological code prohibiting health workers in either the public or private sectors from practicing any form of FGM/C. There have been few actions taken against medical practitioners in Europe: in the United Kingdom a general practitioner was struck off the medical register for consenting to perform FGM/C on three young Somali girls. He was not, however, brought to court.²⁷

Important as a deontological position regarding FGM/C is, the potential of health workers to act as catalysts of change goes far beyond this. They represent a crucial point of institutional contact not only with children who may be forced to undergo FGM/C, but also with the parents of these children. In Sweden, for example, health care professionals are advised that discussions regarding FGM/C should start at the time that a new baby is enrolled with the health services and be raised again at the standard check-up after the child turns five. Health care workers are expected to advise parents of the health risks of FGM/C and inform them that the practice is prohibited under Swedish law. When necessary, health workers are encouraged to use an interpreter, preferably a woman. ²⁸

Conclusions

Even from this brief summary, it is clear that legislation relating to FGM/C in European countries (whether or not FGM/C is explicitly mentioned in that legislation) places emphasis on the criminalization of the act. Experience suggests, however, that this alone is unlikely to have a significant impact on the prevalence of a practice that a community perceives as an element of its cultural identity.

Certainly, legislation has an important place in establishing a state's profound disapproval of the practice: as the Report Adopted by the Parliamentary Assembly of the Council of Europe emphasizes, "It is the obligation of a constitutional state to ensure

²⁶ Parliamentary Assembly of the Council of Europe, Resolution 1247 (2001), Female genital mutilation, para. 10

Rahman, Anika & Nahid Toubia, *op cit.*, p. 233

²⁸ Rahman, Anika & Nahid Toubia, *op cit.*, p. 220

respect for individual rights and to prosecute the actions which violate this principle."²⁹ Legislation has an additional value in that it sends out a clear message of support to those who have renounced, or would wish to renounce the practice. But legislation alone may simply drive the practice underground or encourage, as happens in Africa, cross-border movement in order to exploit legislative differences between one state and another. The threat of imprisonment may act as a deterrent, but it does nothing to change deep-seated but misguided beliefs that genital mutilation or cutting is, in any case, in the best interest of the woman or girl.

Given that punitive legislation in itself offers little justification for communities to change an entrenched behaviour which is perceived to have a clear social function, such legislation must be complemented and even preceded by other strategies. These include focused awareness-raising: teachers, medical staff, social workers and others likely to encounter at-risk children and their families must not only be alert to the issue, but understand how to address it with sensitivity and cultural respect. Above all, these strategies should include extensive socio-educational work among communities where girls are identified as being at risk, with initiatives tailored to specific groups within the community. This work is often most effective when it builds upon general human rights principles, setting in motion a process of discussion and debate among community members that eventually leads these communities to make their own decision to abandon the practice. This non-confrontational, human rights-based approach is particularly important when working with migrant groups who may perceive a cultural practice such as FGM/C as a significant element of their collective identity.

Female genital mutilation or cutting is an affront to human dignity, an assault on the integrity of the individual and a contravention of human rights, but the most successful initiatives will support communities in *choosing* to abandon this practice rather than compelling them to do so.

Key Texts

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²⁹ Committee on Women's Rights and Equal Opportunities, Draft Report to the European Parliament on Female Genital Mutilation (2001/2035 (INI)), 31 May 2001, "Explanatory Statement", p. 15

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