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Afro-Arab Expert Consultation on

Legal Tools for the Prevention of Female Genital Mutilation

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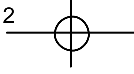

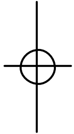

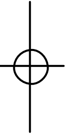

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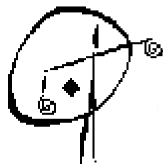

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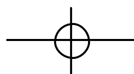

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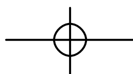

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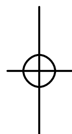
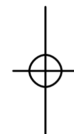
Cairo, 21-23 June 2003





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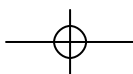

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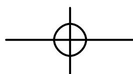

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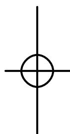

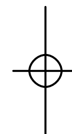

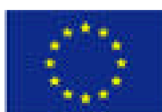

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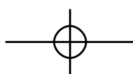

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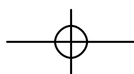

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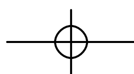

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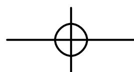

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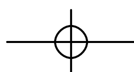

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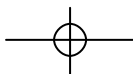

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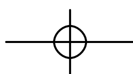

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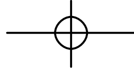

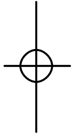

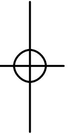

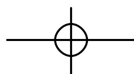

Solemn Appeal against Female Genital Mutilation

We have decided to speak and to act, aware that silence is the best ally of a terrible practice that still affects millions of women.

"There are practices that our ancestors themselves, if they came back to life, would find obsolete and outdated,"
said the great African sage Amadou Hampaté Bâ.

There are now between 120 and 130 million women around the world who have suffered due to female genital mutilation (FGM). Every year, two million girls and young women are subjected to this practice that still survives despite the measures taken in many of the countries involved to try to eliminate it. While sub-Saharan Africa, as well as some parts of the Arab peninsula, i.e., Yemen and Oman and certain parts of the Far East, remain the homelands of the practice, these are not the only places affected. As a result of emigration from these areas towards industrialised countries, Europe, the United States, Canada, Australia and New Zealand are also now involved.

Concerned by the persistence and geographical magnitude of female genital mutilation,

we the undersigned, the signatories of this Appeal, have decided to speak and to act, aware that silence is the best ally of a terrible practice which still affects millions of women.

While, in the last twenty years, people have begun to talk and it is easier to evaluate the damage caused by FGM;

While, many leading politicians and members of civil society - including many of the signatories of this appeal - have fought and continue to fight against it courageously;

While, many States have decided to attempt to eliminate it and have taken legislative, administrative and other measures to this end, in particular –in Africa- by creating a joint coordination structure;

However, the persistence of FGM, including infibulation - its most violent form - demonstrates the limits of the measures taken so far and the need for us to become more personally involved in the struggle for its elimination.

While we note that FGM may have been forced on women as an attempt to reinforce and to codify the traditional roles of the sexes, the practice of the removal of

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all or part of the external female genital organs is not prescribed by any religion, and is now in total contradiction with the universally accepted principles of respect for the physical and moral integrity of the individual, and of equality in dignity and in rights of the sexes, and constitutes an unacceptable abuse against women. In addition to the psychological harm it produces, it also leads to countless medical complications and contributes to the persistence of high rates of female mortality in the countries where it is still widely practiced.

Today, most African and Asian countries affected by this custom have signed and ratified the principal international conventions that condemn it, in particular the international Convention on the elimination of all forms of discrimination against women of 1979 and the international Convention on the rights of the child of 1989. Most of them have also supported United Nations resolutions that call for its elimination, in particular the plan of action of the Cairo Conference on population and development of 1994, and that of the Beijing Conference on women of 1995.

— Aware that the international legal instruments to fight against female genital mutilation already exist;

— Convinced that the States involved must do more to implement them and to persuade the populations involved in the practice that they will lose none of their identity by giving it up,

— Convinced that instead they will gain in dignity by becoming aware that traditions and cultures that are unable to evolve are more at risk of becoming extinct.

We, the women and men, signatories of this Appeal, born in countries where female genital mutilation has been traditionally practiced or in countries where it has been imported in recent times, or simply eager to fight against a custom that violates the rights and the dignity of millions of women around the world, pledge to use all our influence and to do everything in our ability to contribute to its eradication.

For this reason, we solemnly call upon:

the Heads of State, the Governments and the Parliamentarians of the countries in which Female Genital Mutilation are traditionally practiced:

to ensure the respect of the human rights of women and girls, in particular the right not to be subjected to discrimination, and the right to health, to physical integrity and to life;

to legislate — in countries which don't yet have specific legislation — to consider Female Genital Mutilation as a violation of fundamental rights of the human person and to provide for sanctions for those who practice it;

to promote information campaigns to bring about a lasting change in the behaviours of the populations that practice Female Genital Mutilation, addressed to all social classes and taking into consideration all the aspects of the practice: human

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rights, health, social and gender relations, involving national and local institutions, non-governmental organisations, traditional and religious leaders and the media;

to include programmes for the prevention of the practice in reproductive health policies and to guarantee universal access to the health services;

to set aside sufficient funds for these initiatives.

the governments and the Parliamentarians of the immigration countries:

harmonise the existing legislative framework on Female Genital Mutilation and to ensure that all legislative measures are accompanied by information campaigns to ensure that the law is understood, accepted, applied and respected;

to consider carefully the application of penalties against Female Genital Mutilation in order to ensure their effectiveness;

to consider the possibility of granting residence permits and protection to the victims of this practice and to recognise the right of asylum for women and girls who risk genital mutilation.

International organisations and the governments of the countries concerned, as well as donor countries:

to support information campaigns, education programmes and reproductive health initiatives that aim to eradicate female genital mutilation;

to support the work of non-governmental organisations, associations, and women's or youth groups, as well as networks of such bodies;

to contribute to effect the reforms necessary to promote equality between the sexes.

local, national and international non-governmental organisations:

to reinforce collaboration and co-ordination of interventions, as well as to capitalize upon the results obtained, in order to increase the effectiveness of their actions and to achieve as soon as possible the goal of the complete eradication of Female Genital Mutilation;

to intensify collaboration between organisations in the countries of origin and immigration countries of women who have suffered Female Genital Mutilation in order to prevent the practice among migrant populations.

Finally, we call upon all women and men of good-will all over the world to do everything they can to help to abolish the practice of Female Genital Mutilation, with the aim of ensuring that it disappears completely within fifteen years, so that, in the countries concerned, a new generation of women, equal to everyone else in rights and in dignity, will be born.

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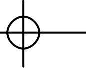

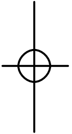

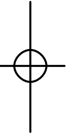

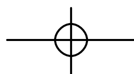

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Agenda Program

SATURDAY, JUNE 21, 2003

9:00 – 10.00
Coffee and Registration of participants

10:00 – 11:15
OPENING SESSION

Chair Keynote Speaker: H.E. Ms. Suzanne Mubarak, First Lady, Egypt
Rapporteur : Amb.Moushira Khattab, Secretary General, NCCM, Egypt

Sheikh Mohammed Sayed Tantawy, Grand Sheikh of al-Azhar
H.H. Pope Shenouda III, Patriarch of Alexandria and See of st. Mark (to be confirmed)
Mariam Lamizana, Minister of Social Action and National Solidarity, Burkina Faso
Jaap Doek, Chair of the United Nations Committee on the Rights of the Child
Emma Bonino, Member of the European Parliament, Italy

11:15 - 13.00
PROGRAMS FOR THE PREVENTION OF FGM

Moushira Khattab, Secretary General, NCCM, Egypt
The activities of the National Council of Childhood and Motherhood in the field of FGM

Daniela Colombo, President, AIDOS, Italy
The "Stop FGM" Campaign

Aziza Hussein, President, Egyptian Society for the Prevention of Harmful Practices - ESPHP, Egypt
The Egyptian Society for the Prevention of Harmful Practices: twenty years of experience

Amna Abdel Rahman, Vice President, Inter-African Committee against traditional practices - IAC, Ethiopia
The "Zero Tolerance to FGM" IAC program

Hamdi El Sayed, Chair of Medical Syndicate, Egypt
Medical Ethics Perspectives

13.00 - 15.00
LUNCH
KEYNOTE SPEAKER: MAME BASSINE NIANG, HUMAN RIGHTS COMMISSIONER, SENEGAL

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15.00 - 18.00

BACKGROUND FOR WORKING GROUP DISCUSSION

Chairs: Daniela Colombo, President, AIDOS, Italy; Gianfranco Dell'Alba, Secretary General, NPWJ, Italy

Laura Katzive, CRR, United States
Using Legislation to Promote Women's Rights: considerations in drafting and implementing legislation to prevent FGM

Nahid Toubia, President, RAINBO, United Kingdom
Legislation as a tool for behaviour change

COUNTRY CASE STUDIES

Kenya: Ken Wafula, Lawyer
Mali: Sidibé Kadidia Maïga Aoudou, President, AMSOPT
Burkina Faso: Gisèle Kambou, Secretary General, Voix de Femmes
Fareda Banda, University of London School of Oriental and African Studies
FGM and the law in Europe
Kady Koita: President, European women network Fgm and civil society activities in Europe

Antonio Vigilante:Undp resident coordinator, Egypt

GENERAL DISCUSSION

Moderator: Katherine Hall Martinez, Director of International Program, CRR, United States

SUNDAY, JUNE 22, 2003

9.00 - 9.30
Coffee

9.30 - 13.00

WORKING GROUPS

WORKING GROUP I

Desirability and objectives of adopting legislation as a tool for social change

WORKING GROUP II

Technical elements of law on FGM

13.00 - 15.00
LUNCH

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KEYNOTE SPEAKER : HALIMA WARZAZI, UNITED NATIONS SPECIAL RAPPORTEUR ON TRADITIONAL PRACTICES

15.00 - 18.00
RESUMED WORKING GROUPS

MONDAY, JUNE 23, 2003

9.00 - 10.15
PRESENTATION OF THE WORKING GROUPS REPORT AND ADOPTION OF A STRATEGY DOCUMENT ON FGM LEGISLATION

10.15 - 10.30
Coffee break

10.30 - 13.00
CLOSING SESSION

10.30 - 11.00
PRESS CONFERENCE : PRESENTATION OF THE EXPERT CONSULTATION RESULTS

Moushira Khattab, Secretary General, NCCM, Egypt
Emma Bonino, Member of the European Parliament, Italy
Daniela Colombo, President, AIDOS, Italy
Mona El-Tobgui, ESPHP, Egypt

11.00 - 12.30
PROJECTS PRESENTATIONS

Chiku Lweno, TAMWA
Media Campaign against FGM in Tanzania
Laetitia Palleva, NPWJ and Cristiana Scoppa, AIDOS
The Stop FGM International Appeal and Web Portal
Mona El-Tobgui, ESPHP
Media Campaign against FGM in Egypt
Sophie Bessis, writer
FGM Dictionary

12.30
CONCLUSIONS OF THE EXPERT CONSULTATION

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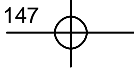

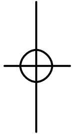

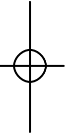

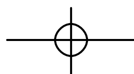

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Introduction

Female genital mutilation (FGM) is a deeply entrenched cultural tradition practiced by various ethnic groups in more than 28 countries on the African continent. The practice is also found among populations in countries on the Arabian peninsula, in the Middle East, and in Southeast Asia.

Over the last thirty years, African women, local associations, non-governmental organizations (NGOs) and national and international institutions have been active in campaigns to expose the practice of FGM as a serious violation of the human rights of women and girls and have worked toward eliminating it. However, despite the implementation in many countries of projects aimed at preventing the traditional practice -- as well as the enactment of laws forbidding it in some countries – there is a need for better coordination of initiatives, the sharing of lessons learned, and the involvement of all social actors, from the international to the community level, to strengthen the message within these traditional societies to reject FGM.

With the recent increase in emigration of African populations, African immigrants have imported the practice of FGM to Europe and other Western countries. Serious attention to the enactment of preventative measures against FGM in Western countries can no longer be postponed. To this end, AIDOS (Italian Association for Women in Development), NPWJ (No Peace Without Justice) and TAMWA (Tanzanian Media Women's Association) have obtained the financial support of the European Union and other donors to execute an international "STOP FGM" Campaign. Seven other NGOs from Mali, Burkina Faso, Gambia, Egypt, Somalia, Ethiopia and Kenya are also taking part.

The "STOP FGM" Campaign is aimed at increasing the awareness of the public, especially in African and Arab countries, regarding the human rights issues involved in the practice of female genital mutilation, and its negative impacts on women and girls. The Campaign is also aimed at fostering and strengthening the involvement of civil society and governments in an effort to eradicate the practice, particularly through political action and the adoption of increasingly effective legal measures.

A key moment in the "STOP FGM" Campaign was the Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation held in Cairo (Egypt) from June 21 to 23, 2003. This publication was prepared to document the Expert Consultation and its results.

The aim of the Expert Consultation was to define both legal content and strategies for more effective legislation to prevent female genital mutilation. It was organized in collaboration with the Egyptian Society for the Prevention of Harmful Practices (ESPHP), and sponsored by Egypt's National Commission for Childhood and Maternity (NCCM) under the auspices of Egypt's First Lady, Her Excellency Mrs. Suzanne Mubarak.

Mrs. Mubarak addressed her opening remarks to about one hundred participants from 28 African and Arab countries where FGM is practiced. Additional participants included international jurists and experts, representatives of the United Nations, and representatives from myriad African organizations fighting traditional practices that are harmful to women, boys and girls.

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Presentations were made by Mohammed Sayed Tantawy, the Sheik of Al Azhar and Egypt's' highest Islamic authority, and Bishop Moussa, a representative for H.H. Pope Shenouda III, Patriarch of the Coptic Church. Each, respectively, made the point that the practice of female genital mutilation is neither called for by, nor has it any basis in, Islam or Christianity.

Technical consultation at the Expert Conference was provided by CRR, the Center for Reproductive Rights (USA), and RAINBO, Research Action and Information for the Bodily Integrity of Women, (UK). The technical consultants presented a comparison of the various laws and political initiatives enacted for the elimination of FGM, based on documents prepared specifically for the Expert Conference. The documents included a paper by Laura Katzive of CRR, Using Legislation to Promote Women's Rights: Considerations in Drafting and Implementing Legislation to Prevent FGM, and a paper by Nahid Toubia of RAINBO, Legislation as a Tool for Behavioral Change, which assessed possible impacts of legislative initiatives and cited examples from a number of countries where legislation has already been implemented.

Following this discussion, three African country case studies were presented: in Kenya, lawyer Ken W. Wafula saved a number of minors from FGM utilizing protection orders provided for in civil law; in Mali, non-governmental organizations are fighting to defeat resistance in Parliament to a bill against FGM; and, from Burkina Faso, an assessment of the first years of enforcement of a 1996 law against FGM.

Finally, since the migration of FGM to Western countries is of increasing concern, Fareda Banda, a researcher at the University of London School of Oriental and African Studies, was invited to discuss how legislation can be used to prevent FGM in Europe. Her paper, Legal Tools for the Prevention of FGM: a Perspective from Europe, compares the opposite approaches of France and Great Britain, analyzes the European Resolution Against FGM, and examines the possibility of granting women and girls who leave their countries to escape FGM political asylum. AIDOS contributed to the discussion by presenting a document by Tamar Pitch, The Right Law: Legal Treatment of Female Genital Mutilation, in which the objectives, effects, and limits of exclusively penal legal action are analyzed.

Following the presentations, discussions took place in two large working groups. One group, chaired by Nahid Toubia (RAINBO) and Kathy Hall-Martinez (CRR), discussed "Opportunities and Objectives of the Law as an Instrument for Promoting Social Change". The other group, led by Laura Katzive (CRR) and Mona El-Tobgui (ESPHP), discussed "Elements of the Legal Approach to FGM". In addition to the international experts, discussion participants included a large group of activists, jurists, and university teachers, as well as officials from a number of Egyptian ministries. To facilitate discussion, a list of questions was prepared based on the papers. At the end of the discussion sessions, each group prepared a final document. A select committee of organizers, technical consultants and representatives of the NCCM then prepared a draft final resolution, which was approved in the plenary session on June 23.

"The Cairo Declaration for the Elimination of Female Genital Mutilation" encourages all governments to pass legislation aimed at the progressive elimination of FGM, and includes 17 recommendations to ensure that those laws become instruments of real prevention.

The discussion groups concluded that law can be an important and useful tool for women who want to protect their daughters from FGM, and can aid them in combating the pressure from both family and community to engage in the practice. However, both groups acknowledged that the law alone is inadequate, that it must be part of a larger program for

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women's empowerment and for the protection of their human rights as defined in the main treaties, international conventions, in the action programs of the Cairo Conference on Population and Development, and at the Beijing Conference on Women.

The participants concluded that law must be accompanied by targeted public information campaigns and measures aimed at legitimizing the law within the communities so that it is acknowledged, understood and used as an instrument for the protection of minors. The roles of the mass media, the judiciary system, the social-health system, organized civil society, and the schools were seen as essential in re-shaping the individual and social behavior at the root of female genital mutilation, and for the construction of a new social context wherein the law can be successfully applied. Finally, there was a forceful call for the investment of adequate resources, both at the national and international levels, to guarantee implementation of prevention programs that would engage many segments of society.

"The Cairo Declaration for the Elimination of Female Genital Mutilation" was further reinforced with support from high ranking institutional representatives from the African countries attending: Mariam Lamizana, Minister for Social Action and National Solidarity, Burkina Faso; Gifti Abassaiya, Minister for Women, Ethiopia; Linah Jebji Kilimo, Under-Secretary of State for Local Development, Kenya; Edna Adan Ismail, Minister for Foreign Affairs, Somaliland; Memunatu M. Koroma, Deputy Minister of Social Welfare, Gender and Children's Affairs, Sierra Leone. This support was bolstered by the participation of Jaap Doek, President of the United Nation's Children's Committee, and Halima Warzazi, United Nations Special Rapporteur on Traditional Practices. Also attending were representatives of the main UN agencies involved in the issue (UNIFEM, UNICEF, WHO, UNFPA, UNDP), and the European Commission, the Office of the Italian Development Corporation, the World Bank, and USAID.

A few days after "The Cairo Declaration for Elimination of Female Genital Mutilation" was adopted, the Maputo Summit of the African Union approved the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Protocol will become enforceable after its ratification by 15 countries, and further reinforces the international framework for the national laws to prevent FGM advanced by the Cairo Declaration, included at the beginning of these proceedings.

Finally, the Expert Conference was also the occasion to launch the International Appeal Against Female Genital Mutilation, introduced by AIDOS and NPWJ in Brussels on December 12, 2002, and already signed by numerous international figures and thousands of people around the world (found in the appendix to this volume). Additional signatures were also collected on the campaigns official web site, www.stopfgm.org, the first portal on activities and actors involved in prevention of FGM.

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The Declaration for the Elimination of the FGM

Adopted at the Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation

Cairo, June 23, 2003

WE, the representatives of twenty-eight African and Arab countries affected by the practice of Female Genital Mutilation, of international and non-governmental organisations, and experts on FGM, meeting in Cairo from the 21st to the 23rd of June 2003 for the Afro-Arab Expert Consultation on "Legal Tools for the Prevention of Female Genital Mutilation" on the invitation of AIDOS - Italian Association for Women in Development - No Peace Without Justice, the Egyptian National Council for Childhood and Motherhood, and the Egyptian Society for the Prevention of Harmful Practices to Women and Children, under the Auspices of H.E. Mrs. Suzanne Mubarak, First Lady of Egypt, organised within the framework of the "STOP FGM Campaign" supported by the European Commission:

Emphasise that all countries affected by the practice of FGM have been represented at the Expert Consultation, making it a unique opportunity for dialogue, exchange of information and points of view concerning the best means and the most appropriate legislative instruments for the prevention and the progressive abandonment of FGM worldwide;

Recognise and salute the commitment and determination of H.E. Mrs. Suzanne Mubarak, First Lady of Egypt, as well as Her keynote speech delivered at the opening session of the Expert Consultation and her specific contribution to the success of this Afro-Arab meeting;

Emphasise in particular the statements of the highest religious authorities in Egypt, H.E. Sheikh Mohammed Sayed Tantawy, Grand Sheikh of Al-Azhar, and the representative of H.E. Pope Shenouda III, Patriarch of Alexandria and of the See of St. Mark, who reaffirmed that no religious precept either in Islam or Christianity justifies the practice of FGM;

Thank the organisers for taking the initiative to convene this Expert Consultation in Cairo and expressing appreciation in particular to the Egyptian National Council for Childhood and Motherhood and the Egyptian Society for the Prevention of Harmful Practices to Women and Children for the warm welcome received in Egypt and to ensure the best working conditions for the meeting;

Thank the sponsors and other contributors for providing the resources for this Expert Consultation and its follow-up;

Take note of the results obtained by the working groups, the quality of the contributions by the speakers and all the participants, and the most valuable technical contribution by CRR - Centre for Reproductive Rights - and RAINBO - Research, Action and Information for the Bodily Integrity of Women - which have made the successful outcome of the Consultation possible;

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Take note of and support the international "STOP FGM" Appeal, launched on the 10th of December 2002, as well as the Declaration on "Zero Tolerance for FGM" issued by the IAC - Inter-African Committee - on the 6th of February 2003, and signed by African First Ladies and a number of other world renowned figures.

CAIRO DECLARATION FOR THE ELIMINATION OF FGM

WE, the participants in the Afro-Arab Expert Consultation on "Legal Tools for the Prevention of Female Genital Mutilation"

Call upon governments to promote, protect and ensure the human rights of women and children in accordance with the obligations undertaken by them as states parties or signatories to:

• the African Charter on the Rights and Welfare of the Child
• the African Charter on Human and People's Rights
• the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
• the Convention on the Rights of the Child
• the Cairo Programme of Action agreed to at the International Conference on Population and Development
• the Beijing Declaration and Platform for Action agreed to at the Fourth World Conference on Women

Believe that the prevention and the abandonment of FGM can be achieved only through a comprehensive approach promoting behaviour change, and using legislative measures as a pivotal tool;

Launch the Cairo Declaration, appealing to Heads of State, governments, parliaments and responsible authorities in concerned countries, as well as international organisations and non-governmental organisations, to endorse the following recommendations in their legislation, social and health policies, aid programs, bilateral and multilateral cooperation initiatives.

WE, the participants in the Afro-Arab Expert Consultation on "Legal Tools for the Prevention of Female Genital Mutilation"

Recommend that:

1. Governments, in consultation with civil society, should adopt specific legislation addressing FGM in order to affirm their commitment to stopping the practice and to ensure women's and young girls' human rights. Where politically feasible, a prohibition on FGM should be integrated into broader legislation addressing other issues, such as:

• gender equality
• protection from all forms of violence against women and children
• women's reproductive health and rights
• children's rights

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2. The use of law should be one component of a multi-disciplinary approach to stopping the practice of FGM. Depending on the national context, outreach efforts by civil society and governments aimed at changing perceptions and attitudes regarding FGM should precede or accompany legislation on FGM. These activities should reach as many members of the public as possible and should include the participation of both elected officials and other government actors and members of civil society, including advocates, religious leaders, traditional leaders, medical providers, teachers, youth, social workers, and all forms of media available. In particular, men must be targets of outreach, as well as family members, including grandmothers, mothers-in-law, etc. Means of outreach should take as many forms as possible in each country, including community gatherings, media (radio, theatre) and other creative means of communication.

3. The work of NGOs is at the heart of social change. NGOs and governments should work together to support an ongoing process of social change leading to the adoption of legislation against FGM. A long-term, multi-strategy approach shaping attitudes and perceptions about women's status and human rights should lead in the long-run to the criminalization of FGM. Governments and international donors should provide financial resources to empower national NGOs in their struggle to stop FGM. In addition, governments must ensure that national NGOs are able to pursue their activities freely.

4. The legal definition of FGM should encompass all forms of FGM and should be formulated by national legislatures on the basis of the World Health Organization definition and in consultation with civil society, including the medical community. However, depending on the national context, it may be desirable to provide for a period of sensitization to precede enforcement of the prohibition as it applies to parents and family members.

5. Governments should formulate time-bound objectives, strategies, plans of action, and programs, backed by adequate national resources, whereby FGM laws will be enforced, taking into account that legislation condemning FGM has a moral force and an educational impact that could dissuade many individuals from submitting girls to the practice.

6. If existing criminal sanctions are enforced in the absence of specific legislation on FGM, governments should work with civil society to undertake a major information campaign to ensure that all members of society, particularly those who practice FGM, are aware that the existing law will be enforced.

7. In adopting a law, religious leaders, civil society organizations, including women's and community-based organizations, and health care providers, among others, should be part of the consultative process. Efforts to end FGM must be focused on empowering women to make choices impacting their health and their lives.

8. Religious leaders should be sensitized to the negative impact of FGM on women's reproductive and sexual health. Religious leaders who support ending FGM should be incorporated into outreach strategies.

9. Once legislation prohibiting FGM has been adopted, whoever performs FGM, including

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health professionals and traditional circumcisers, should be put on immediate notice that performing FGM gives rise to legal and professional sanctions.

10. Licensed medical practitioners should be subject to the maximum available criminal penalties. Professional associations should adopt clear standards condemning the practice of FGM and apply strict sanctions to practitioners who violate those standards. Practitioners may be suspended or lose their licenses to practice. In addition, they should face civil liability for malpractice or unauthorized practice of medicine. Appropriate ethical guidelines against FGM should be incorporated into medical education and training curricula.

11. Provided sufficient outreach and sensitization has taken place, members of the community with knowledge of cases of FGM should be held criminally liable for failure to report such cases. Special measures are needed to protect those who come forward to report a case. Governments should consider alternative methods of monitoring prevalence and effects of FGM, for example, through gathering statistics from health care centers. Law enforcement officials should be trained to respond to cases of FGM (including cases that may still be prevented) in a manner that meets the needs of women and young girls affected by the practice.

12. Women and young girls should be empowered to access legal remedies specified by law to prevent FGM. In particular, women and young girls who are victims or potential victims of FGM have the right to bring a civil action to seek compensation from practitioners or to protect themselves from undergoing FGM. Resources, such as information on legal rights, legal assistance, and social services and support for girls who may face negative repercussions from their families and communities, should be provided to women and girls. Medical professionals should assist by providing evidence supporting the claim of the girl or woman who has undergone FGM. The deterrent effect on practitioners of possible civil actions against them involving monetary damages may be significant.

13. The age of a girl or woman or her consent to undergoing FGM should not, under any conditions, affect the criminality of the act.

14. During periods of armed conflict, both governments and international donors must sustain activities aimed at ending the practice of FGM and other forms of discrimination against women and girls.

15. As agreed at the International Conference on Population and Development in Cairo in 1994 and the Fourth World Conference on Women in Beijing in 1995, as well as their subsequent reviews, governments should ensure all women access to the full range of reproductive and sexual health services and information. In addition, reproductive and sexual health information and education, including information on the harmful effects of FGM, should be incorporated, where appropriate, into school curricula and other community education programs. Women who have undergone FGM should have access to the information and special health care they need.

16. In countries where minorities, including migrants, are vulnerable, governments should

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not use the adoption of laws against FGM to undermine the full enjoyment of human rights by these minorities. In such contexts, it is particularly important that criminal legislation be part of a broader strategy to provide resources to support community needs and to promote the health and human rights of community members. Members of minority communities, particularly activists working to stop the practice, should be consulted and their views taken into account prior to adoption and enforcement of the law. In some cases, it may be appropriate for legislation targeting FGM to make reference to constitutional protections of minority rights.

17. Governments should implement the regional and international conventions that they have ratified, protecting the rights of women and children, and comply with their obligations to take action to end practices that harm women and young girls, including the adoption of legislation prohibiting FGM. Implementation measures should include translation of these texts into national languages and outreach programs to ensure broad knowledge of the rights protected under the law. Civil society could promote government accountability under these treaties by using UN treaty monitoring bodies. NGOs can use treaty bodies' Concluding Observations and Recommendations to push for additional government actions. For example, legal mechanisms to intervene on behalf of children who may be subject to FGM may currently be inadequate but could be developed.

WE, the participants in the Afro-Arab Expert Consultation
on "Legal Tools for the Prevention of Female Genital Mutilation"

Further recommend that:

The Cairo Declaration will be officially presented to the Secretary-General of the United Nations and the presidents of the African Union and the European Union, as well as the Secretary-General of the League of Arab States and the Organisation of Islamic Countries;

Finally,

WE agree to hold a follow-up meeting to be convened on the African continent in a year's time, to review progress achieved towards the implementation of the Cairo Declaration.

Participants of the Expert Consultation from the following countries have adopted the Cairo Declaration:

Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Sudan, Tanzania, Togo, Uganda, Yemen.

Cairo, June 23, 2003

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1. Institutional Interventions

MOUSHIRA KHATTAB
Ambassador, Secretary General NCCM, Egypt

It is a real privilege to welcome you to this conference and a delight for me to introduce our First Lady and Chairperson of the Technical Advisory Committee of the National Council for Childhood and Motherhood.

I recall when H.E. Mrs. Mubarak referred to the elimination of FGM as a priority that NCCM should include in its five-year plan. Like many other Egyptians at the time, I had not realized that this was a problem. But for many others, who had struggled with the sensitivity of the issue for years, the news was enlightening. And indeed the decision by the NCCM to embrace the elimination of FGM as one of the rights of young girls was nationally and internationally applauded. Finally the wall of silence was broken over a taboo that had survived generation after generation. I speak for many across Egypt, the Arab and African regions and the entire international community as I convey my appreciation to H.E. Mrs. Suzanne Mubarak for her courage and relentless efforts to advance children's rights and particularly girl's rights.

The vision that has guided our endeavors, the faith and the commitment that Mrs. Mubarak has given to the national FGM movement since the launch of our National Program speaks for itself. Today, the national debate on FGM is open to everyone who wants to argue and find out the truth about this obsolete tradition. For the first time in Egypt, NGOs that have been working in silence can now share their experiences with the entire Egyptian public and mobilize advocates to eliminate FGM whom were reluctant to join in the past. And today we are hosting this Afro-Arab expert consultation under her auspices to communicate our common vision and different viewpoints and experiences in a professional and objective discussion around legal tools and the struggle to stop FGM. It is the start of a regional dialogue at the highest political level, and I am confident that our strides from hereon will be an important step toward the elimination of FGM in our countries.

It is a great honor that Mrs. Mubarak has accepted to preside and place our expert's meeting under her auspices. The meeting is currently addressing one of the issues, namely violence against girls, of which the National Council for Childhood and Motherhood has repeatedly exposed its gravity, and asked for its eradication. This violence perpetrated against girls has no religious or scientific grounds.

Today, this gathering is entrusted to analyze and compare laws and policies from around the world aimed at eliminating FGM. This event takes place in close partnership with the African and Arab countries, as well as renowned international figures, non governmental organizations working in the field of childhood and motherhood and for the welfare of the community and mankind in general.

The active participation of Mrs. Mubarak in the realm of childhood and motherhood, and her ceaseless endeavors in sending messages of understanding and peace are all

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commendable achievements worthy of praise.

The Girls' Education Initiative, the announcement of the year 2003 to be the year of the Egyptian Girl, the national project, Reading for All, are all part of one great picture, targeting the same objective. Our meeting today falls in this category. One additional touch of a brush drawing a radiant picture of what we aspire to for our girls; the image of girls enjoying a sane body and soul, armed with knowledge and ethics, looking up to the future, not haunted by chains of ignorance.

H.E. MRS. SUZANNE MUBARAK

First Lady, Arab Republic of Egypt

I would like to welcome you to Cairo, a city that combines within its features a diversity of cultures derived from our African and Arab ties; a city that embraces within its spirit the fundamentals of holy religions, and indeed, a city whose history blends smoothly in many ways with modern aspects of life.

This conference bears special significance as we pool our experiences to address the practice of Female Genital Mutilation, at a time when global and national agendas in our continent have put the rights of children at the forefront. What this means, is that it is time for parents to make sound choices based on knowledge, moral values and traditions, as well as religious principles that support the rights of both boys and girls. This is not simply an assembly that brings together experts and policymakers; it is a warning signal to obsolete traditions and their perpetuators that their validity has expired. Hence, I would like to share with you a spirit of enthusiasm and a momentum that we have been able to trigger and with which we are targeting the hearts and minds of parents, families, communities, advocates and intellectuals to end the practice of FGM.

As we discuss legal instruments and their relevance to this African tradition, we should remind ourselves that the power of law alone can seldom match the power of a relationship that bonds parents and their children. We should also remind ourselves that parents who choose to circumcise their daughter, do so out of love and a need to protect her based on misconceptions that have been rooted within our societies for generations. We have the opportunity today to change the fate of a generation and interrupt the transmission of myths and false justifications of such a violation to the next ones. By no means, will this be an easy task. Yet it is a responsibility that we have included among our priorities at the National Council for Childhood and Motherhood; and indeed presents itself as an overwhelming responsibility that is attached to a process of challenges and so far, rewarding milestones. The impact that our initial media campaign - which we launched earlier this year - has created was remarkable and exceeded our expectations. In the public eye, a long wall of silence built over years was broken, opening up a debate where we declared our position in a firm and consistent manner; a position that publicly states "No to FGM."

In many parents' eyes, the controversy around a malpractice is finally being settled as we

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continue - through a variety of approaches - to confirm the absence of religious, medical and social justification that necessitate it. In the girls' eyes, the shadow of fear and insecurity is being gradually dismantled and becoming less visible as our campaign advances to the governorate and village levels where the practice prevails.

We could not have come this far in our struggle against this practice without the dedicated efforts that many NGOs and advocates in Egypt and elsewhere have invested over the past decade. Taking stock of that experience and others across our African region, we are guided by a powerful sense of faith and commitment toward the elimination of this harmful practice.

We believe that the integration of advocacy tools can support the government's efforts to terminate the practice. We also believe in the power of communication channels to facilitate outreach and dissemination of our message. In designing our national program - which is being supported by the international community- we have assessed many experiences that offer best practices and more importantly lessons of failure and success. Our conclusion was that the ultimate responsibility of ending the practice is that of the parents, since they are the only ones responsible for making decisions pertinent to their children. Having said that, we have a very critical role to play in supporting parents' responsibilities and decisions as they affect members of this society. Legal instruments represent one form of achieving this role. Another more effective entry point in the struggle against FGM, is the influence we can create on the socio-cultural environment that continues to support the practice. Many experiences that have argued the religious and medical grounds of the practice have achieved success of a confined scope and a short duration. In contrast, experiences that have piloted the socio-cultural approach have managed to reverse community support of the practice and achieve rewarding results, as has been the case in a number of Egyptian villages.

For our national campaign, our strategy can be summed up in the following lines of action: Create the forum for parents to question the basis of the practice. Give parents the opportunity to ask why and to find objective and reliable answers to their questions. Our strategy also relies on advocacy networks that will be created at the village and local levels to sustain the movement. And finally, we succeeded in mobilising national and local communication channels to support the campaign and mainstream it in their various programs.

We are challenged by those who have for years benefited by the practice and violated not only our child protection laws, but also, the national penal code, which prohibits such an injurious act to the human body. And we believe that the only way is to employ an integrated tool kit of policy, communication and community-based interventions.

More importantly we have positioned the priority of addressing FGM within the wider context of the rights of young girls. These represent a package that we are promoting during the Year of the Young Girl which I announced last January, and will continue over the next few years. The Rights of the Young Girl package includes, as priorities: the Girls Education Initiative and a number of additional programs addressing early marriage, violence, and functional literacy.

At this juncture, I would like to emphasize the value that education can add to our efforts concerning FGM and other elements of the right-based agenda targeting girls. Yet girls education should not be viewed from an exclusively service delivery perspective. For girls to assume control of their lives and that of their families, they need education programs that mainstream within their design principles of quality, creativity and empowerment. For many

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years, traditional school systems in many countries have failed to maintain a girl's commitment, and that of her parents, to education. This may have been partly due to economic reasons, but that is not all. Our research has also indicated that girls dropping out of school do so because of the lack of interest in traditional school curricula, teaching, and learning techniques. We have taken these into consideration in the design of the National Girls Education Initiative. The National Council for Childhood and Motherhood launched the initiative last January, following two years of extensive preparation and consultations that involved girls, parents, local taskforces as well as ministries and UN expertise. The progress achieved so far in implementing this initiative is encouraging and promising. Since the beginning of the year, I have met twice with girl representatives from different governorates across Egypt. The interaction revealed many stories of girls whose lives have been completely transformed as a result of education; stories of girls who spoke for the first time of their trauma following circumcision and girls who challenged their parents on the issue and managed to spare themselves from the practice. These are a few examples. My ambition and that of the teams who are actively involved in implementing these programs, is for every Egyptian girl to be able to exercise her rights and influence the quality of life for herself, her family, and her community. This is the only way for our country to realize its development goals and indeed it is the way that we chose to direct our resources for our present plan at the NCCM.

Ladies and Gentlemen, on several occasions, I have discussed with African first ladies and friends, visions and hopes we hold for our children. I believe that in sharing experiences and enhancing our regional cooperation, we can overcome many of the challenges that impede the implementation of our social development targets. We should be able -through the power of knowledge, communication, and information technology- to facilitate and develop our networking - particularly on concerns such as the practice of female genital mutilation that emerges from a common origin and where we share a common goal.

As I conclude, I would like to acknowledge the individual and collective experiences of delegates represented here today, and last but not least, I would like to commend the organizers of this event for the time and effort they have invested in order to make this meeting feasible at such an important time in the history of women's rights in Egypt, Africa and the rest of the world.

Thank you for your attention.

MARIAM LAMIZANA

Minister of Social Action and National Solidarity, Burkina Faso

Your Excellency Madame Mubarak, distinguished delegates, ladies and gentlemen, please let me start by saying how happy I am at the recognition I received after my speech to AIDOS and No Peace Without Justice. I would also like to thank the Egyptian Society for the Prevention of Traditional Practices for the opportunity to participate here. I should also like to thank the Egyptian authorities - in particular the National Council for Childhood and Motherhood - for chairing this important meeting and for their very warm welcome to Africa.

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Your Excellency Madame Mubarak, distinguished delegates, ladies and gentlemen, times such as these bring us hope and what is more, an opportunity to deal with international, regional, national, or local issues. This meeting of experts will examine the legal measures for preventing female genital mutilation.

In spite of their numbers and the contributions they have made to economic development in all of our countries, it is women who are most at risk of being poor and illiterate. This puts them in a state of perpetual dependency which jeopardises both their lives and their children's lives. This perpetual state of insecurity is worsened not only by the AIDS epidemic - which affects them terribly - but also by the continuing traditional practices which can only be described as violent, and which make a mockery of women's rights and dignity.

Among these practices, female genital mutilation is the most widespread, particularly in Africa and the Middle East, where it is rooted in traditional mentalities and customs. FGM often has irreparable effects on the victims' health, and many international conferences have helped move nations to pass special laws to eliminate these practices. The number of countries concerned about these practices has increased, and societies are moving towards taking multiple measures aimed at eradicating them.

Helped in their efforts by a powerful international movement, and backed by organisations such as the Inter-African Committee, AIDOS, No Peace Without Justice, RAINBO, the specialist agencies of the United Nations, and bilateral and unilateral co-operation structures, several national organisations have seen the passage of legislative measures banning female genital mutilation. This has occurred in Burkina Faso, Togo, Guinea, Nigeria, Senegal, Ghana, Benin, and the Ivory Coast. Unfortunately, it must be stated that these laws often remain either improperly applied - because lawyers do not know them well enough - or because they are "forgotten in the bottom drawer," for fear of the social upset their application might cause. On the other hand, even where they are properly applied, enforcement is made difficult due to the clandestine nature of the practice as well as the population movement and emigration of the circumcisers.

The principle of adopting legislative measures against FGM is often countered by pressure from certain social groups, which very often include religious leaders acting against accepted religious ethics, which would never endorse such a barbarous set of practices.

Your Excellency Madame Mubarak, distinguished delegates, ladies and gentlemen, our countries have ratified laws for promoting and respecting women's and children rights, yet something is clearly stopping their effective application. With regard to FGM, the political will is required to bring this issue to the forefront of the national stage, and it is the duty of civilian organisations to propose effective, alternative solutions. This meeting, I think, has this aim, and is a means of suggesting laws for preventing FGM. We must make a proper analysis of policies and strategies so that we may find the necessary measures that will strengthen any legislation we suggest in an FGM document.

I am moved by the importance and the necessity of this meeting for the following reasons: first, in our fight against female genital mutilation (or female circumcision) in Burkina Faso, we have been able to put our case before the politicians only because the members of the organisation of which I have the honour of being President were convinced that our case had to be heard. As a result, the penal code is being reviewed so that there are specific articles to ban and punish the practice of female circumcision. Without going into detail, an anti-FGM law was passed in December 1996, which entered into force soon afterwards. Now, though certain socio-cultural forces have yet to be entirely eliminated, the application of Burkina

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Faso's anti-FGM law is a reality. Secondly, the government of my country has shown its willingness to definitively eradicate female genital mutilation. Therefore, I, as the minister in charge of FGM Affairs, was entrusted with the duty of working to accelerate the eradication of female circumcision in my country.

To legitimise our struggle and to help us in our task, the government has set up an "Anti-Female Circumcision Day" on May 18th, and has authorised the police to participate in countrywide campaigns to educate people about the new law and to apply it. That is to say, we are expecting a lot from this conference. In addition to changes in policies and strategies, any unified decision on anti-FGM legal measures which comes out of this conference will strengthen international solidarity to eliminate female genital mutilation.

The efforts for total eradication of FGM will be in vain if political leaders only support it to gain votes, or even oppose it. Tolerance and cover-ups will do nobody any good. I do not doubt that the experts we have here will provide decision-makers with the best means to fight against FGM by pointing out the laws which need to be adopted and applied to ban it. The eradication of FGM is a great challenge. I appeal to each and every one of you to make it clear that female genital mutilation is nothing but an act of cruel barbarity with no place in the modern world. Let us have the courage to open people's eyes to the painful reality and the danger to the lives and health of these victims. Toleration in the name of tradition is an attitude only ignorance - or selfishness - can justify.

Your Excellency Madame Mubarak, distinguished delegates, ladies and gentlemen, the number of little girls who have lost their lives is innumerable. They have bled to death after circumcision; they have been repudiated and sent off to end their days at the bottom of a cave because they are fistular or childless and depressed; they are covered in scar tissue and damned to bear this shame for the rest of their lives. During our long consciousness-raising campaigns, we have seen women who have made us all the more determined to spare no effort and to never tire from working to put an end to these practices.

That is why I am so glad to have the chance to share the gratitude of my government in recognising not only the efforts of the Inter-African Committee, and women politicians such as Emma Bonino and other promoters of the International campaign against FGM, but also those who have opened their eyes to the reality of FGM, so that the world-wide campaign against it is strengthened. I dare to hope that all the members of the anti-FGM Campaign will take part in the decision-making process so that FGM receives the treatment it deserves, and that it be relegated to the pages of history as soon as possible.

Your Excellency Madame Mubarak, distinguished delegates, ladies and gentlemen, let me finish by quoting a Cameroonian singer. He said that nothing is more beautiful than a child filled with hope. We must do all we can to provide these children with the happiness they deserve, for a crying child is a sign that her future has been destroyed. I wish you all success in your work. Thank you all.

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JAAP DOEK

Chair of the United Nations Committee on the Rights of the Child

Your Excellency, Madam Mubarak, it is a pleasure and an honour to be here. The Committee on the Rights of the Child is well aware of your numerous activities in promoting children's rights, not only in the area of FGM, but also outside of the specific field of this practice. We very much appreciate all your efforts. It is also a much appreciated opportunity and I welcome the initiative of the National Council of Childhood and Motherhood to convene this gathering of so many representatives from so many countries.

Ladies and gentlemen, Article 24, Paragraph 3 on the Convention on the Rights of a Child, requires that states' parties take all effective and appropriate measures with the goal of abolishing traditional practices prejudicial to the health of children. It was the first time that a major human rights convention explicitly addressed traditional practices prejudicial to one's health. From the drafting history of the Convention on the Rights of a Child it is clear that FGM is one of those traditional practices that state parties should abolish. Although the UN working group on traditional practices affecting the health of women and children was already active in 1985 and 1986, with three sessions in Geneva, it was particularly active in the 1990's with a growing number of international human rights documents explicitly addressing FGM as a serious violation of human rights. The African Charter on the Rights and Welfare of Children contains in Article 21, proficient, /…/ elaborated but in essence similar to Article 24, paragraph 3 of the Convention of the Rights of the Child calling for the elimination of harmful practices, in particular those prejudicial to a healthy childhood.

In 1993 the UN General Assembly adopted a Declaration on the Elimination of Violence against Women, explicitly stating that violence against women encompasses FGM. A plan of action for the elimination of harmful traditional practices affecting the health of women and children was adopted by the sub-commission on prevention of discrimination and protection of minorities in 1994. These and other documents clearly underscore the fact that FGM is not only detrimental to the health of women and children and hence a violation of the rights to a healthy life, but that it is also a violation of the right to physical integrity and the right to be protected from cruel, inhuman and degrading treatment. Rights, as can be found in all the major Human Rights Conventions. In short FGM is unacceptable on legal grounds because it constitutes a violation of most of the fundamental universally accepted human rights. There is no longer any excuse for allowing the perpetration of this custom, neither at the governmental nor at the professional level.

By ratifying the Convention on the Rights of the Child, 192 states around the world committed themselves to taking all effective and appropriate measures to abolish FGM. Let me make some observations on effective and appropriate measures. Prohibition by law is a crucial element of the fight against the practice of FGM. This is not only in line with the international standard in this regard but also provides a legal basis for the necessary measures in terms of raising awareness, education, and prevention. Do I think that legal prohibition will eliminate an often deeply rooted custom? No, I do not. I have been a Juvenile Court Judge for many years and I am still a Justice in the Court of Appeals in my country, so I know that the

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law in itself does not change the reality. I am aware of the fact that a prohibition clause in the law may result in illegal or underground activities that may increase health issues. These and similar arguments can be and have been raised regarding /.../ drug trafficking, drug abuse, alcohol abuse and other substance abuse. These arguments did not prevent many states around the world from introducing strong prohibition clauses in the law with severe penalties. I know that almost every comparison works, "with a limp" as we say in my country, but the common point is that if a practice - however explainable it may be from an historical or traditional point of view - if a practice is a serious violation of fundamental human rights, a clear legal prohibition with sanctions that reflect the seriousness of this violation is the basic necessity for further action. In short, legal prohibition is the first appropriate measure in our efforts to abolish FGM. In order to make this prohibition effective clear enforcement is necessary, or well-trained law enforcement officers and judges. Let us not make the mistake of thinking that a policy of suppression based on penal law prohibition is enough. In a policy aiming at an effective and appropriate response to FGM, the criminal law is, despite its necessity as a standard setting instrument, a last resort. If we discuss the legal tools for the prevention of FGM much more is needed than the prohibition by a criminal law provision. There is evidence from the persistence of FGM in countries that do have such provisions. In other words the elimination of FGM should not be undertaken in isolation but as part of a comprehensive policy aiming at improvement of the status of girls and women in society. This means amongst other things, legislative and other measures to improve the legal status of women and children, which include equal treatment of women and men, and the creation, if necessary through affirmative action, of accessible and affordable educational opportunities for women and young girls. Legislative and other measures must also provide self-interested persons involved in the perpetration of FGM, (particularly midwives but also others) with alternatives to compensate for the loss of income and social status which may result from the elimination of FGM. All these and other appropriate measures have to be supported by on-going, well-targeted educational campaigns addressing parents and children, health service personnel, women's groups, teaching personnel, community and religious leaders, policy makers, the mass media and the public at large.

What I have said so far is not meant to suggest that little has been done, on the contrary, because over the past two decades a lot has been done, both at the international and at the national level. This is true of UN agencies like World Health, speaking out against all forms of female circumcision in 1976 calling governments to ensure total eradication of this custom, but also UNICEF, the Commission on Human Rights, international and regional and national NGOs, like Save the Children alliance, Anti-Slavery International, Minority Rights Group International, the NGO working group on traditional practices, and for this region in particular the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, which has national committees in more than twenty-five African countries. It goes beyond the time given to me to even summarize all these activities. Unfortunately, and despite an increase of the activities in the 1990's it has to be said that FGM is still widely practised in many African countries. It still exists in countries in the Arabian peninsula and in other regions of the world, and at the same time quite a number of European countries have to deal with the practice of FGM. The rather limited progress made so far may have many reasons, but it also indicates, as the Chairperson of the Inter-African

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committee once said a number of years ago, the challenge is formidable and it requires tremendous courage and determination since we are faced with an age old status quo. The efforts for the elimination of FGM also require a well-organized international action comparable, for instance, with the international action to combat and to eradicate commercial sexual exploitation. That effort, that started with an international conference in Stockholm followed up five years later with a mid-term refuel in Yokohama in Japan, shows that international collective action can work and can make considerable changes. This expert consultation could lay the ground work for such an international action based on a comprehensive international plan of action, adopted and supported not only by the governments of states in which FGM still takes place, but also by as many other governments as possible, as an expression of international solidarity. A formidable challenge requires formidable action on behalf of everybody.

HALIMA WARZAZI

United Nations Special Rapporteur on Traditional Practices

As Special Representative of the Sub-Commission on traditional practices affecting the health of women and young girls, I am extremely happy to be here among you during the "No Peace Without Justice" conference of Afro-Arab experts, organised by AIDOS, and the Egyptian Society for the Prevention of Traditional Practices, under the Auspices of Her Excellency Madame Mubarak and of the National Council for Childhood and Motherhood of Egypt.

I wish this initiative all the success it deserves and recognise the commitment it has shown, just as I thank the European Commission for its involvement in the "Stop FGM" campaign.

Before coming to the subject I wish to discuss – legislative measures for the prevention of female genital mutilation – I must take one step backwards to September 1982, when for the first time at the United Nations a Specialist Body investigating human rights violations decided to deal with an area which had been considered taboo, i.e. female circumcision (as it was then called) or female genital mutilation.

The Sub-Commission dealing with discriminatory measures and the protection of minorities (which is exactly what this was) realised the gravity of the situation thanks to the work of the Representative of the Anti-Slavery NGO – Mrs. Ras-Work – who had eloquently exposed the evil of this practice, which had previously been strenuously denounced (1975) by the Secretary-General of Terre des Hommes. Long before that (in 1952) the Women's Commission had dealt with this subject, during a period of investigation into the condition of women in non-independent countries, but nothing was achieved. For this reason, all overseas intervention in this area was rejected by the peoples involved, who saw it as an act of aggression against their traditional cultures and values.

Shortly after independence, some African women tried to speak out about the dangers of female circumcision, but the time was not right for discussion of such a controversial question; it provoked violent reactions among the general public. What this meant was that

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the Sub-Commission, when it decided – as was often the case – to act as plaintiff and speak out against human rights violations (which, in certain cases, had benefited from the lack of debate about such a taboo subject), it played a more important role in awakening and raising the international community's conscience about the evils of this practice. It then benefited, during its work, from the unfailing co-operation of the President of what was to become the Inter-African Committee. I feel I must stress the role of the Sub-Commission in the fight against this pernicious practice because, on the one hand, it seems to me that all the work done has passed unobserved by many people involved in this field.

On the other hand, the methodology adopted by the Sub-Commission has produced some excellent results. If we consider the extreme delicacy of the area in question, all advances made have been extremely prudent, respectful towards the peoples concerned and their cultures, and fully aware that rather than judging and condemning, it was better to demonstrate clearly the evil effects which this practice has had on the physical and mental health of women and young girls.

To this end, it is worthwhile to remember that if such a serious problem as the one we are examining has taken so long to be discussed at an international level, it is because European feminists, in all their ingenuity, only considered female circumcision in terms of its effects upon sexual pleasure. This position and, probably, the inquisitorial and condemnatory tone adopted when dealing with this subject brought about a feeling of indignation among Africans, who would have preferred some sort of active solidarity in order to deal with the problem in a more concrete and more efficient way. The consequence of campaigns against female circumcision was that the African delegates to the Copenhagen Conference spoke out against attempts at inserting this practice into the Conference documents.

Furthermore, the Sub-Commission decided to take all possible precautions before putting a foot into this minefield. During the information-gathering phase, and when making recommendations to the Human Rights Commission and raising consciousness among its members, prudence was the watchword.

The first initiative was the adoption of a resolution (to be adopted by the Human Rights Commission) which assigned two experts to carry out a study into all aspects of female circumcision. This initiative, however, met with opposition from the African members of the Human Rights Commission, who felt it was an attempt at "putting them in the dock". But the resolution was not lost because the Senegal delegate thankfully intervened to amend it: the proposed study was to be carried out by a working group into all harmful, traditional practices. Female circumcision was to be included among these, but it was not specifically mentioned.

Under the terms of the resolution adopted by the Human Rights Commission, a working group was set up in March 1985, with two experts from the Sub-Commission and representatives from the WHO, UNESCO, and UNICEF. The group set to work immediately and, in accordance with the criteria which had been laid down, dealt exclusively with the problem of female circumcision. In carrying out their work, study group members shared the opinion expressed by all NGO's: this practice was a serious violation of human rights. They took care, though, not to say as much in their final report, so that the Human Rights Commission would accept their findings.

In addition, I realised full well the shock we were going to cause within the Commission. Meanwhile, the study group chairman was contacting countless delegations to ask them to

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make sure they didn't put African Delegates in a delicate situation, especially since the question was now considered a human rights issue. It was a first in the history of the United Nations.

This extremely prudent approach bore fruit, because it permitted dialogue between the Sub-Commission and the countries concerned. In addition to this, in the report submitted (later adopted by the Human Rights Commission) several conclusions – which I had written out myself – stated that: "Certain traditional practices, in traditional societies, aimed at assimilating individuals into society better, in order to share individual rights around society.

"Nowadays, these practices are in contradiction with the standards laid out in various international laws which deal with human rights.

"In view of these principles, all countries which have ratified the international laws must face up to the incompatibility which nowadays is between the obligations the countries have assumed (as Parties to international conventions) and the continuation of certain practices, [which] have been seen to be prejudicial to the physical and mental health of women and children."

In March 1988, the Human Rights Commission entrusted the Sub-Commission with a study of the measures to be taken at the national and international level to eliminate harmful, traditional practices, and then to report back to it. The Sub-Commission thus nominated me as its Special Representative, and two seminars were held: one in Africa in 1991, the other in Asia in 1994.

After the two seminars had been held, and in the light of their conclusions and recommendations, a Plan of Action was drawn up and submitted to the Sub-Commission, which adopted it in August 1994. Since then, the Special Representative has been drawing up a report every year on the policies and activities adopted by governments to ensure that the Plan of Action is being enforced.

In this way, under the supervision of the Sub-Commission, remarkable progress has been made since 1982 in the fight against female circumcision. The taboo surrounding it has evaporated, to the point where it is nowadays referred to as female genital mutilation. At the national level, many African governments have shown their sensitivity towards the evil done, and are seriously committed to fighting against it. They have received much help from homegrown NGO's and countless politicians, not to mention the Inter-African Committee, which has spared itself no effort in informing them and motivating them.

At the international level, activity is increasing, and all specialist agencies at the United Nations now dedicate part of their time to the fight against female genital mutilation.

At the same time, all the conventional mechanisms used by the United Nations have included this problem among the reports submitted by member states. As for the U. N. Assembly General, it has taken over the question as it was left in 1993 and 1995 by the Conferences of Vienna, Cairo and Peking.

If female genital mutilation is now one of the international community's main worries, as it is of most African countries and those where the practice continues, we must not allow this worry to be taken over by the media in many countries (as happens in my country). This practice is treated as some sort of sensational news item, and there have even been photographs of circumcised women: such an act can only be a further violation, in addition to the one already inflicted upon them.

Furthermore racist treatment of the people responsible for these operations by several barristers and magistrates in the courts where their cases were judged forced me (both in a

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personal capacity and in my role as Special Representative for violence against women) to publish, several years ago, a joint declaration which strongly condemned any attempt at damaging the health of the people involved. The report stated: "Any punishment or sentencing based on prejudice is bound to be counter-productive. The people involved will only become more closed, and they will certainly find other, more harmful practices which they will say are an expression of their cultural identity. Court hearings in cases such as these must only be used as a last resort, when it has been seen that education and information campaigns have not met with the hoped-for success."

Let me conclude by making special reference to the theme of our meeting. As Special Representative, I have always given priority to consciousness-raising, persuasion, education, information, and even to alternative symbolic rites, if these can be used as a way for communities to continue in their traditional cultures. It must not be forgotten that the people carrying out circumcision also have a right to earn a living. Punishment and repressive measures must only be used after we have seen that the politics of change have had no effect. We must try to change the mentality of the peoples involved by peaceful means. Let me quote an example. Sweden and New Zealand used to consider female genital mutilation as a crime worthy of the most severe punishment. However, the governments in these two countries have realised that criminal law is not sufficient, and is less than 100% effective. So they have begun to apply measures which they hope will bring about a change in mentality.

The fight against female genital mutilation certainly requires government commitment, and their political will is a requirement that cannot be understated. But as well as governments, there are also all those people who play an important role in the life of the country, and they too must become involved. I am thinking mainly of politicians, MPs, teachers, journalists, religious leaders, people with moral or intellectual authority, the husbands and fathers of potential victims and, last but not least, NGO's and women's groups. In fact, all efforts within a country must be directed first of all towards consciousness-raising in women, providing them with access to proper education, information, and an acquaintance with – and understanding of – their human rights. This will be the most effective weapon in the fight against this terrible practice and all other harmful practices: lifting women and children out of ignorance, out of the Middle Ages, out of fatalism, and out of the subjugation in which they are the captives of inexplicable suffering. These efforts must receive financial and material aid.

Now, as Special Representative of the Sub-Commission, I am counting on the results and recommendations this conference will reach. I thank you all for your contributions, and I shall speak about you to the Sub-Commission. I would be failing in my duty were I not to express my gratitude to all those who have organised this conference, for the warmth of their greetings and for the extraordinary opportunity they have given us to talk about our individual experiences and points of view concerning such a painful subject as female genital mutilation.

It must be said that in September 2001 the Inter-Parliamentary Union organised a conference in Ouagadougou on violence against women and female genital mutilation. The delegates present underlined the importance of legislation in this area. However the parliamentarians considered that as just one aspect of wider issues dealing with ancestral practice.

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EMMA BONINO

Member of the European Parliament

First Lady Mrs. Suzanne Mubarak, Ladies and Gentlemen, Dear Activists: It is an emotionally charged experience to be here in some ways, and I am sure that I am not the only one who shares this sentiment. I think I know most of you sitting here and coming from so far away, I know that you have great expectations from this conference. I know that people from AIDOS and NPWJ have been working hard with Moushira and her staff because we really care, you really care. The moment has come, I think, to evaluate and say some clear and simple things based on what I have been hearing this morning.

First of all, we are talking about human rights. We are talking about women's rights, which of course are encompassed in human rights. There is no division between them. We are all human beings. Certainly we are different, fortunately. But that does not mean that one is inferior to the other.

Secondly, as we heard this morning, religion, be it Islam or the Coptic religion, has nothing to do with this practice. Please, say it over and over again. Say it anytime you can. Please say it out of respect for Islam and the Coptic religion, and for the people following these religions. Say it again! Anytime you can!

In our battle for women's rights, in my country, here, and all over the world, we have certainly been fighting against a fierce enemy, i.e., tradition. When we challenge something and say, "Why?", the answer has many times been that it is because of tradition, with no further explanation, though it is sometimes accompanied by a misinterpretation of religion. Since it is you who fear the incorrect application and interpretation of your religion, it is you who need to repeat over and over again, "FGM has nothing to do with religion!"

We know too, that FGM has nothing to do with health. It is, in fact, detrimental to one's health. Doctors and experts present here will explain and restate that it is not a healthy practice, that it is not good for anything, that it is a cruel and useless practice. If you combine both cruelty and uselessness, then the time has come to say as you say here in Egypt…. Khalas… Khalas! You can say it here, thanks to the commitment of long-time activists working over the past 20 years, to recent activists, and to the involvement of personalities: the silence has finally been broken. However as many delegations will tell you during the conference, it is not yet the case in every country. In many countries that I have visited, it is still difficult to go public on Female Genital Mutilation. Some activists are still suffering from harassment and death threats. Therefore, this conference and your work will offer support and encouragement to other activists in other parts of the world, who still do not have your support, your words, and your commitment.

Finally, I think we realize that throughout the world, from Sub-Saharan Africa to the Arab peninsula, from certain regions of the Far East to the expatriate communities in Europe, the United States, Canada, Australia, etc., women are reacting against being genitally, and sometimes even socially, civilly, and politically mutilated. When you say it is not enough to tackle Female Genital Mutilation, you are correct. Generally speaking, it has to do with the empowerment of women, women's human rights. There are no boundaries between human rights and women's rights. The fight against FGM is your fight, but it is important that all women from all over the world and from different institutions support your fight. You are on the frontline and there are no substitutes for you.

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What women from everywhere in the world can provide is solidarity, concrete support and a way to march forward, providing the support of a comprehensive effort, aimed at empowering and giving civil rights to women, 50% of the population or more world-wide. What we really want is the opportunity to build our future based on equal footing on an equal level, with an equal burden of responsibility and freedom. Freedom is fascinating, but it is also a fantastic burden because it requires you to choose.

Over the last few years, I had the chance to meet hundreds of individuals and groups, and I have been to places where this practice exists. Committed people have made the fight against Female Genital Mutilation a priority in their lives. Most of them are here and their courage, expertise, dedication and resolve are encouraging, but we must not leave them to fight the battles alone. We should simply say that, since it is a universal crime or a universal violation of universal rights, all of us have a responsibility.

In this conference we want to take stock and analyse where the laws work, where they do not work, and why, with the help of the Inter-African Committee and other organisations such as RAINBO, and in particular, the Center for Reproductive Rights. The basic paper has been distributed and it shows an analysis of the existing legislation in the 28 countries. This is important in order to really see that legislation is needed, but we cannot wait. In a complex situation, before a solution to a problem is found, you need a thread to pull. When they tell us, "Yes, but first you have to solve the problems of education, poverty, etc.", these are alibis! Let's start in a comprehensive manner, but let's start. Let's agree why it is important to have legislation.

It is important because in every society, every citizen needs to know what is allowed and what is forbidden. It is important for relations between men and women, between citizens and institutions. So thanks to the conference work and preparations, we will spend these three days discussing these issues. You broke the silence, and now others will also be encouraged to break the silence.

It is a sensitive issue, but I know that the courage and the determination of the people here will help us to go forward. What we need are clear words, a clear message. Activists are in the field doing their jobs, but we need one clear message. I would like to thank the organisers and all of you attending. Many people that I see here have been working on this for 20 years, so I would not say that this is a start, but what we do hope is that it can be a new start with renewed energy. Everybody has his or her own responsibility to effect change because our children, our daughters, deserve this kind of attention and this kind of commitment. Thanks for coming. Thank you everybody.

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2. FGM: Religion, Ethics and Anthropology

I. ISLAM AND FEMALE GENITAL MUTILATION

The Grand Imam

SHEIKH MOHAMED SAYED TANTAWI

Sheikh of Al-Azhar

God, in His wisdom, has willed that this universe be composed of males and females. Several Quranic verses assert this meaning "and from everything we have created a couple, may you remember!" … "The world of men, the world of animals and the world of birds, and from everything we have created a couple, that is a male and a female…" The universe exists because there are men and women.

We also see the wisdom of God in how He made the love of children inherent in men. This love is focused on children rather than on an interest in himself. The Koran affirms this truth in several verses such as "… money and children are the joys of life." The love that men and prophets (peace and prayers be upon them) have for children is a natural feeling making them eager to have children of their own. Any reasonable and learned person understanding the rationale of life, would provide his children with a good education and healthcare for a good life, which are basic requirements.

One of our poets had a daughter. He exerted his utmost to bring her up properly even though he had limited resources. He expressed his feelings towards his daughter by saying that he was living not for his sake but for the sake of his daughter: "My reason to live stems from my knowledge of the injustice brought to bear on orphans…" This poet expressed his feelings towards childhood, and stressed the fact that for him, living meant taking good care of his daughter.

This illustrates the love of a father for his children. Regarding mothers, the Koran depicts the feelings of a mother for the child in her womb … The mother of Moses, who lived in an era when all newborn males were slaughtered, was apprehensive and frightened. God in His mercy, told her to breastfeed him and that if she was afraid, to throw him in the river and he would be returned to her and become a messenger of God. Moses was picked up by the Pharaoh and he became a source of worry to the Pharaoh, to Haman and to Karoun. The Pharaoh's wife liked the baby and asked to spare his life on the grounds he might be useful to them and asked that he be raised as a son to them. When Moses' mother learned that the Pharaoh had taken her son, she felt lost and empty. All she could think of was what had become of her son, but when Moses refused all wet nurses, on the proposal of his sister, he was returned to his mother. This is motherhood in Islam.

Islamic Shari'a protects children and safeguards their rights. Those who fail to give rights

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to their children commit a major sin. God, in His wisdom, has also created equality between men and women on many issues. We are created from the same origin. God Almighty says in the women's sourate: "O! Ye people, your God has created you from one soul, and from it, has created its mate, and from them, has created many men and women." Therefore there is equality in creation, "We all come from Adam, and Adam comes from dust."

There is equality in religious obligations, men and women have to pray, and that applies to all other tenets. Both men and women have to be virtuous and pure.

There is also equality to seek knowledge. Seeking knowledge is a duty for every Muslim whether male or female. Honest work is prescribed to both sexes.

There is equality in civil rights, such as in matters related to selling, buying, and human dignity. The dignity of men is equal to the dignity of women. God has honored both sexes; this in no way means that men can be viewed as women or women as men. There are characteristics given by the Almighty to men and others to women.

Now comes the issue of FGM. Wise men give each specialist his due. FGM is a medical issue, what doctors say we heed and obey. There is no text in Shari'a, in the Koran, in the prophetic Sunna addressing FGM. All texts on this issue either have been called weak or could not be substantiated. The issue has to be referred to doctors. There might be cases where FGM is advised, and other cases where doctors do not advise it. So we have to refer to doctors' ruling.

II. COPTIC RELIGION AND FEMALE GENITAL MUTILATION

BISHOP MOUSSA

The Bishop for Youth – The Coptic Orthodox Church
(Representative of Pope Shenouda III, Pope of Alexandria and Patriarch of the Coptic Cathedral)

FEMALE CIRCUMCISION FROM A CHRISTIAN PERSPECTIVE

In the Name of the One God that we all worship,

Egypt's Honorable First Lady, Honorable Audience: Undoubtedly, it is an atrocious tragedy happening everyday in the African arena: six thousand girls are exposed daily to this harmful practice.

As we are here today in this place representing 28 African countries, this harmful practice is being undertaken with six thousand girls in their prime age. What a look of fear and panic they will have in their eyes, what a horror… blood…bleeding and severe pain! It is a grave hazard to their present and to their futures when they marry and give birth. Therefore, we must take a decisive and firm stand against this harmful practice. As the Major virtuous

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Emam said, we also state – from the Christian perspective – this practice has no religious grounds whatsoever. Further, it is medically, morally, and practically groundless.

1. It has no Religious Grounds

When God created the human being, he made everything in him/her good: each organ has its function and role. So, why do we allow the disfiguring of God's good creation? There is not a single verse in the Bible of the Old or New Testaments, nor is there anything in Judaism or Christianity -- not one single verse speaks of female circumcision. In Judaism, male circumcision was a religious obligation and is no longer regarded so in Christianity. It is being practiced for health-related reasons, not for any religious reason. Hence, this practice has no religious grounds.

2. It has no Moral Grounds

The belief of some that this practice gives purity to girls is erroneous. Purity never comes from the body, but from the will and spirit. Jesus Christ said, "The good person brings good things out of a good treasure," Matt.12:35.

Virtue comes from inside and what counts is the inner will. People say, "The body is enslaved to the order" and as the will and heart get moved, the body obeys. Those who say that circumcision is the way to purity should go back to the genuine religion, to the genuine moral values: the family, school and religious education engenders purity in the hearts of young boys and girls, and not this hazardous harmful practice.

3. This Practice has no Health Grounds

You all know as the Major virtuous Emam stated: this practice is harmful to the psychological and physical health of the girl; it creates the following health problems:

Disfiguring what God has created for important goals and roles in women's lives and married couples' lives as well
Severe bleeding, could worsen and lead to death
It is horrible psychological shock for the girl at the beginning of her life
Many marital problems ensue: It renders marital relations very difficult
The third type in particular causes grave problems in child birth

4. It has no Practical Grounds

The daily practice of this habit over many years has proved to be one of the reasons for future family and marital problems. So, why do it? This practice must stop at once.

Therefore, we need the following inputs:

a) Religious Input

We need to take a decisive stand. I believe that a religious effort should be made and we are going to make such an effort to teach our generations, men before women, in the country before the city, that this habit is abhorred and it must stop.

b) Media and Art Input

I saw a film which addressed a certain problem in marital life, and I wished that this film

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had touched more on the issue, as it is one of the main causes of marital problems. We need to make a substantial media effort so that a developing movement emanates from the grassroots, from the community, and not from the top-down structure our conference represents today.

c) Legislative Input

Thanks be to God that the supreme administrative court has passed its judgment on the ministerial decree issued in 1996, which bans female circumcision, and has found it to be a sound decree.

We should all put this decree into action and disseminate it everywhere. The ministry of health and all other ministries will lend a helping hand in this respect.

Dear fellows, it is a tragedy. We can do a lot and we must do a lot.

Thanks be to women who care about children, women and culture.

Thanks be to women who care about human beings in Egypt and in the Arab and African worlds. Thanks be to Egypt's wonderful First Lady: Suzanne Mubarak.

III. MEDICAL AND ETHICAL PERSPECTIVES

HAMDY EL SAYED

Head of Egyptian Medical Syndicate and President of the Health and Environment Committee of the People's Assembly

MEDICAL ETHICS PERSPECTIVE: THE POSITION OF THE MEDICAL SYNDICATE

The Egyptian Syndicate resents the practice of FGM from an ethical and professional perspective, and considers it contrary to medical ethics.

The syndicate considers this act a physical and psychological violation of the female, that it is an act of aggression against females, and a violation of their human rights.

The syndicate has a special position, supporting the Minister of Health, against the verdict of the supreme administrative court No. 9100 of 1997, which cancelled the decision of the Minister of Health to prohibit the practice of FGM in public and private hospitals and clinics.

THE DECISION OF THE ADMINISTRATIVE COURT OF CASE 9100

The Court decided to cancel the 1996 decision of the Minister of Health number 261 which prohibits practicing FGM in all health facilities including hospitals, and also forbids its practice by all personnel working in the medical field, including doctors and nursing staff, as well as doctors working in private clinics.

The court's decision was based on the fact that circumcision is a personal decision and that the present laws do not forbid the practice, as well as the presence of a "Fatwa", which considers the practice a religious obligation, and that there was no existing law incriminating the practice of FGM.

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OPPOSITION TO THE DECISION OF THE ADMINISTRATIVE COURT

With a high sense of responsibility towards taking care of the people's health and protecting them from irresponsible practices, the syndicate attacked the previous decision, with the support of the Minister of Health who was represented by the legal advisor and the well known Islamic 'thinker', Professor Dr. Selim Al-Awa.

In addition to his valuable pleading in this case, he submitted a memorandum to the conference which included arguments for the legal, religious and medical banning of FGM, incriminating the practice of cutting or amputating female genital organs.

LEGITIMACY OF THE MEDICAL SYNDICATE'S INTERFERENCE OF THE VERDICT

The Medical Syndicate interfered with the judicial decision in the aforementioned case based on Law 45 of 1969, which states that the syndicate should work to promote and upgrade the medical profession's knowledge, from both the prophylactic and the therapeutic perspectives to ensure maximum health services, and should join with government institutions in setting health plans and studying and correcting medical laws. Thus the law gave the syndicate credibility to join and support the Ministry of Health, the plaintiff, in case number 9100.

CIRCUMCISION IS A MEDICAL ISSUE

It is a known fact that circumcision is a medical issue and that religion has nothing to do with it. On the contrary, all people should follow the doctors' recommendations and advice. There is no place for religious interpretation as no text exists in either the Koran or in Sunna, or in any other religion's texts which support this dreadful practice. Medical opinions definitively state that FGM is harmful to women and should therefore not be forcibly practiced. The claims of its supporters are all invalid from a medical perspective. Therefore, referring to Prophet Mohammad's "No Harm and No Harming", it should be stopped.

FGM IS A DEPRIVATION OF THE WIFE'S RIGHTS'S

All types of FGM that are practiced in Egypt deprive a woman of the full pleasure during legitimate sexual relations. This can create bad feelings in the marital relationship which we know to be the basis of the human race and an important sign of intimacy. Thus the relations become a source of misery and conflict instead of being a source of happiness, understanding and delight. All types of FGM cause physical complications and ailments, as well as innumerable non-treatable emotional and psychological problems which are rooted in having a mutilated female body.

INCRIMINATING FGM

In general, because normal female genitalia have been created by God, are healthy functioning organs which are not the cause of pain requiring surgical intervention, the practice of FGM by both doctors and non-doctors makes them legally liable for harm

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incurred. From the legal point of view, any procedure in any form on healthy organs is not considered the treatment of disease or the alleviation of any existing or expected pain, and its surgical removal cannot be justified. Accordingly, this intervention is not allowed and should be punished[1].

THE DECISION OF THE SUPREME ADMINISTRATIVE COURT IN 28.12.1997

The Supreme Administrative Court cancelled the issued verdict in 7.7.1997 that blocked the Minister of Health decision prohibiting FGM. The Supreme Court stated that FGM is not considered a personal decision according to the Islamic Shareea; that it falls under the law preventing the touching of the human body without medical reason; that anyone not abiding by this rule will be punished; that there is no need for issuing a new law. The court also stated that the 'FGM prohibition decision' is a regulatory procedure issued by the concerned party within its boundaries and authorities to protect a group of people from being harmed by others; it is considered a regulatory procedure for the practice of medical professionals in general.

TYPES OF CIRCUMCISION

Circumcision is classified according to its severity into three types:

Superficial cut (sunna); doctors agree that Sunna causes damage to the external genitalia.

Cutting the clitoris and some adjacent tissues is considered a more severe type.

Pharaonic type is more brutal and practiced only in some African countries; all external genitalia are removed leaving only a small opening for micturition and menstruation.

WHO PERFORMS CIRCUMCISION?

Usually, circumcision is performed by a mid-wife or another elderly woman and the village barber. In all cases the executor is illiterate and has no surgical skills. Adding to this, it is performed under terrible hygienic circumstances using non-sterilized instruments and very primitive ways to stop the bleeding.

Sometimes, circumcision is performed in hospitals and clinics under anesthesia, which adds to the complications already inherent in circumcision.

In the Delta, the Daya, a mid-wife performs 45% of the cases.

In upper Egypt, the mid-wife and the barber perform 96% of the cases.

MEDICAL COMPLICATIONS OF FGM

First: Direct Complications

1. Death due to massive uncontrollable bleeding
2. Severe pain which can lead to shock
3. Wound infection due to lack of sterilization or unsanitary primitive ways to stop bleeding, which can lead to toxemia, deadly tetanus, hepatitis, or HIV infections. Infections can spread and lead to peritonitis or salpingitis, which can result in infertility.

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4. Retention of urine or urinary tract infection.

Second: Delayed Physical Complications

Many complications can appear over time, some of which are very complex and depend upon the degree of cutting:

1. chronic urinary tract infections secondary to the partial obstruction of the normal passage of urine
2. chronic pelvic inflammatory disease which leads in many cases to infertility
3. dysparunia (pain during sexual intercourse) which leads to failure of marital life
4. local cystic inclusions on the scar
5. difficult labour due to fibrous tissue formation in severe cases

It is worth mentioning that anatomical changes in the genital region, secondary to fibrosis have extremely bad effects.

Third: Psychological Complications

1.All psychologists agree that circumcision causes many psychological problems as it can lead to a sense of both aggression and inferiority in girls. It also marks them subconsciously with a sense of their own inability to choose to be chaste on their own, creating an increasing sense of anger or inferiority. In both cases natural feelings of femininity and decency disappear.

2.The Minister of Health, in his defense in front of the Administrative court, submitted a study reporting that 26% of circumcised females suffer from psychological or physical illnesses.

SUMMARY

Female circumcision, the cutting of female genital organs or FGM is a national disgrace which must be eradicated.

The physical or psychological complications of FGM affecting 26% of the cases can lead to death, but also deprive women of the natural legitimate pleasure in her marital life.

Chastity is an attitude brought about by education, healthy child-rearing, and through role models, and not acquired by cutting women's genitalia.

The current laws, the Minister of Health decision on the law of the Medical Syndicate, make FGM illegal. Also, criminal law, the laws of medical practice and the code of medical ethics can be enforced against those who practice this crime.

The Supreme Administrative court concluded in its historical verdict of December 28, 1997, that there is no need for further legislation.

We need to change the cultural beliefs of the society and confront the advocates of FGM and their claim that it has a religious or moral basis. We also should enhance the role of religious institutions and the media in enforcing the law against those who practice FGM.

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IV. ANTHROPOLOGY OF FEMALE GENITAL MUTILATION *

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1. WHAT IS FGM?

Female genital mutilation[2] was the name given during the III Conference of the Inter-African Committee on traditional practices affecting the health of women and children to all those traditional practices involving the removal and/or alteration of part of a woman's external genitals. The populations of the countries where it is practiced do not accept the strong negative connotation contained in the term and have other expressions. Every group uses terminology passed down by tradition and the words vary greatly from one ethnic group or region to another, also according to the type of mutilation practiced. When Somalian women, for example, speak to each other, they often use the more domestic and evocative name of "stitching". But generally speaking, all the populations where this type of operation on the female body is common prefer the term circumcision. It is a neutral term improperly used to compare female genital mutilation with male circumcision where the operation is limited to removal of the piece of skin surrounding the gland without provoking any mutilation of the male body. This linguistic transfer has the result of concealing the destructive effects of FGM on most women, giving it a more familiar, reassuring image.

According to the World Health Organization (WHO) classification, there are four main types of FGM:

Type I consists of excision of the prepuce, with partial or total excision of the clitoris (clitoridectomy). The traditional name for this kind of mutilation is sunna.

Type II – excision, consisting of the removal of the prepuce and all or part of the labia minora along with the clitoris.

Type III, infibulation or Pharaonic circumcision, the most brutal form, consisting of part or all of the clitoris and the removal of the labia minora and, particularly in the past but still in rural areas today, the stitching/narrowing of the vagina to form a tiny opening no larger than a grain of rice or a millet seed to allow discharge of urine or the menstrual flow.

Type IV includes a series of procedures, from slight pricking, piercing or incising of the clitoris to let out a few drops of blood to different types of manipulation that vary greatly from one ethnic group to another, including cauterization of the clitoris, cutting the vagina (gishiri), and introduction of corrosive substances into the vagina to narrow or dry it.

All of these procedures, performed for the most part without anesthesia by traditional practitioners, mean a high mortality rate, health complications and psychological problems. For clitoridectomies, performed on a large majority of the women, and the sunna, the results from a medical-health point of view, are not as serious as for excision or for infibulation.

Female genital mutilation is primarily an African custom, since experts consider cases found outside of Africa of recent importation. While sunna is also practiced in the north, the

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other forms are common especially along the strip of the sub-Sahara: infibulation in eastern Africa and clitoridectomy in western Africa. The area is a vast one, with a heterogeneous population of ethnic groups with different languages, cultures and religions, but they all have in common the same economic-symbolic system based on the relationship between FGM and the brideprice.

Given its social nature, it is used for all the women in any one ethnic or social group according to set times and periods. Generally speaking, the girls are all operated on during a given season or month of the year, according to periodic cycles that vary from one ethnic group to another. Even the age when the operation is performed changes according to the ethnic group and type of mutilation. If we want to be extremely synthetic, we could say that clitoridectomy is practiced in the period from early infancy (from the 3rd to the 40th day of life) especially in Christian societies but also in some animistic and Moslem societies, and between 4 and 14 years in most Moslem and animistic societies. The age of infibulation various from 3 to 13 years and intervention in the neonatal period is rare.

2. A Long Silence

The origin of female genital mutilation is obscure, from a remote past that, according to some, dates back to the Pharaohs, while for others it originated with ancient Rome. In any event, the origin is made even more shadowy by the silence that has always surrounded it and helped make it a taboo subject for African peoples, as well as to protect it from the curiosity of Westerners.

Many things lie behind this silence: First, there is a world of women closed unto themselves, a world of interiors, suspended between expectation and the fear of cutting away part of their daughters' bodies in ceremonies that mothers have directed for centuries. Second, there is an outside world, a world of men who hold themselves aloof and distant, but that bases its strategies of power on this regulation of the female body. What keeps these very distant two worlds together and has given them cohesiveness is a bloody, brutal practice that grips the entire region of the sub-Sahara and is the symbolic expression of a complex economic and social system of marriage strategies widespread throughout the area. It is a mechanism of domination based on the brideprice, i.e. the compensation that the family of the future husband pays to the family of the future bride. In exchange, the husband receives a virgin, meaning circumcised – be it excised or infibulated – who can be sent right back and the price, cattle or money, returned, if she has not been properly operated upon. The value of the wife depends on her virginity and FGM is a sort of protection which inhibits desire and temptation for pre-marital relations in the woman. But above all, it preserves and defends her from rape.

This silence also includes the tacit complicity of the West. First during colonialism and then with its development co-operation policies, the West has preferred to ignore FGM in various ways, entrenching itself behind a rather uncommon form of respect for local traditions. A veil of silence has fallen that not even ethnologists – those studying the customs and traditions of others – have been able to break. With the exception of the testimony that appeared towards the end of the 17th century in those extraordinary documents of travelers' diaries, little research has been conducted on FGM. And that little bit of research that has been conducted is incomplete, partly because for a long time, the only people who were in

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the field were men, and as such had rare access to, and lacked interest in, the female world.

In recent years, that silence was sealed by a refusal of those directly affected to speak out. This position was adopted by African women during the 1980 Conference of Copenhagen[3] when they dodged pressure from American feminists who insisted on including FGM on the political agenda. The Africans rejected the initiative as interference in their lives and political choices.

Then, something changed. It is difficult to say when or how the conspiracy of silence that for centuries had placed FGM outside history started to crumble. But for the last several years, the silence has given way to myriad voices that are transforming FGM into a new social issue related to respect for human rights and the safeguarding of the health of women and girls. This movement out of the shadows is the result of years of sensitization campaigns promoted by international and African non-governmental organizations and various UN agencies. But it is also the outcome of legislative measures adopted by national governments. Generally speaking, it is a signal that even this archaic, secret practice is now affected by the process of modernization in keeping with dramatic events that are changing the lives and face of many African populations: war, emigration and expansion of Islamic fundamentalism.

3. The origin of FGM

It is not easy to reconstruct the origin of FGM given the variety of forms and the fact that the practice is spread widely throughout the African continent. There is no lack of hypotheses however. According to some, excision dates back to ancient Egypt but also ancient Rome, where it was practiced on slaves and seems related to considerations of the female body as property. Infibulation was also found in Rome, though performed originally only on males. A sort of pin, fibula, was applied to young men to keep them from having sexual relations. But the center of female infibulation seems to have been the Egypt of the Pharaohs, as the name "Pharaonic circumcision" seems to suggest.

All the same, the real origin of female genital mutilation seems destined to remain unknown for now. We do know for certain that Islam was not responsible for introducing the practice of FGM in Africa and that it was already present on the continent well before the spread of the religion. It is a native practice, deeply rooted in the local society. It existed in sub-Saharan and Central-Eastern Africa before the introduction of Islam in 1050 after the religion had established itself in Mediterranean Africa over earlier centuries, eliminating the ancient Christian Churches.

The fact that Islam is frequently attributed as the origin of female genital mutilation in Africa is probably due to the ease with which it adapted to indigenous traditions and conformed to local life. The penetration of Islam was possible due to the presence of certain elements in African culture, such as the patrilinear structure and the concept of a strong sense of dependency on God. These elements fostered its acceptance, allowing Islam to take root in the traditional fabric of society much more deeply that the various Christian churches that started evangelizing the African continent several centuries later. This "Africanization of Islam," also expressed in the adoption of the local name for God, as the translation of the name Allah, made it much more tolerant of female genital mutilation. Greater opposition came from the Christians who were often in open conflict with local cultures, the most clamorous case of which was the rebellion against the missionaries who forbid the practice of

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excision on Kikuyu women in Kenya in 1929.

The different attitude of Christianity and Islam is also reflected in the number of women subjected to FGM in the two groups. The figures are clear: while the percentages in the Christian area, where clitoridectomy is prevalent, ranges between 20 and 50 percent, in the Moslem regions, particularly the Horn of Africa where infibulation is a prerequisite, the percentage is between 80 and 100 percent. With time, identification of Islam with the native tradition became so complete that it subsequently became the main agent for the diffusion of FGM outside of Africa, exporting it to Indonesia and Malaysia, among others.

While FGM was not at the origin of the practice on the African continent, instead of combating it as the Christian churches did, Islam gave the practice legitimacy, defended and justified it, thus helping to perpetuate and spread it. Today, this close identification of traditional cultures is becoming a problem. Part of Islam, including the fundamentalist clergy training in Saudi Arabia, are trying to distance themselves from the most destructive forms such as excision and infibulation. They are attempting to attribute the practice to its rightful owner, tribal culture, that difficult heritage that collides with the fundamentalist ambitions to "Islamize" modernity.

4. INITIATION RITES

The problem of origin is a false one since, rather than providing understanding to remove the reasons for the presence of FGM, it encourages the idea of the survival of something archaic, lessening the idea that FGM is still a very active institution in determining the life of relations and exchanges on which the social organization of most African societies is based. The fact that it is so deeply rooted is due to a complex group of factors that have some common features while varying from one ethnic group to another. The affinity lies in the basic role that this type of traditional practice has in the construction of gender identity and the formation of ethnic belonging, as well as the definition of relations between the sexes and between generations.

Before examining in detail all these aspects affected by the symbolism of female genital mutilation, we need to define its nature. By traditional practices, we mean those habitual acts, of common use, that were transmitted from the past generation and will quite probably be transmitted to the next. Female genital mutilation is therefore a particular type of traditional practice. Specifically, it is a rite of passage, those ceremonial practices that guide, control and regulate change in status, role and age of persons, thus marking the various phases of the life cycle, transforming them into an ordered path of life that makes senses and meets the needs of identity and recognition.

In particular, female genital mutilation is a fundamental component of the initiation rites performed in a traditional society to become a "woman." One is not born a woman, in the sense that the biological connotation is not in and of itself a sufficient factor of identification. For that, rites are needed to transform membership in an ascribed sex to an acquired status, freeing biological destiny of sex and allowing it to become the "social essence" of a woman. It is the rites that decide a person's identity, starting with ascribed belongings such as sex and age. By separating it from biology, rites inform a person of his/her identity, indicating what he or she is and should be.

Rites bring people to the knowledge and acknowledgement of a pre-existing difference,

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like that which separates the sexes, making it exist as "social difference". Indeed, rites of passage have been defined as "acts of social magic" in virtue of this symbolic power. This is not only because they can create differences out of nothing when they notify people of their new identity but also because they make the community acknowledge as legitimate what is really an arbitrary limit that creates a fundamental division in the social order, like that between the married and the unmarried, the initiated and the uninitiated and the even more radical division between men and women.

5. CONSTRUCTION OF GENDER IDENTITY

Of course, this does not happen only in Africa. With differing emphasis, every society transforms biological sexuality into a cultural construction, differentiating between male and female to decide gender membership. Gender is a process of the definition of self according to the connection to cultural models historically built on the difference between the sexes. For the most part, they are implicit models in their ways of acting, projecting the difference between the sexes on the cultural level, redeeming them from pure biological belonging. The state of gender in complex societies, on the other hand, is subject to continuous negotiation in the sense that none of the distinctions between men and women is destined to remain the same for long. As such, these distinctions cannot be taken for granted. In traditional societies, on the other hand, gender is better constructed and, at present, seems fairly unchangeable.

In African societies, the creation of gender identity is first of all, a physical manipulation of the body and also a metaphor. With respect to the ceremonial aspects of the rites of initiation, which take care of the symbolic control of the passage of status, female genital mutilation does something more: it carves the woman's gender identity into her body. And it does so in two ways, first, by changing the morphology of her body and then by shaping its expressiveness.

FGM removes the "male" part of the female genitalia, the clitoris which is compared to a small penis. Thus, it erases the original bisexuality based on the presence in both sexes of rudimentary genital organs of the other sex. In the male, it is the prepuce which is removed, because it is considered a residue of femininity since it resembles a sheathe. Actually, these two operations are complimentary since one hides the female genital organ and the other uncovers the male organ. Only through excision of her male parts can a girl fully become a woman. That way, despite the fact that construction of gender identity is primarily a symbolic process, this physical manipulation of the body reinforces the impression that female identity is produced and maintained through circumcision. Thus, we have a sort of naturalization of the procedure that the culture uses to construct belonging to a sex, making any attempt to end this, at an individual or collective level, very difficult.

Along with manipulation of the woman's body, mutilation forms the physical appearance, proportion and harmony among the various parts, the exis, posture and bearing, giving a woman's body what Mauss calls "techniques", those automatic body gestures and movements that, in different ways, represent "femininity" in every culture. This is particularly visible in infibulated women whose lithe, slow gait is a result of the operation that makes a series of movements very difficult. The operation brings the legs closer together, restricting the intermediate space and keeping women from separating their thighs too much. This forces

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the woman's body into a carriage and stride that we could define as centripetal. After they are infibulated, the girls are re-educated to use their bodies, choosing certain movements and postures that are compatible with the changes wrought by the operation, abandoning others that might compromise its results and reopen the freshly sutured wound. "Careful, don't run, don't play ball, you'll tear," admonish their mothers. The latter take it on themselves to teach their daughters to discipline their bodies according to rules and models of behavior inspired by the women's subordinate role in society and characterized by rigid differentiation and separation of male and female. The operation also ends any form of promiscuity between boys and girls who stop playing with each other, not only because the operation makes any type of activity we associate with masculinity, like running, playing with balls, jumping, and so forth difficult, but also because the new status of woman forbids it.

We can therefore consider female genital mutilation as a "sexual marker". Not only does it remove any ambivalence in a woman's body with regard to gender identity, but it also naturalizes the difference between sexes, hiding the cultural construction in gender membership.

We have already seen how female genital mutilation acquires its meaning within the sphere of initiation rites and are the main event. There are also cases when the ceremonial aspect is reduced to a minimum and FGM becomes the ritual performance itself. Every operation takes place according to a ritualized sequence that is repeated unchanged from mother to daughter. It is held in a separate place at a ceremonial time with a woman from the outside and is handled in secret in a female community that opens to welcome the entire community, or neighborhood if they are in a city, once the operation is complete. Public celebrations or recognition of the woman's new status are almost always accompanied by gifts that are highly symbolic in colors and forms.

6. EXPECTATIONS AND REPRESENTATIONS

There are a wide number of case histories that vary immensely according to the type of mutilation, the girls being initiated, and local habits and traditions. But still, the practice is carried out according to a ritual sequence marked by the three phases of separation, waiting and aggregation that mark every rite of passage.

The first phase is separation when the girls to be operated upon are taken away from home at dawn and brought together in a place far from prying eyes where the operation will be performed. The second phase is a threshold, as it were, a period of time suspended between the suffering due to the operation and the healing of the wounds, which the girls pass laying on the ground with their legs bound, far away from their families, waiting to heal. The third and last phase is that of aggregation, when they are returned to the joyous community and showered with gifts to celebrate their entry into the world of women.

Everywhere, we see the same multicolored scenario of women, mothers, traditional practitioners, sisters, aunts, grandmothers, neighbors and girls excited about becoming women like the others, excited and fearful in the face of that knife or razor blade that will allow them to join the female world only by destroying the most conspicuous demonstration of their femininity. There is strong social pressure from their peers and the specter of social alienation without the possibility of deliverance for those who refuse, mothers or daughters. What is at play here is the coupling of purity/impurity supported by an ethic based upon feelings of shame which form a terrible deterrent when grouped together. Local explanations

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of the practice are of the same sort and generally based on stereotypes that can all be traced to the need to control and limit female sexuality, seen as something ungovernable and threatening.

The natural body is impure because it is open and violable, exposed to a promiscuity that can contaminate not only the individual woman but her entire family group which would be discredited and shamed. In this scenario, female genital mutilation is the only way of protecting women from the male desire that is always lurking, and especially from herself. That helpless body is defended by a cultural construction of bodies that deprives them of all tumescence and excess, making them smooth and innocent after stealing their naturalness and pleasure.

But there are two important relationships at play here: between the sexes and between the generations (mother and daughter in particular) which initiation rites make extremely visible and dramatic. The mother-daughter relationship is much more ambiguous and controversial than that between the sexes, basically an asymmetrical relationship of domination, based on the marital strategy which we will discuss below.

In the mother-daughter relationship, we find rivalries and destructive instincts that are condensed, expressed and neutralized in the period of time required for the ritual performance. This is true from the point of view of the daughters who see in the rite a legitimization of their own sense of guilt at taking over their mothers' position, and from the point of view of the mothers who "betray" their daughters' trust, becoming persecutors and thus expressing their envy for their reproductive capacity. Then, all is forgotten, including torture and suffering, once the "passage" has taken place.

At the rite's end, only the bodies preserve the memory in the form of a scar appointed to represent the sign of membership in one's ethnic group.

7. BODIES, ETHNIC BOUNDARIES AND COMMUNITY BELONGING

Female genital mutilation is also the entrance into one's own community, an entry ritual like baptism for Catholics. As such, it is a point of no return that separates those on the inside from those outside. This is true for all members of the community, men and women, even though it takes effect in different ways. In African society, not only female bodies are mutilated. Especially in the past, young men's bodies were subjected to cruel, painful intervention.

For both, they were signs left on their bodies by the cultural order, "symbolic wounds", which every social group used to write its name, impressing a mark that transforms the person into a bearer of his/her own culture. It is a mark of belonging but also of subordination which binds individuals to a collective identity and at the same time, makes them objects of a disciplinary strategy according to different procedures for the two sexes.

Female genital mutilation in particular represents that "ethnic boundary" that is the internal marking of community membership, converting it into a biological expression, canceling the unnatural nature and conditions of its production. It is a form of "endo-binding" that marks the boundaries between "us", meaning both the local community and the enlarged form of the "imaginary community" which is the nation, and is destined to become increasingly important with the process of change that is taking place thanks to emigration. This character of ethnic boundaries emerges and is confirmed in the widespread tendency towards endogamy, the choice of one's partner from among one's own group.

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Female genital mutilation is the means by which a woman recognizes herself and is recognized as a member of her community. Refusing to submit to the practice means condemning herself to alienation and rejection and thus to a net loss of that irreplaceable symbolic resource which is belonging and community recognition. But the scars left by genital mutilation also play an important role in preserving the memory of a social group; they are the silent deposit transmitted through women's bodies. This incorporated memory, transfigured in nature, turns women into the discrete custodians of collective identity, passed from one generation to another. It is their bodies, bodies that are confiscated by symbols of a community affiliation, that are the real tie between past and present, and maintain it over time. These bodies are an incarnate memory of the community that has transformed its women into bearers of a complex economic and symbolic system through which every ethnic group can recognize and confirm its existence through time.

FGM is therefore the sign of a double belonging: to the community and to gender. It is the condition of possibility and recognition.

8. THE BRIDEPRICE

From exactly where is the symbolic effectiveness of female genital mutilation derived? From where does it receive its power to confer sense to the actions of social subjects, legitimizing community belonging and gender identity?

As long as it is dealt with in an isolated manner, the practice will remain obscure and indecipherable, just as cultural facts always appear arbitrary. In order to understand something more, we need to place them within the context that gives them significance. By context, we mean a structure of meanings shared by part of the social group that establishes and gives sense to their actions.

The context that imparts sense to the cultural practice of female genital mutilation and the behavior of the people involved is a complex system of matrimonial strategies, based on the brideprice. Their corollary is a number of fixed features affecting each other, such as combined marriage, the young age of the bride and polygamy. These are accompanied by a series of secondary features that vary from one ethnic group to another: marriage by abduction, the advanced age of the groom, some food taboos during pregnancy and puerperium, some rules of purity and sexual practices, such as gishiri, and other more closely related to mutilation, but that are not significant for our analysis.

In other words, female genital mutilation is a fundamental component of marriage in Africa since it assists in regulating management of resources and the complex network of exchange and social relationships.

Marriage in Africa is a union defined by a series of contractual obligations between the two families, within which the people with the power to combine marriages are always a group of co-resident males generally representing three genealogical generations, i.e. elderly men or grandfathers, normal adults or fathers, and young men or sons. They are the ones who choose the groom. Marriage is always a union combined by relatives. It is rarely a free choice of the couple and when it is, the approval to the marriage depends on the blessing of the two families. The two groups of relatives also have the right to decide on the amount of the bridewealth that the groom must pay to the bride's family.

By bridewealth, we mean all the goods that the groom's family hands over to the bride's family on the occasion of the marriage. In other words, the bridewealth is the reverse

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equivalent of our dowry. It is the groom who pays the family of the bride as compensation for the loss of a woman and her services. But note that, despite the negotiations between the two parties regarding the amount and terms of payment, this is not a commercial transaction. Indeed, it is in order to avoid this kind of misunderstanding, that the more neutral term "bridewealth" (instead of brideprice) is used. The bridewealth is a gift given in exchange for the woman's fertility. It represents compensation for the transfer of certain rights. The brideprice is the equivalent of something that is transferred from the birth group to the groom's group, but in the African context, it is not the person of the woman that is given but only the right over her (for her work, sexuality and fertility), and over her children.

Since the bridewealth is the compensation paid in exchange for the woman's fertility, and most of all for her purity, the function of FGM in preserving her inviolability, the chastity of daughters but also to encourage their fertility, according to local belief, is clear. The brideprice is therefore the compensation that the family of the future husband pays the family of the future wife in exchange for not just any woman but a virgin, intact and closed, well closed in the case of Somalian, Eritrean or Ethiopia women, or properly excised in order to discourage pre-matrimonial desires and relations. It is an indispensable condition and the penalty for non-fulfillment is that the hapless girl is sent right back to her family on her wedding night. This is the task of FGM: by ensuring control of female sexuality, it guarantees the purity which is indispensable for marriage.

In many societies, the marriage transaction is the most important economic transaction of a person's life. The amount and makeup of the brideprice are set by custom, which varies from one ethnic group to another and generally depend on the social status of the negotiating parties. While the bridewealth was once calculated mostly in cattle, today it is offered or requested in monetary terms.

9. STRATEGIES FOR REGULATION

At this point, it is clear enough that the brideprice is not only a resource of vital importance for every family, but an institution implying rigid rules. It is a way of making a girl desirable, starting with her virginity, her pubescence, docility, and so on. In this context, every woman becomes a fundamental resource for her family group who must reach marriage in the best condition possible, i.e. chaste. This is what female genital mutilation is used for. In popular belief, the surest means of protecting the virginity of future brides is infibulation, of preserving chastity, is excision.

Female genital mutilation is a way of regulating the female body in order to pursue a strategy of subjugation of women. It is the stigma that the social groups impress on their bodies, according to procedures that are not simply an exterior form that conditions them from the outside. It is something built up inside to train them according to schemes of docility that prepare them to be taken over by a world of men that is extraneous and aloof, basing its strategy of power on this extraneousness. Their power is not exercised by a repression of instincts, or on a mechanism of coercion based on dominion of the command/obedience type, which must be practiced daily to be effective. Instead, it is inscribed on women's bodies through mutilation and disciplines her once and for all at the moment it is performed.

FGM is the very form with which power is inscribed in bodies, since it does not lead to coercive procedures of condition but to the actual construction of the body. It is a form of

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control of the female body whose aim is to prepare the girl for the marriage exchange which the family group relies upon as a fundamental economic and social resource. The bridewealth is an important custom not only in terms of patrimony but especially because it is cash in hand to allow her brothers to marry in turn. But the marriage of a daughter is not only a way of procuring funds; it is also a useful way of acquiring relatives.

In conclusion, female genital mutilation is a symbolic practice that is not only a determining factor in social reproduction but acquires significance within a marriage system supported by the institution of the brideprice or bridewealth. As mentioned earlier, its main features are combined marriages, the young age of the bride, the advanced age of the groom and polygamy. Keeping this complex economic-symbolic system in mind allows us to greatly expand our analysis and lets us monitor the system in detail, highlighting lateral movements or imperceptible changes that, in the long term, will erode the practice's possibility of survival.

In order to erode the practice, we have to stop looking at female genital mutilation as a de-contextualized cultural practice, an exotic eccentricity, only capable of communicating the obscurity of cultural phenomena. That only plays into the hands of those who attempt to build a substantive case for cultural differences in order to turn them into objects of discrimination.

** First published in Antropologia delle mutilazioni genitali femminile. Una ricerca in Italia, by Carla Pasquinelli, AIDOS, Rome, 2000*

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3. Programs for the Prevention of FGM

I. THE ACTIVITIES OF THE NATIONAL COUNCIL FOR CHILDHOOD AND MOTHERHOOD IN THE FIELD OF FGM

MOUSHIRA KHATTAB

Ambassador, Secretary General of the National Council for Childhood and Motherhood (NCCM), Egypt

INTRODUCTION

The FGM Free Community Model is the result of a 4-month project formulation process, carried out by NCCM with the support of UNDP (United Nations Development Programme), with NGOs, advocates and experts in social communication, as well as representatives of other organisations that had been previously involved in relevant activities.

Based on the assessment of previous experiences, the project formulation task force recommended the adoption of the socio-cultural approach. The approach will accommodate FGM within a comprehensive developmental package addressing the Rights of the Girl Child. Furthermore, the approach aims at addressing the false beliefs justifying the practice through the creation of an environment conducive to dialogue, initiative, interaction and advocacy. An integrated social communications campaign will be developed targeting the different groups influencing decisions relating to FGM at the family level, aimed at ultimately reducing community peer pressure. The project model is intended for dissemination on a national scale. To this end, the FGM-Free Community Model will be developed.

THE FEASIBILITY OF COMPLIANCE AND ENFORCEMENT: AN EGYPTIAN PERSPECTIVE

MEASURES OF COMPLIANCE (Demand-side Management)

— Public perceptions of the tradition, its origin and the legal context for its practice
— Socio-cultural influences triggered by individuals, families, and communities
— Expression of demand for services by families

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— Advocacy role of the government, NGOs, opinion leaders

MEASURES OF ENFORCEMENT (Supply-side Management)

— Definition and commitment to ethics by practitioners
— Clarity, conformity and sustained communication of legal, medical and religious stands
— Monitoring and reporting mechanisms revealing the actual situation of the practice
— A solid foundation of basic facts relating to the practice accessible at the family level to counteract false medical arguments

KEY PLAYERS

— NCCM
— Ministry of Health
— Ministry of Social Affairs
— Other government stakeholders
— Religious leaders
— Intellectuals
— National FGM taskforce
— Donor Assistance Group and UNDP
— UNICEF
— UNFPA
— Ford Foundation
— National and International NGOs

EGYPTIAN INITIATIVES TOWARD THE ELIMINATION OF FGM LED AND CO-ORDINATED BY THE NATIONAL COUNCIL FOR CHILDHOOD AND MOTHERHOOD

NCCM's APPROACH

— To demonstrate the best use of advocacy and communication tools to eradicate the practice
— To mobilize networks at the village, governorate and national level in support of national and local interventions
— To ensure that the transmission of the practice to the next generation is halted
— To introduce FGM within a package of initiatives addressing the rights of young girls
— To provide a platform for coordinating and sharing experiences at the national and regional levels

NCCM'S LEADERSHIP THROUGH THE FGM FREE VILLAGE MODEL PROJECT

Converging efforts in an effectively coordinated national framework

Co-ordination Mechanisms:
— Steering Committee chaired by NCCM bringing together key players (Donors and counterpart organizations)

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— National FGM Taskforce (Non-governmental players)
— Policy Resource Group (governmental players)

NCCM partnership with DAG and UNDP
— 3 year program ending in 2006
— 60 villages in 6 governorates
— 12 focal NGOs: 2 per governorate
— A network of community leaders as the basis for local FGM taskforces
— Social marketing campaign: “The Girl is Egyptian”
— Village socio-cultural profiles
— Community initiatives
— Monitoring based on socio-cultural indicators
— Policy dialogue
— Support to national NGO networking
— FGM Free Village Model Kit

NCCM’s Partnership with UNICEF
— 5-year program ending in 2006
— 32 villages in Assuit and Alexandria
— Community mobilization influencing youth and influential leaders in 5 governorates
— Capacity building of governmental entities and NGOs
— Supporting the national dialogue through communication interventions
— Review of IEC materials and refinement of messages
— Mainstreaming FGM advocacy in ongoing UNICEF programs

SOCIAL COMMUNICATION CAMPAIGN

Messages to be addressed
— It is an obsolete social tradition
— Is not required by religion
— Does not control sexuality
— Does not impact hygiene
— Communication channels
— Communication resources group

SCOPE OF VILLAGE PROFILES

Main Features
— Human Development Indicators
— Leadership structure (formal and informal)
— Changing socio-cultural trends and popular tendencies
— Pressure groups
— Perceptions, rituals and patterns of FGM practice
— Gender relations
— Advocacy skills and capacity within the community
— Perceptions relevant to the status of girls and their rights

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Development priorities, trends and ongoing development interventions

COMMUNITY SERVICES INITIATIVES

Functional Literacy Classes

— Family well being
— Communication skills
— Team organization
— Initiative Planning

Family Counseling Services

— Reproductive Health Services

NCCM's APPROACH IN MONITORING AND EVALUATION

Objectives

— To measure the impact of activities implemented by both projects
— To assess the processes
— To determine the sustainability potential of projects' investment in advocacy networks at the village, governorate and national levels
— To monitor indicators of socio-cultural change

FEATURES OF PROGRESS IN COOPERATION WITH DAG, UNDP AND UNICEF

— Launch of the communication campaign
— Initiation of village socio-cultural profiles
— Community Initiatives program to be launched by the end of the year
— Capacity building program to NGOs
— Opinion leaders survey
— Demonstration of success stories at the village level by NGOs
— Production of FGM Advocacy Kit
— Training and mobilization of religious leaders at the local level
— Introduction of socio-cultural indicators to monitor change of attitude within communities toward the practice
— National dialogue among policy makers

EXPECTED IMPACT

Individual vs. community pressure
National debate on FGM
National reporting on FGM
National experience on FGM
Institutional
Advocacy
Supporting local initiatives

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II. THE STOP FGM CAMPAIGN

DANIELA COLOMBO

President of AIDOS (Italian Association Women for Development), Italy

In the name of the organisation I represent, AIDOS – the Italian Association for women in Development – and the other partners of the STOP FGM campaign, No Peace Without Justice, the Egyptian society for The Prevention of harmful practices and seven other NGOs in Africa, I would like first of all to express my deepest gratitude to the First Lady, Ms. Mubarak, for having honoured us with her presence. I would like also to warmly thank Ambassador Moushira Khattab, for the support given to this expert consultation by the National Council of Childhood and Motherhood.

This meeting has been made possible through the generous contribution of many donors, which I would like to acknowledge with deep appreciation: the European Commission, UNDP, UNIFEM, the Open Society Institute, the designer Elsa Peretti, Alitalia and the Conrad Hotel.

Exactly fifteen years ago, in June 1988, AIDOS and the Somali Women's Democratic Organisation had organized one of the first international Conferences on the subject of FGM in the Parliament House in Mogadishu, titled "Female Circumcision: Strategies to Bring About Change," that saw the presence of the most important actors at that time involved in the struggle against this traditional practice. At that time, the issue of using the law to prevent and eradicate FGM was the theme of one of the working groups.

Some of the women who participated in that conference are here today and we are pleased to see that some of them now hold the position of ministers in their countries. Some others are no longer with us, but their daughters and sons are continuing the struggle. Many others have come on board and I am particularly glad that Emma Bonino is now among us.

In these fifteen years, much water has passed under the bridges. The agencies and funds of the UN system have taken position several times against FGM and through their activities have had a great impact on globalising the struggle.

Various international organisations, mainly the Inter African Committee, RAINBO, the Center for Reproductive Law and Policy (now CRR), and many national and local associations and government bodies have experimented with different research, training, information, and sensitisation methodologies so that now we may hear not only about their success stories, but also the difficulties they have encountered. I am pleased to see that their leaders are all here today and that we have left behind all misunderstandings and competitions that in the past have somehow undermined our struggle and that now we are all working for the same objective, each of us bringing our added value.

The project STOP FGM, of which this Afro Arab consultation on legal tools for the prevention of FGM is a component, has the aim of contributing to build and reinforce this

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partnership and at the same time to stimulate African and Arab public opinion favourable to the abandonment of the practice, by contributing to the creation of an international front of actors fighting against FGM with shared approaches, strategies and contents.

We have created a web portal available now in English and French, that will also be available in Arabic very shortly, which has been set up and is maintained through a hidden online administration engine, directly by all our partners from Gambia, Mali, Burkina Faso, Egypt, Somaliland, Ethiopia, Kenya and Tanzania, which have been specially trained and have been given equipment for this task. The web portal includes among other information, a database of relevant actors, international, national and local organisations, international and national legal tools and plans of action, statements of personal commitment, bibliographies, training materials, and a press review of international news related to FGM which is updated on a daily basis.

It also contains the thousands of signatures from the International Appeal that was launched in Brussels in December last year, on Human Rights Day. This Appeal has been published by international and African newspapers. Many signatures are of eminent personalities in Africa, in the Arab States and in the western world, but for the first time a major effort has been done to involve the civil society of African countries as well.

These signatures will be handed officially by all the partners in the project to the Secretary General of the UN, on the occasion of the next Session of the General Assembly in New York.

In Tanzania, the NGO TAMWA, the Tanzanian Media Women's Association, with our financial and technical backing, has launched the largest media campaign so far conducted in an African country, making use of all modern and traditional media. This two year campaign will be presented on the last day of the Conference as an example of the activities that have to accompany the enactment of the legislation to prevent FGM: news, features, reports for the printed media, weekly radio program spots, television talk shows, but also poetry and theatre plays to animate group discussions and meetings, together with IEC materials and training for media performers.

I wish the greatest success to this expert consultation and I am confident that the declaration that will be issued at the end of these three days of work will be a concrete instrument to guide legislators and governments in their future actions.

I would like to conclude this brief introduction to the STOP FGM project by citing the last lines of a poem which was declaimed by the female Somali poet, Dahabo Elmi Muse, during the closing ceremony of the Mogadishu Conference,:

"And now hear my appeal!
I appeal for dreams broken
I appeal for my right to live as a whole human being
I appeal to you and all peace loving people
Protect, support and give a hand
To innocent little girls who do no harm, trusting and
Obedient to their parents and their elders
And all they know are only smiles
Initiate them to the world of love not to the world of feminine sorrow!"

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III. LEGAL TOOLS FOR THE PREVENTION OF FGM IN EGYPT: A 20-YEAR OVERVIEW

AZIZA HUSSEIN

President of the Egyptian Society for the Prevention of Harmful Practices (ESPHP)

Fifty years ago, in 1954, I was initiated into the FGM debate without knowing it, through my participation in the UN General Assembly, 3rd Committee, whose agenda included at that time "harmful traditional practices," which did not mention FGM by name. Apparently, as it turned out later, WHO had brought the question out worldwide and urged governments to adopt clear policies to abolish female circumcision, as it was first called. Since then, WHO continued to lead national and international agencies in the fight against FGM. A WHO regional Seminar was held in Sharm El Sheikh Egypt three years ago. As to our NGOS in Egypt, they caught on to this issue in due time playing their traditional role of path finding and taboo breaking to pave the way for official programs.

THE NGO EXPERIENCE (1975 – 2000)

The International women's Movement had begun to express concern with this issue, prompted by writings of Egyptian doctors abroad, particularly Dr. Nawal Saadawi. They began to bombard the Cairo Family Planning Association, which I have the honor of chairing, with questions regarding FGM. Our reaction at that time revealed our total ignorance. First, we did not think it had anything to do with family planning; second, we were under the impression that the practice was illegal. "FGM was abolished by law," we said. When urged by Fran Hoskens, the famous activist, to produce the text of the so-called law, we found to our surprise that there was no law, only a ministerial decree No 74 issued in 1959, an ambivalent one at that, which banned the operation in hospitals while recommending the superficial excision. In the meantime, clandestine operations in back streets abounded at the hands of unlicensed nurses, midwives and barbers – in full contravention of a general law forbidding surgical practice at the hands of unlicensed cadres. The last straw came when I received a communication from international feminist organizations asking me to join them in signing a statement addressed to Kurt Waldheim, the then UN Secretary General, asking him to take steps to eliminate female circumcision in different parts of the world. I politely declined to join the effort and decided to take responsibility for this issue inside my country, as an Egyptian citizen in charge of an NGO that had previously managed to break other taboos such as Family planning. FGM would be another similar challenge.

THE FIRST FGM SEMINAR

Taking advantage of the International Year of the Child in 1979, the Cairo FPA launched a Seminar entitled "the Bodily Mutilation of Young Females," aimed at investigating the question objectively and scientifically, through the participation of a high level inter-

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disciplinary team, medical doctors, sociologists, researchers, religious leaders and feminist, groups etc… with the attendance of representatives of important national, regional and international organizations, and the inauguration by the minister of Social Affairs. The media was well represented and was surprisingly positive .We had no public backlash despite it being the first time that this question had ever been raised in public.

The conclusions of the Seminar are worth summarizing here because they are still relevant. Its 14 recommendations have been used to guide the program for years thereafter.
"The practice of female circumcision pre-dated Islam and Christianity. There was no mention of it in any Sacred Books. It is practiced by Christians and Moslems alike in Egypt, but is unknown in other Moslem countries like Saudi Arabia. Where it is practiced, it is mainly motivated by tradition without any connotation of violence. In fact it is performed out of concern for the girl's chastity and good name and to insure her eligibility for marriage. Nevertheless the Seminar ended with a call for a legislation to incriminate FGM, the first such forum to make an appeal to law."

Subsequently a National Committee was formed composed of multi-disciplinary experts, including social, medical, religious and legal experts, which were later affiliated with the Inter-African Committee for the Elimination of Harmful Traditional Practices. Under its supervision, a full-scale program of information, education and training was implemented targeting special categories which have a critical influence on attitudes and behavior regarding this issue. These were identified as doctors, nurses, midwives, social workers, teachers, media, TV and Broadcasting personnel…A full-scale television and broadcasting program was launched for a few months. The impact was very promising but the sustainability of this program required more funds than were at our disposal. As to evaluation, it was mostly based on anecdotal evidence and some positive indicators of performance, but a proper scientific survey would have also required more funds than we could afford. For a long time the FGM project operated on a shoestring budget with volunteers supporting most of its activities.

THE FIRST NGO AGAINST FGM

In 1992 the first NGO against FGM was established as an offshoot of the Cairo Family Planning Project. It has been working zealously for over 10 years, collaborating with different government departments as well as with other NGOS. The legitimacy it gained through its registration under the law enabled it to work more effectively. The ICPD Forum gave it the chance to intensify its activities and to build coalitions with various national and international organizations in addition to former allies like the Population Action International which gave the first seed money, the Rada Barnen of Sweden, the Inter-African Committee, Ford Foundation etc... all of which gave it funding and valuable support. It later forged strong links with the NCPD FGM Taskforce and other national and international organizations, the Fertility Care Society, Caritas, CEOSS, the Population Council, CEDPA and NGOS in the Provinces etc. Because of the immensity of the task to be achieved, it became very clear to some of us that all these stakeholders should work together in harmony and in a complementary manner, in order to tackle this daunting problem comprehensively and

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effectively. This fact became very clear in a Seminar set up by the Population Council held in the year 2000 to evaluate the impact of all these efforts and which brought all the stakeholders together. The National Council for Motherhood and Childhood promises to be a good umbrella to help coordinate and/or synchronize all FGM activities with the leadership of Mrs. Suzanne Mubarak.

THE LAW AS SEEN BY THE LEGAL MEMBER OF THE NATIONAL COMMITTEE.

Because of periodic appeals to the Law as a means of prohibiting harmful practices, our society decided to study this question through the Legal Member of our National Committee.

Hence a study was undertaken at our request by Counselor Salah Eweis, entitled “Female Circumcision, Criminal and Civil Liability under Egyptian Law” which starts with the right to bodily integrity as a basic natural right which all the successive religious legislation have been keen to protect, with a view to maintaining the dignity of man, the most glorified of "God’s Creatures." Egyptian law regulates this protection by stipulating a series of penal codes which incriminate all acts considered an infringement of the human body, be it for men or women, young or old– starting with the simple infringement that leave no trace, i.e. light beating etc…and ending with intentional homicide and murder. This stand is obviously endorsed by all legislation world wide, says Counselor Eweis.

As regards Female Circumcision, the Counselor regards it as a case of infringement of the female body which inflicts an injury by will and intention, and results in depriving the female of a naturally functioning part of her reproductive organs, the responsibility and liability of the prime perpetrator, but which is also shared by the guardian of the child, be it a father, mother or grandparent. As such, it is considered a crime of intentional injury, punishable according to Article 241 and 242 of the Penal Code, in varying degrees according to the duration of the treatment. This does not apply to male circumcision, which he claims, is a very superficial excision and may have health or religious justifications.

In this regard, the Egyptian Court of Cassation decreed that if a person undertakes to give another person an unlicensed "medical" treatment, which infringes upon his or her physical integrity, here the basic conditions for a crime of intentional injury are realized according to the provisions of article 242 of the Penal Code. It is to be remembered that a doctor is legally authorized to perform operations according to specified rules and controls, the most important of which should be the intention to treat an illness, to perform a diagnosis or to remove or alleviate pain etc…This does not apply to female circumcision, says Counselor Eweis, because the consensus of the foremost medical authorities has been that a girl’s reproductive organ in its normal shape is not considered an illness nor is it a direct cause of illness or of pain, hence any infringement of that part of her body is not a medical treatment or a diagnostic search for a disease or the removal or alleviation of pain. This act therefore is completely outside of the boundaries of a doctor’s medical competence and authority and his performing it places him under the accusation of committing a crime of intentional injury for which he will be liable under Articles 241 and 242 of the Egyptian Penal Code in varying degrees according to the duration of the treatment. This applies to the medical doctor as well as to non-medical personnel. The latter are criminally liable on two counts, the inflicting of an intentional injury as well as practicing a “medical” procedure without license.

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CONCLUSION

According to Counselor Eweis, it is clear enough that female circumcision is illegal under the existing law, a fact that should not require us to seek a special legislation to ban it. But no one seems to be aware of it, because not only is there a usual gap between law and its implementation, but this gap is aggravated by lack of social awareness about laws in general, and their social implications in particular. Furthermore, the cultural, historical and gender factors involved in the perpetuation of FGM seem to elude attempts at a clear legal resolution. At best, new laws serve to reinforce the work of activists and give them some moral authority in their effort to seek to influence a change in attitudes and behavior.

In the past for example, because of the taboos surrounding the subject of sex, there was no information in our cultural milieu even about the extent of its occurrence, compounded by our own misconception for a long time that there was a law prohibiting it. Nowadays it seems that because in our own awareness we did not link FGM with the penalty under Egyptian law, mentioned above by Counselor Eweis and applicable to any infringement on bodily integrity without health justifications, we did not diligently pursue this line in our lobbying efforts and instead, there have been periodic attempts to resort to some form of legal prohibitions or decrees within certain limits and boundaries (hospitals for example) targeting certain categories etc. Some of the NGOs, particularly in the FGM Task Force, while generally conscious of a generic law prohibiting FGM, have been supportive of the relevant draft decrees in their public advocacy programs and in their lobbying efforts in courts. This particularly applied to a decree issued by the Minister of Health and Population, Dr. Sallam, in 1997, which was the most comprehensive and straightforward decree to-date, completely banning FGM in and out of hospitals and was confirmed by court decision. The most important concern of NGOS had been the attempt by some physicians to "medicalise" the FGM operation in the name of health and/or religion.

In their lobbying efforts some NGOS have been researching and reformulating their advocacy messages according to different approaches: the medical, religious, legal, social, status of women, community participation etc…The FGM Task Force and the Fertility Care Society took the lead in investigating these questions. NGOs in general also probably need to research the impact of the law on the practice of FGM within a certain framework and the role of law in supporting or complementing social efforts aimed at the elimination of FGM. Within this exercise, it is pertinent also to investigate how much the law is perceived as a reflection of the will of the people as opposed to its being a top-down imposition. At the same time, we need to tackle perhaps the question of legal illiteracy among the lay public which is rampant, mostly because they feel they should leave the question to lawyers and wait until they get into trouble. Some NGOs as well as the National Council of Women have included in their programs citizenship education programs aimed at raising legal awareness of the public, in general, and of women, in particular. This we believe should include understanding of the simple citizen's part in initiating law, following it up and moving to revoke or amend it when necessary. Ideally speaking, however, civil society should be able to resolve its problems outside of the courts.

In conclusion, laws apart, we need to undertake an intensive information education and communication program on all levels, aimed at eliminating FGM as a priority. Indeed we should make a sustained comprehensive effort to change attitudes and behaviour through

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formal and informal education, particularly regarding the status of women in society which happens to be the prime objective of the National Council of Women, chaired by Mrs. Mubarak. For example the prevalent misconception that FGM will insure the girl's eligibility for marriage is based on a gender bias reflecting an inferior status of women in society. One of the arguments that impressed me most in one of the society's workshops was that "chastity has nothing to do with the organs of the body, but with the mind, which needs to be cultivated through good upbringing at home and education in school, only this will insure good conduct." Incidentally, this statement which was given by a traditionally clad female physician, in one of the FGM training sessions was later quoted in the New York Times by one of its reporters who attended the session in 1994.

Furthermore, the dissemination of information and knowledge about these issues on the Internet will serve to consolidate the movement nationally and internationally. We can now say that the taboo of silence on these issues has been broken, as manifested by the increased international interest in the FGM subject in the world at large and the consensus which has obviously been reached on the importance of maintaining human rights in our global village, which should not be violated in the name of traditions or other parochial considerations. In this connection we can say that Ignorance has been the main problem, Knowledge will be the solution. So let us make the maximum use of the age of information and communication technology to propagate knowledge and to "help make their world a better place."

Evidently many lessons were learned from our twenty years or more of experience – the first one being that the human approach in dealing with any developmental issue is indispensable. No technology is a substitute to the human element. We have to listen carefully and to give due respect to others, before involving ourselves with any project which is as sensitive as this one. Of course, funds are important to spend on issues like the media and we have lacked this financial capability despite a good start with media projects which could not be sustained. For example, we have undertaken some media pilot projects through co-operation with the Egyptian TV which resulted in the broadcasting of some 25 productions under the Channel III "Reportage" program, all of which are available in video tapes, and which could be used for future reference. We also have some indicators of performance in statistical terms from our training programs which could be useful in any future strategy. Finally we have an array of publications on several issues related to FGM, written by experts including the religious, medical, legal and social dimensions, published and distributed throughout the last twenty years.

We expect that the new era of collaboration with the National Council of Childhood and Motherhood will give a chance for all other dimensions of FGM to be tackled within a comprehensive national context.

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IV. THE "ZERO TOLERANCE TO FGM" IAC PROGRAM

AMNA ABDEL RAHMAN

Vice President, Vice President of the Inter-African Committee Against Traditional Practices – IAC, Sudan

THE INTER-AFRICAN COMMITTEE FOR ZERO TOLERANCE TO FGM PROGRAM, 2003 TO 2010

I have to give you a very brief introduction to this organisation. The IAC is an African non-governmental network. It has twenty-eight African national committees where FGM has prevailed and it has many affiliates from Europe, the US, Asia and other parts of the world. What is the Zero Tolerance program? It was initiated by IAC, proposed and implemented on the 6th of February 2003 in Ethiopia. Many NGOs at the international level, many donors, and many Africans participated in the contribution and the support of this conference. The conference's goal was to invite private sectors, individuals who are interested in the abolition of FGM, many institutions and universities, and all the UN agencies to contribute together in the conference. There were more than 400 participants present at the conference, among them were the First Ladies of Burkina Faso, Guinea, Mali and Nigeria and many Ministers from Burkina Faso and other African countries. The European Parliament of the European Union, the African Union and the ECA also participated.

One of the major presentations was when the IAC national committee shared their best experiences on many projects, the challenges incurred therein, and how they met those challenges, changing the attitudes in many religious programs, so that people shared their ideas and approaches. Also, youth campaigns and training manuals produced by the WHO in the African region were shared, as well as tools for impact assessment to abolish FGM and the tools for data collection. IAC also presented their vast experience in the process indicators for interventions and behaviour change, which were developed recently and are now given in training to whomever works on FGM. The draft protocol to the African Charter of Human Rights and People's Rights, on the Rights of Women and Children in Africa at the African Union level was also discussed thoroughly in that conference. UNICEF called for the government to fulfil their pledge to end FGM and for UNIFA support. Suggested methods to stop FGM were shared in that conference.

Now let us see the impact of the conference. The conference declared the 6th of February as an international day of Zero Tolerance toward FGM. I will take this opportunity to remind you that it is already declared and adopted, so the 6th of February is going to be the international day for it. The adoption of the common agenda for action on Zero Tolerance to FGM is an example of the joint collaboration agreed to during the conference. We need joint collaboration all over, out of Africa, in Africa, and we need to consolidate our efforts to put an end to FGM by the year 2010. The short-term objective of the Zero Tolerance to FGM program is to adopt a common agenda and to identify priority areas for intervention and the agreement on different approaches and modalities for co-operation. The long-term objective of Zero Tolerance is to see the end of FGM by the target date, decreasing the prevalence of the

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practice and abolishing it completely. Finally, the proposed activity for the common agenda was operational research, which is very important. Without operational research, we cannot revise our strategies and approaches. The development and production of IAC materials, conduction of training and awareness campaigns to different target groups, holding training workshops for the circumcisers, mobilising traditional leaders and communities are all important in the struggle to stop FGM. A special program targeting religious leaders is becoming very vital as is media participation and the re-orientation of health personnel to stop FGM from being taught in medical training facilities. In Sudan, this is one of the things that we are fighting. We need to provide alternative income generation activities for TBAs (Traditional Birth Attendees), and we are moving our efforts now toward lobbying the government for legislation. We need to adopt an integrated approach involving all the stakeholders and I can tell you that from our quantitative and qualitative research, we have found fourteen negative consequences of FGM on women and the community as a whole. Time does not allow me to state them — we can discuss it in the group work — but indeed, there are fourteen negative consequences.

Monitoring and evaluation of the activities is also very important, and without monitoring and evaluation we cannot assess our work. The time frame set for this program is eight years, 2003 to 2010 and the key players, as my sister, Her Excellency Moushira said (and she had presented them very well), are very important. They are the same stakeholders here: government departments, WHO, all UN agencies, the EU and the African Union, and all the international NGOs who are partners in the implementation. The budget, or rather the estimated budget, is quoted at $15,528,800, in U.S. dollars. This is the amount projected for the eight year duration of this proposal. It has to be shared by the different stakeholders and whoever is interested in any part of it. So, for more details on who will do what and who the implementing agencies are, I have given you a copy of this information to be photocopied and sent to you, or you may contact the IAC website. Thank you very much.

V. USING LEGISLATION FOR THE PREVENTION OF FGM

1. CONSIDERATIONS IN DRAFTING AND IMPLEMENTING LEGISLATION TO PREVENT FGM

LAURA KATZIVE

Center for Reproductive Rights, United States

INTRODUCTION

While female circumcision/female genital mutilation[4] (FC/FGM) has been the target of government action in some countries for several decades, it is primarily since the 1990s that governments have taken a legislative approach to stopping the practice. With some variations, this approach has principally entailed the assigning of criminal penalties to those

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who perform, assist or solicit FC/FGM. As governments and advocates for women's health and reproductive rights grow increasingly united in calls for legal measures prohibiting FC/FGM, the time is ripe for an evaluation of how these measures complement broader strategies to prevent the practice. It is also important to analyze the legislative approaches adopted to date in order to identify ways to optimize the law's effectiveness while promoting and protecting the rights of women and young girls.

Part I of this background paper examines the role of law in preventing the practice of FC/FGM. It discusses the benefits of legislation, as well as some of the concerns that any legislator should consider when adopting a law specifically on FC/FGM. Part II provides an analysis of legislation adopted to date addressing FC/FGM. Following an overview of the types of legislative measures that have been adopted in African countries where FC/FGM is practiced, it discusses the common elements of most legal systems and considers the different approaches available to legislatures. It places special emphasis on criminal laws adopted to prohibit FC/FGM, highlighting the issues that governments should consider before adopting legislation of this type.

THE ROLE OF LAW IN STOPPING THE PRACTICE OF FC/FGM

Governments have increasingly adopted legislation to further efforts in the struggle to stop the practice of FC/FGM. Of the 28 African countries where FC/FGM is prevalent, 15 have at least one specific law or regulation addressing the practice. Twelve of these countries have criminal laws, three have constitutional provisions, and two have child-protection laws prohibiting it. It is significant that few of these measures pre-date 1994, the year of the International Conference on Population and Development in Cairo. At that conference, FC/FGM received a great deal of attention and governments agreed to take action to stop the practice.

Few advocates for legislation prohibiting FC/FGM would argue that law alone can change individual behavior. The effectiveness of any law will depend upon a number of factors, including the strength of enforcement mechanisms, the importance of formal law in norm-setting and social control, and the extent to which legal measures are accompanied by other manifestations of government commitment to stopping a particular practice. Nevertheless, legal measures specifically condemning and prohibiting FC/FGM can help strengthen the position of those advocating for change. This section considers the manner in which legislation addressing FC/FGM can contribute to efforts to prevent the practice. It also considers barriers to successful implementation of such legislation.

A. The benefits of a legal approach

Where measures are enforced, they may create incentives for change in individual or communal behavior. The most obvious of such incentives is the avoidance of punishment – in the forms of imprisonment, fines, social stigma or professional sanctions. Practitioners of FC/FGM who learn that their actions may be punishable under the law may cease their activities for fear of being caught and prosecuted. Parents may dread the potential consequences of attempting to have their daughters circumcised illegally. In addition, under certain conditions, law may have a moral force that is persuasive to members of society. The sheer desire to be law-abiding may be enough to persuade some individuals to abandon a

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practice that has been criminalized by the state.

Legal measures may also act as educational tools, publicizing information about the risks associated with the practice of FC/FGM. The passage of a law criminalizing FC/FGM creates an opportunity for media coverage of the issue and opens the door for wider discussion of the harmful nature of the practice. Likewise, a government's condemnation of the act may lead some individuals to seek out more information themselves. In addition, the passage of legislation may facilitate communication within families across generations, providing an occasion for those who oppose the practice to broach the subject with more traditional members of the family. Finally, where a prohibition against FC/FGM is placed within a broader bill on, for example, women's reproductive and sexual health, the law can help shape people's perception of the practice. Such bills send the message that the right to be free from FC/FGM is an essential reproductive right, based upon women's basic right to reproductive and sexual autonomy.

Notwithstanding the increasingly united call to address FC/FGM by legislative means, lawmakers contemplating a specific legal approach to FC/FGM face several challenges. The following subsection considers some of these challenges and discusses means of addressing them.

B. Barriers to implementing FC/FGM laws

1. Women's low social status

Legislation targeting FC/FGM is likely to have little positive effect in a legal context in which women's rights are not recognized or are explicitly undermined. Governments should ensure that they have ratified the major human rights treaties guaranteeing women's rights, including the Convention on the Elimination of All Forms of Discrimination against Women. They should then bring all national-level laws into conformity with the rights guaranteed in these treaties.

In reforming national-level laws, it is critical that governments modify laws that discriminate against women. Constitutions should be unambiguous in securing the equality of women and men under the law in all matters, protecting the rights of children and guaranteeing women and children protection against harmful practices. The constitutions of several African countries, including those of Kenya and Gambia, explicitly declare that guarantees of non-discrimination are not applicable in matters governed by customary law. Because customary law frequently governs such matters as marriage and inheritance in Africa, a government's refusal to enforce women's equality when customary law is at issue may result in a perpetuation of conditions that lead to women's subordination.[5] Women's weak social standing, in turn, reinforces their inability to reject FC/FGM. In matters affecting individual rights, constitutions of all countries should declare their supremacy over customary and religious law. Such explicit statements upholding the primacy of the constitution and guarantees of individual rights are found in several constitutions, including those of Eritrea, Ethiopia, Gambia, Ghana, Niger, Nigeria, and Uganda. In South Africa, a country not otherwise discussed in this paper, customary law may only be applied subject to the constitution and to legislation that permits its application only when it is not "opposed to principles of public policy and natural justice."[6]

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In addition to removing formal discrimination from the constitution and other national laws, governments should adopt affirmative measures aimed at promoting women's rights. Women cannot abandon the practice of FC/FGM until they have the information, material conditions, and skills to enable them to do so. In countries in which FC/FGM is seen as a prerequisite for marriage, women and girls whose economic security depends upon their ability to be married have little choice but to undergo FC/FGM. Governments should adopt measures enabling women to raise their economic, social and political status, including ensuring that both women and men have the right to work and the right to equal pay for equal work. Governments also have a responsibility and obligation to support women and encourage their participation in all aspects of community life. Barriers to women's ability to access credit and training should therefore be addressed. Governments should ensure girl's equal access to education by allocating sufficient resources and adopting gender appropriate policies. Governments should also work to ensure women's participation in public office and decision-making. Finally, where popular knowledge of the law and government is limited due to high levels of illiteracy and remoteness from urban areas, national campaigns should be instituted to disseminate information about the legal protections that do exist, particularly those aimed at upholding women's rights.

2. Resistance at the community level

A law condemning FC/FGM can only have weight where the practice's harmful effects are understood and recognized at the community level. In kinship-based societies, behavioral change at the individual level is difficult to achieve without the approval of the community. In such a context, using the law to subvert the demands of one's own relatives or community members may cause graver social and economic repercussions for the person resisting FC/FGM than for the person trying to impose it.

It is therefore critical to ensure that a broader governmental strategy which includes outreach and awareness-raising programs aimed at individual behavior and social norms, is in place prior to any national-level criminalization of the practice. Legislation that targets FC/FGM may itself call for such measures prior to enforcement of criminal sanctions. Governments should be devoted to reaching out to those communities that practice FC/FGM. This outreach should aim to: promote human rights and demonstrate the connection between human rights and FC/FGM; focus on the needs of women and girls while involving the entire community; and emphasize the impact of FC/FGM on the lives of women, girls, and members of the community-at-large. Governments should rely on the assistance of NGOs, local leaders, and health care professionals to create and to provide this information in an effort to generate social dialogue. Moreover, government resources should support the dissemination of accurate information about FC/FGM and women's health and rights, enable people to access services, and support skills development and other training programs.

At the same time, as noted above, specific legislation that is appropriately and effectively publicized can itself serve as an educational tool to inform communities, individuals, members of the judiciary and law enforcement about the practice, its consequences, and available recourse. Well-disseminated laws not only inform potential perpetrators about what behavior is considered criminal (putting them on "notice"), but they also communicate that the government has taken a stance against the practice.

3. Vulnerability of minority groups

When FC/FGM is common among one ethnic group or community

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and not the majority, enacting and applying a criminal law could fuel ethnic tensions. In countries in which FC/FGM is practiced primarily by a minority ethnic group, criminal laws prohibiting FC/FGM may be perceived as a pretext for harassing or persecuting members of that group. This may particularly be the case when criminal legislation is enacted in the absence of concerted governmental efforts to reach women and girls through outreach and empowerment programs. Governments should show a consistent pattern of interest in eliminating FC/FGM as a means of improving the lives of women and girls. In countries in which minority rights are vulnerable, governments should take steps to show that their actions are not motivated by an interest in disrupting the lives of members of a minority ethnic group. Such steps may involve increased consultations with minority organizations and enhanced appropriate outreach programs, as well as allocating resources to community groups – particularly women's groups. It is advisable that lawmakers specify within legislation that efforts to prevent FC/FGM should comport with guarantees of minority rights and general protections against non-discrimination.

4. Weak enforcement mechanisms

In some countries, law enforcement mechanisms are weak and lack resources. Where FC/FGM is widely practiced and approved by most members of society, there are likely to be few cases brought to the attention of the authorities. The burden thus falls on law enforcement officials to investigate and uncover evidence of the practice. The logistical difficulties of performing such investigations, particularly in rural areas, are obvious. Adopting criminal legislation with no means of enforcing the law risks engendering disrespect not only for that measure, but also for the rule of law in general. In the context of FC/FGM, some have argued that criminalizing the practice will do no more than drive it further underground.

Under such circumstances, even occasional enforcement, if highly publicized, may be sufficient to send the message that those who practice FC/FGM incur criminal liability. In all cases, it is important that enforcement of any kind be accompanied by public education informing people that a law criminalizing FC/FGM has been adopted. To date, while enforcement of legal measures aimed at stopping the practice of FC/FGM has been uneven, news reports of arrests in several countries with legislation criminalizing FC/FGM, including Senegal and Ghana, have received international attention.[7] There have also been scattered prosecutions for FC/FGM in cases where the girl undergoing the procedure died as a result, as in Egypt and Sierra Leone.[8]

5. General denial of reproductive health care

Governments should bear in mind the link between the practice of FC/FGM and the need for reproductive health services for all women. First, where such services are lacking, women have less information about their own reproductive health. Women who understand the harmful health consequences of FC/FGM may be less likely to undergo the procedure or encourage their daughters to do so. Second, women who have already undergone FC/FGM have the greatest need for medical attention, particularly during pregnancy, childbirth, and the post-partum period.

Legislation addressing FC/FGM should therefore be accompanied by measures to ensure women's access to reproductive health care. An example of such an effort is Togo's legislation prohibiting FC/FGM, which takes special note of these health needs and directs public and

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private health facilities "to ensure the most appropriate medical care to the victims of female genital mutilation arriving in their centers or establishments." [9]

MATTERS TO CONSIDER IN LEGISLATING AGAINST FC/FGM

The discussion in Part II of this paper considers the elements of legislation aimed at stopping FC/FGM. It provides a brief background on legal systems generally and then reviews the types of legal measures that can be employed to address FC/FGM, with a particular emphasis on laws that assign criminal penalties for the practice of FC/FGM.

A. Background

1. Legal measures and their hierarchy

Legislators should consider what type of legal measure is an appropriate vehicle by which to address the practice of FC/FGM. Legal approaches to FC/FGM are, broadly speaking, of three types: constitutional, statutory, and decreed or regulatory. Generally at the apex of a country's legal system is a written constitution, which represents the law of highest authority. All legislation and government action should conform to the norms established in the constitution. Adopting amendments to the constitution is generally a heavily political process, requiring the broad agreement of various constituencies.

Codes and statutes are also adopted via the political process with the approval of the parliament, or legislative branch. Like constitutional amendments, though to a lesser degree, they reflect political, and usually popular support, which often signals some receptivity to the substance of the legislation and its implementation.

In contrast, a ministerial ordinance, policy, or regulation, which tends to focus on a specific issue, is usually drafted and adopted by the responsible ministry or bureau in a relatively closed and swift process. Nearly every country surveyed has issued some type of policy addressing FC/FGM. A new minister or administrative body can easily revoke such policies. Many policies, however, are sustained over time and even strengthened by subsequent administrations. For example, Mali's strategy on FC/FGM initially consisted of a multi-stakeholder five-year plan of action (1998-2002) extended to 2007.[10] It has recently been bolstered by a legal ordinance setting out a specific national program designed to stop the practice.[11]

2. Federal versus state law

Where a country's constitutional structure provides for governance at the sub-national level, an additional consideration is whether adopting local or state legislation is preferable to a federal or national law. Depending on a country's political stability, social agenda priorities, religious, ideological or cultural divisions, a localized process may prove more or less controversial than a national-level effort. For example, faced with tremendous political hurdles at the federal level, activists in Nigeria advocated for state-level laws.[12] It is important to note that national-level legislation prohibiting FC/FGM may co-exist with legislation at the state level, as is the case in the United States. In some cases, state legislation might complement national-level criminal sanctions by calling for additional outreach programs and provider training.

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B. Elements of a Legislative Approach

Provisions with general applicability to the practice of FC/FGM can be found in the constitutions of each of the 28 countries where the practice is prevalent. All of these constitutions enshrine the equality of the sexes, as well as guarantee the right to life and physical integrity. Addressing FC/FGM with greater specificity requires a careful evaluation of a number of different factors. This subsection discusses the different approaches governments may take to legislating on FC/FGM and points out considerations for each approach.

1. Constitutional Reform

Constitutional protections against practices that are harmful to women and girls have been adopted in Ethiopia, Ghana and Uganda. The Constitution of Ethiopia guarantees women protection from "harmful customs."[13] It provides that "[l]aws, customs and practices that oppress women or cause bodily or mental harm to them are prohibited." [14] The Constitution of Ghana provides that "[a]ll customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited."[15] It states further that "traditional practices" injurious to peoples' health and well-being shall be abolished.[16] Uganda's Constitution declares that customs or traditions that are "against the dignity, welfare or interest of women or which undermine their status" are prohibited.[17] In addition, the constitutions of a number of countries explicitly protect the rights of children.

Constitutional measures that uphold the rights of women and girls to be free from FC/FGM can shape governmental responses to the practice. The legal effects of constitutional protections vary according to each country's legal system. In some countries, constitutional provisions provide legal remedies for women and girls whose rights have been violated. In addition, in many countries, a judicial body might have the power to strike down laws and policies that are inconsistent with such a protection. Finally, a provision of constitutional status may guide members of the government in their drafting and implementation of law and policy. Whatever the legal significance of a constitutional provision condemning FC/FGM, it would represent a clear government commitment to stopping the practice and would give weight to a developing movement.

2. Criminal Legislation

In most countries, criminal or penal provisions ban intentional injury, wounding or mutilation, often increasing penalties when the crime is committed against minors. Such provisions may be applied to prosecute the practice of FC/FGM. In the absence of specific legislation, however, criminal laws against bodily injury are rarely invoked or interpreted to cover FC/FGM.[18] This subsection is based upon an analysis of criminal legal measures specifically addressing FC/FGM adopted in 19 countries in Africa and around the world.

a. What act is prohibited?

i) Definition

Governments that elect to enact legislation specifically criminalizing FC/FGM should bear in mind that FC/FGM occurs in several different forms. Penal laws should therefore state clearly whether all procedures commonly referred to as FC/FGM are prohibited under the

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law. Legislation can achieve such clarity in one of two ways. Drafters may adopt an "inventory" approach, listing the various types of FC/FGM that are prohibited. Alternatively, they may adopt a “blanket” approach, prohibiting all forms of FC/FGM. Both approaches risk some degree of ambiguity. The former creates a possibility that one form of FC/FGM will be left unnamed, thereby creating a loophole for some practitioners. The latter, on the other hand, leaves open the possibility of disagreement over which practices constitute FC/FGM. For example, some practices of FC/FGM do not involve cutting, including a custom in Nigeria of “deadening feeling and retarding growth” of the clitoris by use of hot compresses on female infant’s genitals. Whether or not this practice would commonly be understood to be prohibited under a general ban on FC/FGM is open to speculation.

Among the laws that have been enacted to address FC/FGM in African countries, the degree of specificity varies substantially. The laws enacted prior to 1990, namely those of the Central African Republic and Guinea, merely state that the practice is prohibited and assign a penalty. Among the more recently enacted laws, those of Djibouti and Tanzania follow a similar model, stating only that FC/FGM is prohibited and subject to penalties. The laws of Burkina Faso and Ghana are more complex. Both attempt to define precisely the behavior that is prohibited. Ghana’s Criminal Code, for example, specifically prohibits the excision or infibulation of any part of the labia minora, labia majora and the clitoris and the terms “excise” and “infibulate” are explicitly defined.[19]

In addition, a number of laws, such as that of Senegal, assign criminal penalties to one who incites or instructs another to perform FC/FGM.[20] Canada, New Zealand, and Sweden also prohibit arranging for the illegal practice of FC/FGM in a country in which the procedure is not prohibited.[21]

Benin and Burkina Faso explicitly made it a crime for a person with knowledge that FC/FGM has occurred, to fail to report the act to the proper authorities.[22] Benin’s law, which requires that supervisors of health care facilities provide appropriate care to women who have undergone FC/FGM, expressly demands that such personnel report FC/FGM cases to law enforcement authorities.[23] Mandatory reporting requirements are troubling from a legal perspective, and may also prove to undermine broader government objectives. The legal concern raised by such requirements relates to a patients’ right to confidentiality in the use of health care services. Requiring health care providers to violate their basic duty to maintain provider-patient confidentiality is a breach of universally recognized principles of medical ethics.[24] The practical effect of such a provision is likely to be greater hesitation on the part of parents and other individuals to seek care for girls who are suffering from complications related to FC/FGM. To do so would be to make oneself vulnerable to criminal prosecution. Girls and young women themselves may avoid seeking care for fear of subjecting parents or loved ones to arrest and prosecution.

ii) Who is subject to punishment?

In keeping with the requirements of the Child’s Rights Convention, “the best interests of the child” should be the guiding principle in formulating the law. Laws that provide criminal sanctions for parents who procure FC/FGM for their daughters may create undue hardship for the girls who have undergone the procedure. Long prison terms for parents of young children, involving separation of members of a family, can have severe effects on the emotional lives of the children involved. Governments should consider either assigning criminal sanctions only to the practitioners of FC/FGM themselves or assigning lighter

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penalties to parents than to practitioners.

All laws providing a basis for prosecution in cases of FC/FGM potentially impose liability upon parents who procure FC/FGM for their daughters. The laws of several African countries, including those of Burkina Faso, Senegal, and Togo, explicitly apply to parents and family members, as well as to practitioners of FC/FGM. The law in Côte d'Ivoire punishes the relatives "by blood or marriage" (to the fourth degree) of the victim who have solicited FC/FGM or who did not report a known imminent case to the authorities.[25] Other laws render parents and family members guilty under general legal principles of accomplice liability, according to which anyone who procures the procedure or otherwise cooperates with the practitioner could be prosecuted.

Even where laws do potentially subject parents to prison sentences, judges may, in their discretion, elect not to impose such penalties on parents who have been convicted in cases of FC/FGM. In France, one of the few countries to have prosecuted parents for procuring FC/FGM for their daughters, the result of most prosecutions has been that convicted parents have not been assigned criminal penalties. In the most recent case of this type, for example, a practitioner of FC/FGM was sentenced to eight years in prison for performing the procedure on 48 girls. The 27 parents who were tried as accomplices received suspended sentences from three to five years.[26]

iii) Consequences of "victim's" consent

Governments should consider whether there are any circumstances under which FC/FGM should not be considered a crime. In particular, governments may wish to recognize an exception to a prohibition of FC/FGM when a woman who undergoes the procedure has given her informed consent. Informed consent, according to the United Nations General Assembly, is consent to a medical intervention that is "obtained freely, without threats or improper inducements. . . ."[27] Prior to giving consent, the patient must be provided with "adequate and understandable information in a form and language understood by the patient" on such matters as alternative treatments and "possible pain or discomfort, risks and side-effects of the proposed treatment."[28] Informed consent thus requires that a woman be free from coercion and that she have adequate information in order to make her decision. Often, there is a presumption that to provide informed consent, a woman must have reached a minimal age (18 years of age in many countries). Where requisite conditions exist, laws should respect women's autonomy in making decisions about their bodies.

In many contexts, however, it may be difficult to ensure the conditions that will enable girls and women to give their informed consent. Children will generally not have the capacity to make a decision freely, with full understanding of the health consequences of their decision. Enabling women and girls of any age to reject FC/FGM requires profound social change resulting in equal access to educational and economic opportunities. Because women may not be empowered to refuse FC/FGM, some women's groups have advocated that FC/FGM should be a crime when committed even upon a consenting, adult woman. Governments should take these concerns into account when formulating criminal laws that address FC/FGM. At the same time, they should strive to create the conditions under which women will be free to reject FC/FGM in the absence of criminal sanctions.

Criminal laws addressing FC/FGM have generally not recognized circumstances in which a woman is deemed to have the capacity to consent to undergoing the procedure. Only Canada, Kenya, Tanzania, and the United States have limited their prohibitions of FC/FGM to

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procedures performed upon a child under the age of 18. The Kenyan and Tanzanian prohibitions of FC/FGM are incorporated into criminal provisions pertaining to children which both laws define as persons under the age of 18.[29] Implicit in these laws is an assumption that by attaining the age of 18, a woman is in a position to consent to FC/FGM in the absence of coercion and with full understanding of the procedure's consequences. What remains in question is whether women will be given the information and life choices necessary to abandon FC/FGM or whether the force of cultural norms and lack of economic and legal autonomy will prove stronger.

On the extreme end of this debate are two Nigerian states that have passed anti-FC/FGM laws that punish the "female who offers herself" for circumcision or genital mutilation, the practitioners, and parents and guardians, regardless of whether the woman consents to the procedure.[30] Thus, not only does an adult woman's consent not exempt the perpetrators of FC/FGM from criminal liability, the consenting woman herself is subject to prosecution.

b. Criminal Punishment

Countries that have addressed FC/FGM in criminal legislation have assigned widely varying penalties to punish the practice. Kenya's law calls for a relatively light maximum sentence of 12 months in prison,[31] while Tanzania's law imposes a minimum prison sentence of five years.[32] The severity of sentences may reflect governments' view of the degree to which FC/FGM is accepted by society at large. In national contexts in which FC/FGM is widely practiced and not viewed as a serious infraction, legislators may anticipate courts' unwillingness to convict practitioners of a crime carrying severe punishments. On the other hand, where only a minority of the population practices FC/FGM, popular sentiment against the practice may be sufficiently negative that courts will be willing to convict practitioners and impose severe minimum sentences. It is noteworthy that Tanzania, with its severe criminal penalties, has an FC/FGM prevalence rate of only 18%.[33]

A number of laws note aggravating circumstances that give rise to elevated penalties. When the practice results in death, the prison sentence provided for in Togo's law, for example, goes from a maximum of five years to a maximum of ten.[34] It is also not uncommon for laws to assign greater penalties to members of the medical or paramedical professions. In Burkina Faso and Senegal, such individuals are assigned the "maximum" penalty for performing FC/FGM.[35] Provisions such as these reflect governments' condemnation of the "medicalisation" of FC/FGM, that is, the practice of FC/FGM in hospital or clinical settings by trained members of the medical profession. While medicalisation of FC/FGM reduces many of the health risks associated with the practice, the underlying violations of women's rights – their rights to the highest attainable standard of health, bodily integrity, and non-discrimination – are no less undermined.

Finally, a number of laws punish recidivists more severely. Under Togo's criminal law, for example, penalties are doubled for repeat offenders.[36] Nigeria's Cross Rivers State law prescribes imprisonment of two years for a first-time offender and up to three years for each subsequent offense.[37] Such provisions have the effect of punishing regular practitioners of FC/FGM more severely than, for example, individuals implicated in a one-time circumcision of a daughter or grand-daughter.

3. Civil actions

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All legal systems distinguish between civil and criminal actions. Criminal offenses are often viewed as violations against the community and the state. Civil law addresses the wrongs suffered by private individuals and generally covers a greater range of topics than criminal law, including torts, breached contracts, constitutional challenges, and family law adjudications.[38] Administrative and regulatory law constitutes another, often separate, body of law.

In countries with adequate mechanisms for adjudicating civil claims and enforcing judgments, FC/FGM can be recognized as an injury that gives rise to a civil lawsuit for damages or other remedies. Girls and women who have undergone FC/FGM can seek money damages from practitioners or, theoretically, from their parents. Such lawsuits would have a long-term effect of deterring individuals from performing or soliciting FC/FGM. Other procedures, such as injunctions or stays, may be available to prevent the procedure from occurring in the first place. While civil legal actions are a potentially effective means of influencing individual behavior and protecting girls and women from FC/FGM, such mechanisms have not consistently been utilized.

There are scattered reports of instances in which civil remedies have been employed to sanction or prevent the practice of FC/FGM. In all of these cases, no specific criminal law had been adopted. For example, in Liberia in 1994 a Grebo girl forced to undergo the procedure took legal action against the offending FC/FGM practitioner, who was ordered to pay $500 (US$11.75) in compensation for the girl's injuries.[39] Another successful litigation took place in Kenya, prior to the adoption of the Children Act, which specifically outlaws the practice. In 2000, the Iten magistrate, northwest of Nairobi, issued a historic permanent injunction to prevent a father from coercing his two adolescent daughters into undergoing FC/FGM. Using general legal principles, the magistrate ruled that "[FC/FGM] is an illegal kind of practice because it is repugnant to morality and justice. The practice also violates human rights as stipulated in our constitution."[40]

At least three differences between civil and criminal law can influence the decision whether to choose either types of measures, or a combination of both. These differences center on the party responsible for bringing claims, the burden of proof, and the outcome for the perpetrator and the victim.

a. Who may bring claims

While criminal cases must, with some exceptions, be carried out by an agent of the state, such as a public prosecutor, civil cases are brought by the individual (or a person authorized by her) who claims to have been wronged. Consequently, in states with criminal laws prohibiting FC/FGM, the local prosecutor wields control over whether a law will be enforced in a particular instance. The prosecutor has the discretionary power to decide whether the facts of the case merit prosecution, including whether the violator and the act fall under the definition of the law, and whether enough evidence is available to prove guilt. Therefore, while criminal laws bear the official stamp of state protection and prosecution, their enforcement relies heavily on prosecutors' and judges' discretion in initiating and managing cases.

In civil actions, individuals seeking redress for an actual or potential injury lack the status, clout, resources and access to information available to a public prosecutor mounting a criminal case. In addition, most individuals at risk of FC/FGM are adolescent girls who may be unable to navigate a complex legal system, gather evidence against their perpetrators, or

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hire qualified lawyers. As minors, they may face intimidation and pressure from family and community members not to bring a case. Moreover, under some legal systems, minors lack the ability to bring a suit in court. In such situations, they may be required to authorize an adult to bring a case on their behalf. While some civil systems explicitly allow adult third persons to bring a case on behalf of a child or minor in need of protection, it is questionable whether adolescent girls subject to FC/FGM have access to a trusted adult or guardian willing to take up their cause.

In considering which approach is preferable, policymakers should keep in mind that most of the girls and women seeking protection and/or redress may wish or be forced to return to their homes and communities. It is therefore important to consider what approach would best enable these girls and women to obtain relief without antagonizing and alienating family and community members with whom they reside.

b. Burden of proof

Perhaps a less critical consideration is the differing evidentiary burden tied to civil and criminal laws. In most Commonwealth systems, the standard of proof in criminal cases is higher (e.g., beyond a reasonable doubt, or near certainty) than in civil cases (e.g., on the balance of probabilities, or preponderance of the evidence, or 51% probability of guilt).[41] However, given that in a civil case the plaintiff - often a minor - must prove the guilt of the other party, even the lower standard of proof may be difficult to establish.

c. Outcome for perpetrator and victim

Finally, the type of “punishment” or “remedy” available also merits consideration. Criminal measures subject violators to punishment, such as imprisonment, or a criminal fine paid to the state. These measures are meant to “penalize” and “punish.” In contrast, civil measures provide for “remedies” – an outcome designed to remedy the wrong inflicted on the individual. Civil remedies include compensation to the victim (e.g. “damages” from the harm, which may include damages for “pain and suffering," physical and mental distress), and protection orders or injunctions ordering the other party to refrain from carrying out or continuing to carry out the alleged wrong. Civil laws do not carry an imprisonment sentence.

4. Regulatory and disciplinary measures

Regulations passed and implemented by licensing authorities regulate the practice of a profession and require the licensed practitioner to maintain certain standards of competency and fitness. [42] Lawmakers considering a legislative approach may wish to consider and incorporate existing professional standards, including codes of ethics, into new laws. While legislation can apply to all potential perpetrators, professional and regulatory measures only cover registered members of that profession, such as medical providers or traditional healers.

Medical ethics standards should make it clear that the practice of FC/FGM upon children or non-consenting women violates professional standards. Medical practitioners who engage in the practice should be subject to disciplinary proceedings and should lose their licenses to work in the medical field. In Egypt, a Ministry of Health decree, upheld by the highest administrative court, has declared FC/FGM an unlawful practice of medicine, thereby making practitioners susceptible to criminal prosecution.[43] In the Sudan, government health

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authorities have sanctioned traditional birth attendants and village midwives who participate in FC/FGM by confiscating their midwifery kits and placing them under close supervision.[44] The medical licensing and disciplinary bodies of Denmark, France, and the United Kingdom have declared that physicians who practice FC/FGM may lose their licenses to practice medicine.[45]

Notably, some criminal laws contain provisions on professional discipline. However, conduct that violates regulatory and disciplinary measures need not also be a breach of criminal law. Such measures may stand alone or provide for penalties to supplement those defined in criminal law. For example, in 2000, Ghana passed the Traditional Medicine Practice Act, which establishes a council empowered to regulate the registration and licensing of traditional healers.[46] Under the act, the council may revoke, suspend or refuse renewal of a license to practice when the practice constitutes a "risk to public health, safety or is indecent."[47] Though addressing a different harmful practice, the Medical and Dental Council of Nigeria, which accredits medical practitioners, announced that any medical practitioner who amputates human hands or legs for non-medical purposes shall lose his or her license.[48]

5. Child Protection Measures

Most industrialized countries, and some African countries, have child-protection laws that could potentially be applied to prevent girls from undergoing FC/FGM. Child-protection laws provide for state intervention in cases of child abuse by a parent or guardian. Unlike criminal laws, child protection laws are concerned less with punishing parents or guardians than with ensuring that a child's interests are being served. These laws provide mechanisms for removing the child from his or her parent or guardian when the state has reason to believe that abuse has occurred or is likely to occur.

A number of countries, such as the United Kingdom, have declared the applicability of child protection laws to FC/FGM. State authorities may thus remove a girl from her family if there is reason to believe that she will be subjected to FC/FGM. Authorities in the United Kingdom may also prevent a girl from being removed from the country if there is evidence that the girl will likely undergo FC/FGM in another country. Note that because FC/FGM is not an indication of on-going abuse, child protection measures are best employed as a means of preventing FC/FGM, not as a means of safeguarding children once FC/FGM has occurred. Whether any such measures would be appropriate in the legal contexts of the African countries in which FC/FGM is prevalent should receive special consideration.

CONCLUSION

This paper has attempted to summarize the principal considerations for policymakers taking a legislative approach to preventing the practice of FC/FGM. It is premised on the view that law can and should play a role in improving women's status and shaping social norms to respect women's autonomy and bodily integrity. Examining FC/FGM-related legislation within its social and cultural context, the paper supports a holistic and multi-strategy approach to preventing the practice. Such an approach should focus simultaneously on promoting women's human rights, reaching out to communities, protecting members of minority groups, supporting governments' capacity for law enforcement, and ensuring women's access to the full range of reproductive health services.

The paper also provides an analysis of the types of legal strategies available to

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policymakers, examining elements of the approaches taken to date in a number of African states. It recommends broad constitutional protections proclaiming women's equality and their right to be free from harmful practices such as FC/FGM. Where criminal legislation is adopted, policymakers should consider how they wish to define the crime of FC/FGM, who they wish to punish, the effect of a woman's consent to the act, and the desired severity of criminal punishment. Civil actions provide an alternative to criminal law enforcement, and may be used effectively to deter FC/FGM or prevent the practice by court order. Finally, the paper considers how regulating the health care professions can prevent medicalisation of FC/FGM, and how child-protection mechanisms may be used to prevent the practice under some circumstances.

2. LEGISLATION AS A TOOL FOR BEHAVIOURAL AND SOCIAL CHANGE

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For many years, activists seeking ways to stop the practice of female circumcision (FC), or female genital mutilation (FGM), have wondered about the possible role of law in combating this deeply rooted and socially sanctioned violation of girls. Two competing instincts were constantly at play. On the one hand there was a strong belief that passing legislation on its own cannot possibly dissuade the public away from a practice that has long been used, symbolically and physically, to curb and control women's sexuality. On the other hand there was the desire to bring the weight of the modern state, and its legal system, to bear on the shaping of a new national consensus to protect girls and their bodily integrity. Some of the questions raised over the years are:

1. Should we lobby for new legislation to criminalise FC/FGM or will such legislation only manage to drive it underground?
2. Is passing new legislation even necessary in countries where child protection and prohibition of grievous bodily injury laws already exist?
3. Is passing a law against FC/FGM desirable in a context where citizens (both men and women) have few rights and/or in law enforcement environments with poor resources, not sensitive to women's rights and easily corruptible?
4. Is it appropriate to speak of individual (girls') rights under the law in kinship-based economies the same as in modern free market economies?
5. Should we be creating a situation where members of a family or a community are encouraged to report a criminal act perpetrated by their own people thus taking the risk of fracturing important social and economic units and alienating the dissenting members?
6. Have we learnt any lessons on the role and usefulness of anti-FGM legislation passed in the West and those passed in Africa?
7. When is passing a law a legal measure, an advocacy tool, or a political act?
8. Is passing prohibitive legislation desirable in all countries at any time or should this be strategic as to the timing of the legislation and activities surrounding their introduction?

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These and many more questions need to be asked, researched and answered as we struggle to find the appropriate role of legislation in changing behaviours and practices that are deemed unnecessary or harmful to society. In the case of FGM there has not been enough thinking, research and analysis on the role of the law in stopping the practice in the rush to pass laws in as many countries as possible. A previous effort to gather and anaylse the content of the emerging anti-FGM laws in Africa and in the West discussed the need for more understanding of the complexity of interaction between legal change and social, political and economic realities (Rahman and Toubia Zed Press 2000). This paper reflects on what we know of what fuels the continuation of the practice in order to foresee whether criminalising the act will be effective or will be, at best, ignored or at worst be counter productive to the objective of protecting women and girls against violation.

As professionals, activists and policy makers we condemn this practice too easily without enough consideration to the social function it serves for those in our communities who strongly believe in preserving it (ref Boabab article). Without compromising our position on the need to stop this regressive and violating practice we must acknowledge that unless we get to the root of the social and economic importance of FC/FGM to those who perpetrate it we will not achieve our goals. For most people in our communities who practice FC/FGM this is still an act of loyalty to ancestors, a duty to preserve social integrity and regulate sexuality and reproduction. In short it is an act whose perpetrators until now have been celebrated and rewarded, not punished. By passing a law we run the risk of turning concerned and faithful citizens into criminals overnight. The history and reality of dealing with social problems through legislation without getting at the root causes of the so called ‘criminal behavior’ speaks for itself in the form of expanding prisons full of unemployed and alienated youth, particularly those from urban slums and from racial and ethnic minorities.

The history of passing laws against FGM goes back to 1946 when the British colonial administration passed a law to prohibit infibulation in the Sudan. Most of us are aware of the negative repercussions of that law as more girls were circumcised that year than before or after, and political leaders used the occasion to rally community support against the colonizers. This clearly demonstrates a case of the bad timing of a law passed by an administration which was denying a population their right to freedom, while claiming and pretending to care and protect their girls’ genitals.

Today we are in world that is in some ways different from that of 1946 and in other ways quite similar. Traditional colonialism has been relegated to history and replaced by a new-world order. Independent states in Africa have been in existence for over 30-40 years and the world is linked through an unprecedented network of telecommunication and Internet based information. Yet in Africa today, we are still struggling with ethnic rivalry, stagnating or reversing economies and easily corruptible legal and health systems with poor resources. African societies in the continent, and in the Diaspora, are facing challenges that they never considered before and can no longer protect themselves against. The debates around FC or FGM, within the African community, are symbolic of the tension between attempts to preserve an inherited social order which seemingly worked for years, and the search for a new and viable one that can withstand the new challenges they now face.

Whether FC/FGM or other forms of violations and oppression of women, for that matter,

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can survive the changing African society, will depend upon whether or not the underlying reasons for its continuation over the centuries are still meaningful today.

Why is FC/FGM such a strongly upheld 'traditional practice' and is it in fact 'harmful' or useful to women?

As a Sudanese feminist and physician I have, in the past, been plagued and irritated by the nagging question: why do women in Africa insist on circumcising their girls and why do even the educated among them still defend the practice? Studies in Sudan show that women medical doctors refuse to condemn the practice in a society where infibulation is the norm. It may be easy to lay the burden of the demand for FC/FGM on the shoulders of men or, more accurately, on patriarchal society including the women within it. While such analysis still holds, there is still the unresolved issue of why women defend the practice even when men in their family or their community want to abandon it.

The answer to this question revealed itself while we were conducting an analytical review of major approaches taken against FGM in the past twenty years, which we undertook between 2001-2002. In extracting the elements of what worked and what didn't in persuading people to abandon the practice, we found that projects which focused on changing women's consciousness and, in some cases, their material conditions had a significant effect on accelerating the rate of abandonment. We also found that for the change in women's attitude and behaviour towards FC/FGM to take root and be sustained it must gather sufficient support from power holders in the community such as, husbands, health professionals, religious leaders and policy makers.

This finding made us look more carefully at our perceived notion that FC/FGM is harmful to women. On the basis of objective logic and scientific criteria FC/FGM is undoubtedly harmful to girls as it deprives them of vital sexual organs necessary for their health and holistic development. The fact that the cutting happens to minors who have no true powers of consent is a violation of their human rights under the Convention of the Rights of the Child. But these are 'our' logical and rational reasons for condemning the practice, which we attempt to transplant onto the women who want to preserve the practice. Women living in circumcising communities have 'their' own logic and rational reasons for not readily adopting our logic. For them living under a strong patriarchal social and economic regime with very few options for choices in livelihood, the room for negotiating a limited amount of power is extremely small. Circumcising your daughter and complying with other certain social norms, particularly around sexuality and its link to the economics of reproduction, is an essential requirement to these silent power negotiations. Women instinctively know this. We may scare them with all the possible risks of FC/FGM to health. We may bring religious leaders to persuade them that the practice is not a requirement. We can try to bring the wrath of the law to bear upon them. But in their desperate hold on the little negotiated power they have known for centuries, they are not willing to let go unless they see a benefit that is equal to or more than what they already have.

The Relation between FGM, Social change and Women's Empowerment

Hypothesis 1

Women use FGM as a power-gaining tool. They forego their sexual organs in exchange for

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social acceptability, material survival (marriage) and other freedoms such as mobility, choice and education. Therefore women protect and practice FGM.

Hypothesis 2
By changing women's consciousness, material conditions and decision-making ability, we shift their power base away from the need for FGM.

Hypothesis 3
Shifting women's power base will be ineffective (and maybe detrimental) unless community support and consensus is built around them.

Hypothesis 4
Behavioural and social change is a cumulative non-linear process. To catalyse and sustain it requires supportive inputs over the longer term (laws, policies, investment in education, etc).

So beyond 'educating' people on the harmful effect of FC/FGM and how it is now illegal to practice it, we owe it to women to provide them with 'alternative' tools for self- empowerment and a new social consensus that will make them feel safe if they decide to abandon the practice. Passing legislation as part of measures to empower women must address the suffering they've endured, and the violations of which they are daily victims. Legislation that ignores the crucial needs of women will result in making them criminals and end up punishing the same victims that we aim to protect. The latter, would be unpopular and will be resisted by communities as in Ghana among the people of the Sahel (ref Pop Council paper in Bellagio 2002) and by women themselves as in Kenya (paper presented in AMANITARE Conference 2003).

If actions are not taken by governments and by project implementers to redress issues of women's empowerment and help negotiate a new social order more beneficial to women, our efforts to stop FC/FGM will not succeed even if legislation is passed.

But the process of individual behaviour change and the cumulative change in those individuals that results in social change, is neither linear nor a simple summation formula. People are complex beings, women are no exception. To bring about change in women's' beliefs, attitudes, and ultimately a decision to abandon FC/FGM, is to gently prompt them along a road of self realization, a sense of entitlement and strength that takes a little while to achieve. Our tools should be better information, new and different skills for reasoning and organizing, a space to speak and share thoughts and feelings. A timely passing of laws to protect emerging resistance to FC/FGM against conservative forces and to give legitimacy to women's voices is essential to escalating social change and redressing the balance of power.

How can we ensure that laws prohibiting FC/FGM empower rather than penalize women?

As modern legislators and human rights activists we would like to believe that passing a law to prohibit and criminalise a violating act such as FC/FGM could only be a good thing. We would like to view our action as standing by and protecting the victims of a tragic atrocity, particularly if the victims are helpless young girls. It maybe true that a law, if effective, may protect the girl as a non-consenting child. But the woman who was once that child and had no say on what happened to her is now the person holding down that girl to be cut. Should we, with all good conscience, arrest that woman and put her in jail or deport her from her new

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home? We can decide that in drafting and implementing laws we cannot be held hostage to the mitigating circumstances of the perpetrators. That is one way of using laws that belong to authoritarian and non-democratic systems of repression. Humanistic laws that are meant to enhance the quality of life of citizens, and claims to protect the vulnerable, must look at the totality of the rights of those it aims to protect as much as they uphold the principles of absolute right and wrong.

For example passing laws in a Western country that severely punishes health practitioners who perform FGM is highly desirable and acceptable. The case is different for members of a refugee community who have not been well informed, and little investment is made in providing them with services or to integrate them into the new society. Even more unacceptable is that the same authorities that pass such laws refuse to give women independent legal status from their husbands as refugees and immigrants. If under these unchanged and dependent circumstances women are caught facilitating the circumcision of their daughters, they are liable to be imprisoned or deported.

In the case of perpetrators in Africa it is inappropriate and unacceptable that laws are passed against FGM while laws to protect women's rights and enhance their positions within their families and their communities are ignored. Are land and property ownership laws favourable to women? What about family laws that govern divorce and child custody? Immigration laws, citizenship and employment laws among others must be revised for their compatibility with international human rights standards on women's rights and sometimes to the countries own constitution. While empowering women to become equal citizens economically and socially is a long-term project, at least legal equity is more within reach.

If legislative bodies are contemplating passing laws against FGM why not pass a package of laws that will cover a range of violations of women's rights at the same time as passing an anti-FGM law?

In our proposed framework for better design, monitoring, and implementation FC/FGM interventions, we place legal change as part of creating enabling environments for women's empowerment. An isolated act of criminalizing FGM without empowering women or involving the community could easily create an environment that is hostile to women.

CONCLUSION

Legislating against FGM is no longer a theoretical debate but a reality that must be addressed as a matter of urgency. Laws are being passed in an increasing number of African countries and in most Western countries where Africans have immigrated. Yet the motivation behind passing these laws and their possible consequences on the targeted communities, and particularly women, has barely been considered.

While facilitating the passage of such legislation serves the purpose of demonstrating political will on the part of governments, we must invest in a certain amount of deliberation and consultation regarding the timeliness, content and use of these laws. Good governance and democratic principles dictate that protection of the vulnerable need not happen against their will, or while ignoring or repressing their other rights. In the case of women and the practice of FGM a whole host of other legal and non-legal measures must be considered as an essential accompaniment to passing specific anti-FGM laws. Failure to do so runs the risk of

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making a mockery of the law or creating a situation where girls and women are faced with the double jeopardy of suffering FGM to appease an old social order and then being penalized by the modern legal system. This need not be the case if women's and girls interests are truly at the heart of efforts to stop FGM and therefore central to considerations for any new legislation.

III. THE RIGHT LAW: LEGAL TREATMENT OF FEMALE GENITAL MUTILATION

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THE QUESTION ON AN INTERNATIONAL LEVEL

In a more or less clearly, legally binding manner, the question of female genital mutilation falls within the sphere of the principles embraced by numerous declarations, pacts and international conventions ratified in Italy. While the question was never dealt with explicitly in international documents defending human rights – the Universal Declaration of Human Rights (1948) and the Pacts on Civil and Political Rights (1966), as well as of economic, social and cultural rights (1966), the Convention for Elimination of all Forms of Racial Discrimination (1969), the Convention against Torture (1984), the Convention for the Elimination of Discrimination Against Women (CEDAW, 1979), the Convention of the State of Refugees (1956) and, finally, the Convention of the Rights of Childhood (1990) – it can be considered as covered by numerous articles of these conventions. In particular, we should mention article 37 and article 24, paragraph three, of the Convention on the Rights of Childhood. In the first article, adhering states undertake to apply all possible measures to ensure that no male or female child is subjected to torture or cruel, inhuman or degrading treatment or punishment. In the second article, they undertake to abolish traditional practices that menace the health of male or female children.

The question of female genital mutilation also falls under measures that are part of regional pacts and conventions, like the African Charter on the Rights of Human Beings and Peoples (1981). The relevant articles here are article 5 (against every sort of degradation, humiliation and degrading and inhuman treatment), article 16 (on the right of every person to enjoy the highest possible level of physical and mental health), and article 18, paragraph three (against every form of discrimination against women and the safeguarding of the rights of women and children). Another important convention is the Charter of the Rights and Well-being of African Children, particularly article 21, the first paragraph, which commits states to adopt measures for the elimination of traditional customs and practices that are harmful to children's health and development. The European Convention for the Safeguarding of Human Rights and Fundamental Freedoms (1953) and the European Social Charter (1965) are two other documents that take these problems into consideration.

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THE LEGISLATION OF EUROPEAN COUNTRIES

Only Great Britain, Sweden and Norway have specific laws against female genital mutilation. In other European countries, FGM is included in other types of crimes, such as serious and very serious personal lesions, attempted homicide and, of course, homicide when mutilation causes death. The only countries where trials have been held in cases of FGM is France, which first prosecuted the crime under article 312 of the French Penal Code that punished the mutilation, amputation, or loss of a limb or death voluntarily caused without premeditation to minors of 15 years. After March 1, 1994, these crimes were punished on the basis of two new articles (222-9 and 222-10) added to the Penal Code regarding mutilation (not specifically female genital mutilation), which call for 10 years imprisonment and/or a fine of one million French francs for the offender. The punishment is increased to 15 years in prison if the victim is under the age of 15. The trials in France were the subject of widespread debate, which we will discuss later. In the European countries (almost all) where no specific legislation exists, all initiatives lay within the judiciary. Whenever mutilation is reported and prosecuted, it is thanks to jurisprudential interpretations that include it within existing crimes. The debate is open on the advisability of making FGM a specific crime, a request advanced by feminist associations in many European countries.

As mentioned above, there are many cases of crimes that can include FGM. In Italy, for example, it could be construed as lesions, but also as an infringement of article 5 of the Italian Civil Code (use of own body) or part of the abuses and ill treatment of minors. Sweden was the first country to adopt specific legislation (1982, modified in 1988), by which any form of female genital mutilation can be punished with a maximum of 4 years imprisonment. The punishment is greater if the mutilation is life threatening. Great Britain passed legislation on this point in 1985 with the law “Prohibition of Female Circumcision.” The law considers it a crime to “cut, infibulate, or in any way mutilate the labia majora or minora in whole or in part, and the clitoris; aid, advise or procure the practice by another person of any of these acts on the body of another person.” The punishing foreseen is imprisonment up to five years, a fine or both. No one has ever been brought to trial under these laws, either in Sweden or Great Britain. Aside from the specific penal aspect, other measures might also include FGM, first of all those for the protection of minors. In Great Britain, for example, article 47, the first paragraph of the 1989 Children’s Act, obliges local authorities to investigate whenever there is suspicion that a child under their jurisdiction runs the risk of damage or abuse and, in that case, to take all necessary measures, including suspension of parental authority. There is no doubt that in Italy as well, justice for minors also requires this obligation of social services, physicians, school authorities, etc. In Norway, the law prohibiting female genital mutilation went into effect in 1998. As for physicians, their ethical codes explicitly prohibit any operation not justified by health reasons.

LEGISLATION IN NON-EUROPEAN COUNTRIES

Some African and Asian countries where female genital mutilation is a widespread traditional practice, explicitly forbid it including: Burkina Faso, the Ivory Coast, Djibouti, Egypt, Ethiopia, Ghana, Guinea, Senegal, Sudan, Togo, Tanzania, and Uganda. However, state law is in conflict with the law of custom which is much more binding. What we have is

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juridical pluralism, already existing in the countries of origin, which leads to pluralism and conflicting legislation, even more acute in the host countries.

An example of the contradiction between differing legal systems in the countries of origin can be seen in the case of Egypt. Here, the official prohibition was first abolished, allowing mutilations to be performed in hospitals and later, following pressure by national and international associations, restored.

The question of the so-called "medicalisation," i.e., delegating mutilations to physicians and hospitals to avoid the most serious, immediate dangers of the practice, was also controversial. The question has now been virtually resolved, since the practice has been almost universally condemned with the position adopted in 1982 by WHO (World Health Organization), both because medicalisation implies legitimization of FGM and because it contradicts medical ethics. Australia approved a similar law in 1994.

In the United States, the Congress approved a law in 1995 charging the Department of Health and Human Services to gather reliable data on African immigrants in order to start up educational programs informing immigrant communities of the harmful effects of female genital mutilation. Fifteen American states have approved specific laws forbidding the practice.

In Canada, a 1993 law made substantial changes to the sections of the Penal Code regarding crimes against children, forbidding taking children out of the country when there is suspicion that they might be subjected to genital mutilation elsewhere. This protects the daughters of resident immigrants from the risk of being taken back to their countries of origin for mutilation.

Worthy of note are the cases of two girls from Togo and from Ghana who were accorded refugee status in the United States because they risked genital mutilation in their own countries. A similar case also occurred in France, while Norway is debating the case of a Somali woman who requested political asylum for herself and her daughter stating that her daughter risked infibulation if she returned to Somalia. There are two positions confronting each other at the legislative level. According to the first, and still the most common, there is no need to resort to, nor is any use made of, any independent definition of criminal offence since genital mutilation is included under other types of offences. The second position, supported by few nations thus far, is put forward increasingly by many associations, lobbies, and parliaments in a number of countries. It underlines the need to define a new criminal offence. We will discuss these two positions below.

TRIALS AND CASE LAW

As mentioned earlier, the only trials for female genital mutilation so far were held in France. The trials gave rise to impassioned debate (cf. Facchi, 1992). In 1983, a sentence of the French Court of Cassation found that excision should be declared mutilation in accordance with article 312 of the French Penal Code which states that parents who perform mutilation of their children's limbs or organs are liable to life imprisonment and imprisonment between 10 to 20 years in the case of complicity. On this precedent, a numbers of trials were held against parents and "accomplices," the people who actually performed the mutilations. The trials all ended with light sentences that were suspended or not executed.

A number of controversial questions emerged in the debates that arose around these trials. The first question concerns ignorance of the law. On one hand, most of the people

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brought to trial showed little, or no, knowledge of not only the law but even of the French language. On the other hand, the lack of any specific offence in the penal code meant that the case under consideration was subject to judicial interpretation. It was, if anything, difficult for the first defendant at least (a woman from Mali who did not even speak French), to know that traditional mutilation was considered a crime under French law. If this first problem (which, from a judicial point of view, concerns the question of presumed knowledge of the law) was in some way resolved with the first trial, others concerned the suitability and advisability of bringing penal charges in this matter, and therefore going beyond the specific context of France.

The first issue is the lack of willful malice. Parents who carry out mutilations on their daughters not only are not trying to "hurt" them; they are convinced that they are doing it for their own good. This conviction is supported by fact, documented by ethnologists and anthropologists: girls without mutilation risk being isolated from their communities, they "cannot find husbands," they are not really considered women.

Secondly, there is the normative conflict. The practice of genital mutilation is a tradition with a strong normative connotation. Not only have people "always done it," but people "have to do it." As Facchi (1992) observes, the sanction for transgression of custom is not only mortal, but also social, taking the concrete form of isolation of non-mutilated girls. The rule of custom is therefore more coercive and binding not only than the host country, but even more than the official law of the country of origin when it prohibits mutilation. The sanction for transgression of the rule of custom is seen as much harsher than that which may ensue from transgression of official law.

A further question has to do with protection of the victim's interests, this being the main argument of those who champion the suitability and advisability of applying penal law in this matter. The law is aimed at safeguarding a girl's physical and mental well being, both of which are menaced by mutilation. While there is undoubtedly serious damage deriving from the operation, it is still unclear just where the victims' interests lie. When plans are to migrate temporarily to another country, the damage suffered by a non-mutilated woman who returns to her country of origin from the ensuing isolation might be greater than the damage suffered from the operation. Moreover, there is the risk that non-mutilated girls might have to undergo the operation at a later age once they have returned definitively to their countries of origin or during a vacation. But even when the families migrate definitively, if integration in the host country is difficult, isolation within the girl's community might be construed as strongly detrimental to her interests. Therefore, the reasoning in favor of considering this matter a penal offence on the basis of the victim's interests is controversial. It depends on how and what one sees as interests, and is in reality tied to the interpretation given to the relations between an individual and the culture of origin and an individual and the host culture, as well as of course the policies towards immigrants. On the other hand, it is plausible, and there is confirmation in this sense, that wherever there is real integration into the host culture (through schooling, access to health and social services, etc.), actual or impending mutilations are eventually experienced as an unacceptable difference or obstacle to genuine integration. From this point of view, the reasoning in favor of the victim's interests becomes convincing and compelling.

In general, the debate around these trials brings up another question to be discussed later,

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i.e., the role attributed to the law, penal law in particular. Should the law's task be to repress or to promote proper behavior? Which role is more suitable in this situation? What juridical instruments are more relevant to which role?

THE SITUATION IN ITALY

As of today, only one sentence has been passed, by the Court of Milan for lesions in conformity with articles 582 and 583 of the Penal Code. An Italian woman, the wife of an Egyptian, filed a complaint against her husband (in 1997) for having subjected their two children, a boy (5 years old) and a girl (10 years old) to genital mutilation during a vacation with his relatives in Egypt. The woman was forced to stay in Milan for work but when the children returned, suspicious at the girl's poor health (hemorrhaging, infection and fever), she realized what happened and brought charges. The trial ended on November 25, 1999 with a sentence for extremely serious personal lesions. It was the first trial in Italy for a crime of this kind. The man was sentenced to two years in prison and a deal was struck.

A brief study of records in the Public Prosecutor's Office and the Minor's Court of Rome and a study of other Italian Prosecutor's Offices did not reveal any other cases of this kind. As this one case demonstrated, and as Livia Turco, former Minister for Social Solidarity, said during a Parliamentary hearing on the question in 1999, girls are mutilated during visits to their countries of origin. No Italian doctors or health structures appear to be involved, although there is talk of private clinics where Somalian or Italo-Somalian doctors are said to operate.

Since these operations often have significant physical outcomes, we might well wonder why no charges or reports have been made by physicians, pediatricians or school and social service personnel. This is particularly true at a time when suspected ill treatment or sexual abuse of minors is so zealous.

In Italy, given the absence of any specific offence, mutilations are liable to prosecution under article 5 of the Italian Civil Code (prohibition of acts against the body), articles 582 and 583 of the Italian Penal Code (serious and very serious lesions), and article 32 of the Constitution (the right to health).

The lack of a specific offence can also influence the fact that charges are not brought. For the people in the community, the lack of charges is probably due to cohesion within the community and the high degree of consensus and acceptance of the practice which, as mentioned above, is seen as a veritable duty (probably legal but most certainly normative). But, when some of the people most closely affected in the process of assimilation in the host culture start doubting or dissenting, the lack of protest is also due to the fact that Italian law provides no pretext for bringing charges against parents for the mutilation of their daughters.

As for social and education workers, lack of knowledge of the issue also plays a role. They might be influenced by a sort of passive acceptance of a "foreign" custom, not explicitly defined as a crime in Italy. The absence of malice may contribute to the non-perception of the practice as abuse or ill treatment of the minors involved (although, in accordance with our laws regarding minors, abuse is also a "state of abandonment" requiring the intervention of the judicial authorities which must not be considered "intentional").

Articles 330 (forfeiture of parental authority) and 333 (parental behavior detrimental to children) of the Italian Civil Code give the judiciary the authority to remove the children from their parents, with loss of parental authority in the most serious cases. Otherwise, they may

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adopt "reasonable measures" when the behavior of one or both of the parents is detrimental to their son/daughter. These provisions could be applied to protect girls "at risk"; their parents could be given specific orders to prevent them from being mutilated. The fact that there are no cases of this kind (as of yet) brings to mind that most likely there is widespread ignorance, indifference or difficulty in considering the question as "behavior that is detrimental" to minors.

If and how to bring criminal charges

As seen above, whether or not specific offences exist, female genital mutilation is subject to penal prosecution. Before discussing the advantages or disadvantages of an ad hoc law, we need to consider the suitability and advisability of the use of penal law in this area.

Considering a problem as a crime (or prosecuting it as such) means believing that a penal response is most suitable. But why is a penal response suitable? There are three possible objectives, all intertwined, in addressing a problem with a penal law: 1) a reduction of the problem through the threat of punishment; 2) recognition of the problem as "bad"; 3) changes in the attitude and cultural dictums related to that problem. These three objectives are related to the three roles normally attributed to penal law: general prevention, the symbolic reorganization of what is perceived as good and protected by a certain community, and its pedagogic function.

First point: The more the sentence is certain and exceeds the advantages attained by committing the crime, the more successful the threat of punishment. Neither of the two conditions seems to occur in this case (as in many, many others), unless we are to hope for a punitive system which is not only quick, but also contains such severe sanctions, really applied, as to discourage an act considered necessary for the good of one's daughters. Moreover, the threat of punishment, especially when the sentence would be severe, could (as happens in other cases), induce the community involved to isolate itself, pushing the behavior further into the shadows. It could, for example, discourage subsequent use of healthcare facilities when complications occur following mutilation.

Second point: symbolic recognition of a behavior as "bad" would, in this case, be useful within the host community, preparing it to recognize mutilation as unacceptable according to prevalent cultural models. It is, however, doubtful that it would be equally useful within the community involved in the practice, unless it already had a cultural basis to understand the concept. Otherwise, it could add to the community's isolation from the host culture, with sharp discrimination between "us" (who condemn the practice) and "them" (who consider it a binding law). While defining a specific offence would reinforce the symbolic potential of the prohibition (making it clear and obligatory and therefore not open to any judicial interpretation) by "us," it could be seen by the community involved as discrimination aimed strictly and only at "them".

Third point: There is an "educational" role when criminalization or actual prosecution of an action as an offence is accompanied by widespread public debate involving all the actors as active participants. For example, the campaign for a new law against rape shows how attitudes and cultural models have changed throughout the campaign's sixteen years, without even considering the questionable law finally passed. But this example teaches us that the

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prior debate is more useful than the law itself. The truer this is, the more the actors affected by legal or judicial changes on female genital mutilation depict a particular community with its own rules and cultural models. In a case of this type, the educational role of a law could be seen as authoritarian, discriminatory and paternalistic.

With respect to the request made by a number of countries to define a specific offence, there is no doubt that the symbolic potential would be exploited more in this case, and the debate to create a law would be "educational." Moreover, any dissent in the community involved would facilitate those who wanted to save girls from mutilation by appealing to the explicit legislative prohibition. As mentioned above, this might lead to greater attention to the question on the part of healthcare, social and education workers who would be induced to start preventive activities and help the girls "at risk." We share the opinion of Minister Turco during her response to the Parliamentary inquiry mentioned above. According to Ms. Turco, an ad hoc law would only make sense if the community itself were to request it. Given the lack of that kind of request, i.e., given the absence of any semblance of a pluralistic attitude indicating that the community is willing to question its traditional laws, any specific legislation would be more of a "manifesto law", ineffective and probably producing the reverse consequences mentioned above (the community closing onto itself, instances of discrimination, pushing the behavior further into secrecy and accentuated isolation).

On the other hand, it is no accident that there have been no trials, even when a specific offence is contemplated. The implicit choice has been to criminalize but not to prosecute. In France, where prosecution did take place, the choice was made not to punish (sentences were light and then suspended). As regards Sweden and Great Britain, the existence of a specific crime does not seem to have sensitized the population enough for people to bring charges. Still, we do not know whether and to what extent, the existence of this offence was enough to give any dissenting members of the community a pretext to refuse the practice. In both cases, use of the punishment's symbolic potential seems to prevail over any deterrent role. The risk in these cases is that this potential would develop as a merely declarative role (the "manifesto law"), a way for the country and the government passing the law to give themselves legitimacy, rather than as an educational role. The result would be to delegitimise the legislation (and the legal system as a whole), whenever it becomes a dead letter and is not or cannot be applied.

Indeed, the problem is one of application. It is not only difficult to prosecute and punish this behavior, it might also be inadvisable and self-defeating when, as mentioned above, there is no consensus or sensitization of the community involved. Approval of legislation creating a specific offense without any will or possibility of applying it could also be counterproductive, lowering the standing of the law in general and of this law in particular.

While the use of penal law seems to carry with it risks and contradictions, that does not mean that there should be no legislation in this area. Information campaigns, support to organizations and groups, public policies aimed at improving individual and collective integration into the community and assistance to those who want to escape the practice are all indirect measures that might have a more incisive effect on concrete behavior than a symbolic prohibition which is actually not applied.

First published in La legge giusta. Il trattamento giuridico delle mutilazioni dei genitali femminili, AIDOS, Rome, 2000.

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IV. INTERNATIONAL TREATY PROVISIONS GUARANTEEING FREEDOM FROM FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION

THE CENTER FOR REPRODUCTIVE RIGHTS

THE RIGHT TO BE FREE FROM DISCRIMINATION AGAINST WOMEN

Universal Declaration of Human Rights, Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex . . . "

United Nations Charter, Articles 1 and 55: one of the purposes of the UN is to promote "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion …"

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

Article 1: "… the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2: "States Parties … agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Article 5: "States Parties shall take all appropriate measures … [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes."

Convention on the Rights of the Child (Child's Rights Convention), Article 2(2): "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination …"

International Covenant on Civil and Political Rights (Civil and Political Rights Covenant), Article 2.1: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion …"

International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant), Article 2.2: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language …"

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African Charter on Human and Peoples' Rights (Banjul Charter):

Article 18.3: "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

Article 28: "Every individual shall have the duty to respect and consider his fellow being without discrimination …"

Programme of Action, World Conference on Human Rights,

Paragraph 38: "The world conference on Human Rights stresses the importance of working towards the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism."

Paragraph 224: "… Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated."

THE RIGHT TO LIFE AND PHYSICAL INTEGRITY, FREEDOM FROM VIOLENCE AGAINST WOMEN

Universal Declaration of Human Rights:

Article 1: "All human beings are born free and equal in dignity and rights."

Article 3: "Everyone has the right to life, liberty and security of person."

Civil and Political Rights Covenant:

Preamble: recognises the "inherent dignity … of all members of the human family …"

Article 9 (2): "Everyone has the right to liberty and security of person …"

Economic, Social and Cultural Rights Covenant, Preamble: recognises that human rights "derive from the inherent dignity of the human person."

Child's Rights Convention, Article 19: "States Parties shall take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence …"

Banjul Charter:

Article 4: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person …"

Article 5: "Every individual shall have the right to the respect of the dignity inherent in a human being …"

Declaration on the Elimination of Violence against Women:

Article 1: "…the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women …, whether occurring in public or in private life."

Article 2 (a): "Violence against women shall be understood to encompass, but not be limited to … female genital mutilation and other traditional practices harmful to women …"

Platform for Action of the Fourth World Conference on Women:

Paragraph 107(d): ". . . [E]nsure full respect for the integrity of the person, take action to ensure the conditions necessary for women to exercise their reproductive rights and eliminate coercive laws and practices . . . ."

Paragraph 118: "Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate

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the lower status accorded to women in the family, the workplace, the community and society."

Paragraph 232 (h): urges governments to "[p]rohibit female genital mutilation wherever it exists and give vigorous support to efforts among non-governmental and community organisations and religious institutions to eliminate such practices."

THE RIGHT TO HEALTH

Universal Declaration of Human Rights, Article 25: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family."

Economic, Social and Cultural Rights Covenant, Article 12: "The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Banjul Charter:

Article 16: "Every individual shall have the right to enjoy the best attainable state of physical and mental health."

Article 16 (2): "States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick."

African Charter on the Rights and Welfare of the Child (African Charter), Article 14(2): "States Parties shall . . . take measures:

> (f) to develop preventive health care and family life education and provision of services."

Programme of Action of the International Conference on Population and Development, Paragraph 7.2: "Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life . . . .It also includes sexual health, the purpose of which is the enhancement of life and personal relations."

Platform for Action of the Fourth World Conference on Women:

Paragraph 89: "Women have the right to the enjoyment of the highest attainable standard of physical and mental health … Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity …"

Paragraph 106: Recommends that governments "Remove all barriers to women's health services and provide a broad range of health-care services."

THE RIGHTS OF THE CHILD

Child's Rights Convention:

Article 2(1): "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language."

Article 3(1): "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 6:

(1): "States Parties recognise that every child has the inherent right to life."

(2): "States Parties shall ensure to the maximum extent possible the survival and

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development of the child.

Article 16(1): “No child shall be subjected to arbitrary or unlawful interference with his or her privacy.”

Article 24(1): “States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health.”

Article 24(3): “States Parties [to] take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

African Charter:

Article 4(1): “In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration."

Article 5(2): “States Parties . . . shall ensure, to the maximum extent possible, the survival, protection and development of the child.”

Article 10: “No child shall be subject to arbitrary or unlawful interference with his privacy.”

Article 14(1): “Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.”

Article 21(1): “States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

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

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

Programme of Action of the International Conference on Population and Development, Paragraph 5.5: “Measures should be adopted and enforced to eliminate child marriages and female genital mutilation.”

Platform for Action of the Fourth World Conference on Women, Paragraph 39: Girls are “often subjected to various forms of … violence and harmful practices such as female infanticide and prenatal sex selection, incest, female genital mutilation and early marriage, including child marriage.”

Programme of Action of the World Conference on Human Rights, Paragraph 49: Urges “States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.”

THE RIGHT TO CULTURE

Universal Declaration of Human Rights

Article 27 (1): “Everyone has the right to freely participate in the cultural life of the community…”

Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Economic, Social and Cultural Rights Covenant

Article 15 (1) (a): “The States Parties to the present Covenant recognise the right of everyone to take part in cultural life.”

Article 5(1): “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognised herein . . . .”

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Banjul Charter, Article 29 (7): gives the individual the duty "To preserve and strengthen positive African cultural values in his relations with other members of the society …"

THE RIGHTS OF MINORITIES

Civil and Political Rights Covenant
Article 3: States Parties "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."
Article 5(1): "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein."
Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:
Article 2 (1): "Persons belonging to national or ethnic, religious and linguistic minorities … have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination."
Article 8(2): The exercise of these rights "shall not prejudice the enjoyment by all persons of universally recognised human rights and fundamental freedoms."

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5. Country Case Studies

I. CAN THE LAW STOP FGM?

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CAN THE LAW STOP THE PRACTICE OF FEMALE CIRCUMCISION?

This is a question many people around the world and mainly in Africa frequently find themselves asking. The only thing that many activists in NGOs, in governments and in intergovernmental groups don't ask themselves is whether they have tried using the law to combat this cultural practice.

There are various categories of laws. Conventionally we have the following types:

— Criminal Law
— Civil Law
— Administrative Law
— Constitutional Law
— The Law of the contract
— International Law

I also wish to include the Rules of procedures as a special part of this legal regime.

Many lawyers and activists find it difficult to relate (FGM) to any of these laws. In most cases their failure to use law is either out of ignorance of the law or out of lack of serious commitment to deeply look at FGM as a legal issue or human rights violation.

However, in this paper I want to relate FGM to each branch of law.

CRIMINAL LAW

I am convinced beyond reasonable doubt that FGM is a crime. This is especially true when it is performed on minors. In most legal outlines any person below the age of 18 is a minor and therefore cannot give informed consent to anything.

Luring or compelling a minor girl into accepting to be circumcised is a crime because her consent is not mature enough to distinguish between good and bad.

Many countries across the globe have passed criminal laws to prohibit FGM. In Kenya, this was done under the Children Act, 2002. Under this act, FGM is prohibited and any person found circumcising a girl will be charged and imprisoned for one year or fined Kshs. 50,000 an equivalent of 710 US dollars, or both.

FGM can also be looked at from the angle of child abuse, or causing grievous bodily harm, or unlawful dismembering of an organ of the body.

Criminal sanctions can serve as restraint mechanisms to those who disregard any peaceful

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appeal to stop the practice. It can be used against those die–hards who refuse to heed advice and counseling. However, criminal law has its weaknesses in the sense that it waits until a girl is mutilated. When applying criminal sanctions a parent will be arrested, remanded and charged and perhaps jailed. The girl has already been circumcised. She has been injured and has suffered, you cannot reverse the suffering. Again law enforcement officers may be reluctant to even get involved. And for criminal proceedings to be filed, the police play a big role. Where they refuse or out rightly ignore the statements recorded at the station then no case will be filed.

In Kenya at least one case of a girl who bled to death was prosecuted and the traditional surgeon involved was found guilty of the offence of manslaughter. She was jailed for merely 3 years.

CIVIL LAW

This is a branch of law that I feel can help us fight FGM in Africa and other parts of the world. It involves a possible victim or victims of FGM seeking protection from courts of law before they are circumcised. I don't know whether it has been tried anywhere else around the world, but I have always thought that I am the first person on Earth to use it. In December 2000, I made history when I moved to court seeking legal protection for two sisters who had run away from their home to avoid being circumcised. In the ensuing legal battle, I was able to win the case on behalf of the two sisters where I sued as the next friend, as they were both minors. In this suit popularly known as Civil Suit No. 10 of 2000, the presiding Magistrate made the following statement and I quote.

> "FGM as it is popularly known is an outdated mode of practice. It has been over taken by events and circumstances. It is an illegal kind of practice because it is repugnant to justice and morality. The practice also violates human rights as stipulated in our constitution".

And this was historic. This ruling was being made in the absence of any specific law on FGM. I had combined various sections of laws and legal conventions to come up with a very strong case.

PROCEDURES ON HOW TO FILE AN FGM MOTION IN COURT

Interview victims and write statements.

Draft affidavits – if a girl is a minor someone responsible will sign on her behalf. I mostly do this as the next friend. Many people are reluctant to sign such affidavits for fear of incurring costs in the event that they loose.

Make an application in court under a Certificate of Urgency. This is known as an Exparte Application and Temporary Orders restraining those behind the scheme to carry out the act of circumcision to stop until the matter is resolved in court.

Then a date for an inter-parties hearing is set by the court and the interim order is served

to the respondent.

There are other technical papers that have to be worked out and they include:

— A plaint
— Supporting affidavit
— Verifying affidavit
— Authority to act as next friend
— Affidavit of service of the initial interim order

Finally when the matter is resolved,
— an ORDER.

In court I ask for the following.

— A permanent prohibitory order or injunction restraining the defendant, respondent, his agents, servants or people of like mind, from ever attempting to, or actually circumcising or causing to be circumcised, the applicants.

— That the parents or guardians be compelled to continue discharging their parental responsibilities to the applicant(s) despite the court action.

— That an office of a government security or peace officer be compelled to monitor the situation and ensure that the order is fully obeyed by the respondents who are parents or guardians.

— That, that particular court declares FGM illegal and unacceptable in its area of jurisdiction.

— And that the parents, guardians or their servants or agents desist from molesting or harassing the applicant(s) at any one time. Those orders carry penal notice and a violation of such orders amounts to contempt of court, which in the Kenyan law is a criminal offence.

There are peculiar civil cases of FGM.

In Civil Suit No. 12 of 2000, the two sisters Beatrice and Edna Kandie sued their father.

In the Civil case No. 126 of 2002. Alice Cherop sued her mother. The mother is a senior circumciser in the community. She has 5 other daughters older than Alice, and all had been circumcised. Alice was the sixth and second to last daughter and the mother saw nothing wrong in having her circumcised, but she however defied and we went to court.

In the Civil Suit No. 10 of 2002 Maureen Yego sued her mother and father for conspiring to have her circumcised.

In the Civil Suit No. 18 of 2002 Rebecca Chebet sued the grandmother Josephine. Both of her parents objected but the community under the leadership of the grandmother insisted that she had to undergo that rite of passage.

It is important to note that I have since December 2000 won 19 cases in court. I have lost none and I have no pending case now.

DEFENSE

There is no formidable defense for the practice of FGM in court. At least from my experience, no serious defense has ever been filed in court in all the 19 cases I've tried.

In the first case the father of Edna and Beatrice cited ignorance of the dangers and the legal implications. This has continued to manifest itself in most of the other cases. Many parents or guardians ask for leniency.

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IMPACT OF THE LAW ON FGM

Legal actions have instant and permanent impacts and FGM is one of the areas. Law can work. Without exaggerating the outcomes of my court actions, I wish to state my faith in law as an important tool to combat FGM.

In the district where Edna and Beatrice come from, FGM declined drastically and in December 2001, only 30 girls were reportedly circumcised. In December 2002, none were reported to have been circumcised.

In Ngeria village where Alice comes from, no girl undergoes FGM anymore. Why? For fear of prosecution.

In Marakwet district where I have saved 16 girls, the statistics show that in December 2001, an estimated 1,300 girls were circumcised. In December 2002, only 155 were circumcised due to the impact of the cases.

HOW TO EFFECT LEGAL MEASURES AGAINST FGM

— Create a monitoring system and develop a readily available litigation mechanism or scheme.

— Train law enforcement agents on the existing legal provisions on FGM.

— Carry out community awareness campaigns on the existence of laws on FGM.

— Sensitize judicial officers on the same.

— Empower girls to speak out and to be aware of the basic law that protects their bodily integrity.

CONCLUSION

Law is an important tool for advocacy against female circumcision.

Law can act as a restraint to this cultural practice.

Civil law is the most suitable weapon, as it protects the girls, no circumcision takes place, and no arrests and no family separation or breakage occurs as a result.

To effectively ensure that legal and court actions are sustainable, there is a need to have follow-ups and reconciliatory meetings between both parties (girls and parents or guardians).

Legal actions spur debate and mobilization leading to the process of self-help and civic education in the community on the relevance or irrelevance of the practice.

FGM is torture by non-state actors and, under our national constitutions and the provisions of international conventions like presidential directives against FGM, can be used with other sections of the law to build a very formidable case. There exists a natural law, a contract between parent or guardian and child (girl –child), and in every action or decision when said girl is the subject, the best interest of such girl- child should prevail.

Lawyers from the communities that the girls I have dealt with come from, have more than once declined to represent some of the parents, arguing that morally there was nothing to defend in FGM as a practice. This has sent a very strong message to the community forcing them to rethink the cultural significance of the practice.

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II. CASE STUDY: MALI

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Mali is a continental country with a population of 10.4 million inhabitants. The surface area is 1,204,000 square km. It is bordered by Algeria to the north, Nigeria to the east, Burkina to the southeast, the Ivory Coast to the south, Guinea to the southwest, Senegal to the west and Mauritania to the northwest.

It is composed of 8 administrative regions, in addition to the district of Bamako. FGM (Female Genital Mutilation) is practiced in nearly all of these regions, with the exception of the 7th and 8th regions.

The ethnicities these regions comprise are: Sarakolés, Bamanan, Peulhs, the Dogons, the Bobos, the Mossis, Miankas, Senoufos, and others.

The practice is not known among some Songhois, Arabs and Tamasheq.

According to the EDS II of 1996, it is prevalent in 94% of the country.

Politically, since 1991, the country has opted for a complete multiparty system and for the expression of basic liberties.

HISTORY AND EVOLUTION OF THE FIGHT AGAINST FGM

The fight against FGM began under the 1st Republic with Congresswoman Feue Awa KEITA (may she rest in peace), who proposed a law that was misunderstood by her peers and so never passed.

Subsequently, under the Second Republic, a national committee was set up following the international seminar held in 1984 in Dakar, during which the current CI-AF (Comité inter-africain, or Inter-African Committee) was established.

At the end of this international meeting, at least 24 African countries created national committees immediately upon their return to their respective countries.

That same year, Mali established its committee, run by the UNFM (Union Nationale des Femmes du Mali, or National Union of Malian Women).

Then, under the Third Republic, with the advent of democracy, the country witnessed the emergence of a vast number of NGOs and associations.

AMSOPT is the only association exclusively dedicated to FGM. International structures and the involvement of the State and its technical structures have provided support for the fight.

PRESENTATION OF THE LEGAL FRAMEWORK REGARDING FGM

Since the 1980s, the debate over circumcision has been at the center of conferences and seminars regarding the health and rights of women.

Nevertheless, the subject continues to bring into conflict—and even divide—the points of

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view of many Africans.

While some African countries such as Burkina Faso, Nigeria, Ivory Coast, Senegal, and Guinea—countries bordering Mali—have passed laws, this is not the case in Mali.

How can we explain Mali's attitude, considering that the country has been dealing with this issue for a very long time?

Are opportunities for change available to the country—yes or no? If yes, what obstacles must be overcome—and how?

I will attempt to respond to these questions based on my own experiences, as well as on the activities that have determined my position.

The National Context of Mali provides many opportunities.

— Individuals, informal groups, and associations have all studied the issue of FGM. Research has been carried out to explain its basis, its socio-economic and cultural stakes, and what consequences it has for the health of women and children.

There are legislative and regulatory items concerning FGM, namely:

— Decree no. 99/PMRM of June 16th 1999, which led to the creation of the National Committee established as part of the program for the abandonment of traditional practices harmful to the health of women and children

— Circular no. 0019 MSPS – SG of January 7th 1999, which banned the practice in health centers

— The constitution of 1992, which sets forth:

Article 1: the human being is sacred and inviolable. Every individual has the right to the life, liberty, safety, and physical integrity of his or her person.

Article 3: No one shall be subjected to torture, or to duties or treatments that are inhumane, cruel, or humiliating.

These two articles lead us to the clauses of the penal code, whose articles 160, 161, and 171, respectively, call for the repression of intentional cuts and wounds, and test treatments.

FGM can be penalized based on these articles of the penal code.

A clause concerning FGM does exist in law no. 2, though it is referred to as the educational and persuasive law clause.

— Law no. 02044 of June 24th 2002 concerning reproductive health was deliberated and passed by the National Assembly in its session of June 7th 2002.

Some members of parliament, religious figures, individuals, NGOs and associations are in favor of abandoning FGM and of passing a law against it.

Some villages have abandoned, and others continue to abandon the practice. These communities wish to and should be supported by governmental authorities for their courageous decisions, for their awareness that it is necessary to evolve with the times and to take advantage of scientific advances achieved for their well being.

This raising of awareness has been possible thanks to the treatment of woman and girl victims of the consequences of FGM in the form of fistulas, cysts, sterility, infibulations, and

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infections… Discussion groups regarding reproductive and sexual rights, and the culture of non-violence have helped these communities realize that FGM really is an issue of public health, human rights, and reproductive and sexual health and rights. A network composed of some fifty NGOs and associations is prepared to fight FGM by spreading information and raising public awareness, and by encouraging the passing of a law that would discourage some practices and prohibit others.

There is no one who is unaware that the practice of FGM today is comparable to an empty eggshell drained of its contents. The fact that FGM involves babies aged 7-40 days or 4-year-old girls, who, moreover, are physically incapable of defending themselves,deserves particular attention and consideration because it concerns us parents, and the national and international governmental authorities.

On an international level, Mali has many opportunities, having ratified the agreement regarding all forms of discrimination and violence towards women, the charter of the rights of man, the agreement concerning children's rights, the peoples' charter, etc.

As far as the context of sub-regional integration is concerned, the cases of bordering countries such as Burkina Faso, Nigeria, Senegal, the Ivory Coast, and Guinea are, in my opinion, relevant examples to follow because these nations share the same socio-cultural and linguistic conditions, and thus are in a position to support and back Mali in its decision.

To conclude, we may confirm that Mali has ample sub-regional, national, and international opportunities that would permit the country to pass a law against FGM.

Difficulties exist, in the form of:

— incoherence among intervention strategies and various players

— the powerful influence of socio-cultural determinants over both illiterate and educated populations

— the reaction of certain Islamists

— the failure to recognize FGM as a problem of health, violence, and human rights by a very large majority of Malians, male and female alike

— the attitude of our lawyers, of state security agents

— Mali's vast surface area, which has been impossible to cover to date because of the insufficient funds of the NGOs and associations, and because of the lack of a strategic approach on the part of our governments since they do not consider FGM a priority.

RECOMMENDATIONS:

— Strengthening the NGOs and associations involved in the issue to enable them to spread information and raise awareness across all of Mali

— Organizing information and awareness discussion groups with the 4 coalitions of the CAFO (Coordination des associations et ONG féminines, or Committee of Women's Associations and NGOs) and the eleven committees of the National Assembly

— Organizing a partnership and drawing up a monitoring plan with the commission of constitutional laws, justice and governmental institutions

— Deepening the partnership between AMSOPT and the Lawyer Association of Mali

— Providing the assembly with assessable data such as reports of places where FGM has been abandoned, proposals for community laws, and lists of signatures from villages, families and individuals having abandoned the practice

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— Supporting the complaints of parents wishing to lodge a complaint

The example of the father whose daughter was circumcised without his permission and who lodged a complaint at the level of the national committee, which in turn filed the case with the AJM (Association des juristes du Mali, or Association of Mali Lawyers), is a case worth supporting.

CONCLUSION

The relevance of passing a law regarding FGM is beyond question. At the individual, national, sub-regional and international levels, opportunities to do so exist and are available to Mali. All that is needed is the will to do so on the part of governmental authorities.

AMSOPT CASE REPORT

Malian populations and communities do not recognize the concept of reproductive and sexual rights for women and girls because sexuality is and remains masculine. A husband alone decides whether to have sexual intercourse with his wife. This attitude, which concerns both illiterate and highly educated populations, seems normal to men and women alike because it has been so deeply engrained over the centuries. In light of this, it is necessary to clarify the relationship between human rights and the law, because we cannot speak of laws if we do not accord an individual "rights."

To give concrete expression to this view, AMSOPT has developed the following methodology, which is built around:

a) personal experiences regarding human rights;
b) an analysis of a documentary entitled "The Victim," based on an actual, concrete case;
c) a comparison between the real experiences and the analysis of the documentary;
d) and, in conclusion, demonstrating that human rights are sacred.
This approach methodology has been applied to community leaders.

The first exercise was introduced by asking the participants:

Tell a story from your life, or one that you've heard, about the violation of rights—what are those rights?

The aim is to raise the participants' awareness based on their own experiences.
A summary of the responses from the sub-groups yielded the following results:
— The violations of rights took the form of forced marriage, the prohibition of an education at the university level, embezzlement, non-participation in national celebrations or in certain communities, etc.
— The individuals who were subjected to these abuses all experienced feelings of frustration, rebellion, and injustice.

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— The institutions where these violations occurred were: the family, governmental institutions, and schools.

The point of analyzing this exercise is to make participants realize, based on their own experiences, that human rights are constantly being violated, and that they themselves are at the root of these violations, more or less unconsciously.

The second exercise began with the screening of a documentary entitled “The Victim.”

The film describes the real case of a little girl who was circumcised 5 years ago and who now, at the age of 12, suffers from urinary incontinence.

Despite the goodwill and commitment of Italian partners, her case remains irreversible.

Following the screening of the documentary, participants were asked to:

List what rights were violated in the case of this victim.

Compare these rights to the universal human rights by referring to various articles.

The rights violated in the victim’s case are:

— the right to physical integrity
— the right to an education
— the right to health and care
— sexual rights
— reproductive rights
— the right to participate in society

The analysis only confirmed that these universal human rights are precisely those violated both in the personal experiences of the participants and in the case of the victim.

The point of the exercise is to trigger awareness about basic and universal rights in general, and about the concept of reproductive and sexual rights in particular.

The research project concluded with the organization of two large discussion groups for the benefit of community leaders, and in support of the benefits gained by those villages that have abandoned FGM and by those little girls, aged 0 to 6 years, who have not been circumcised in 30 villages supervised by AMSOPT. The villages whose 0 to 6-year-old girls were physically examined included both villages that have and those that have not abandoned FGM.

The results were satisfactory 73.52% of the time; of a total of 1798 girls examined, 1322 had not been circumcised.

The aim of the discussion groups is to identify social contracts and existing community laws in order to apply them to the issue of FGM.

Once the responses of the discussion groups had been summarized, social contracts taking the place of laws were classified according to the seriousness of each case.

The penalties range from the payment of a fine of 10,000 to 30,000 CFA francs, to banning participation in community functions such as burials, weddings, christenings, harvesting, and the putting in place of tortures.

These penalties are often initiated by the villagers themselves.

The signatures of the heads of households and of their family members express commitment to and support of the benefits gained by villages that have abandoned FGM,

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and, at the same time, make it possible to identify those households or individuals who have failed to abide by the community decision.

Suitable strategies are developed for these cases, such as counseling and house visits intended to provide information and increase awareness about FGM in the 11 parliamentary commissions. The signatures of community members in addition to community laws, will serve as data that can be considered and assessed in order to turn members of parliament towards, and to encourage the passing of a clear and precise law regarding FGM.

AMSOPT firmly believes in this long-term undertaking, which is a more original approach because it tackles the problem at its root. Furthermore, it is participative and provides political and governmental institutions with assessable facts.

THE REASONS FOR MY INVOLVEMENT IN FGM ISSUES

My involvement in the fight against FGM began from the shocking moment I first came into contact with this practice, which changed my life because I had been completely unaware of this practice even though I am Malian. I cannot forget that young, 16-year-old girl who died from the consequences of an infibulation. I cannot comprehend how a human hand—a woman's hand at that—is capable of carrying out the appalling deed I witnessed without shuddering; how it is possible to withstand the nauseating smell I breathed in, or to ignore the wide-open eyes of this young girl begging in vain to be rescued.

I heard a song of rebellion that has dictated my mission ever since: to use my abilities as a teacher to inform, raise awareness, and change the attitude of a peoples regarding FGM.

This is the sense of conviction that aids me in my constant search—my search to put an end to this practice.

III. THE LAW AS AN INSTRUMENT FOR BEHAVIORAL CHANGE: THE CASE OF BURKINA FASO

GISÈLE KAMBOU

Lawyer, Secretary-General of Voix de Femmes (Voice of the Women), BURKINA FASO

We are going to successively examine the process of the passage of a law on Female Genital Mutilation (FGM) in Burkina Faso, and the contents thereof.

Subsequently, we will examine the role of the CNLPE and Burkinese NGOs involved in the fight against this practice through the application of the law.

We will conclude with possible recommendations for the fight against FGM.

PASSAGE OF THE LAW ON FGM

Excision is the most common form of female genital mutilation in Burkina Faso, as in the majority of West African countries.

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According to the report of the 1996 national survey of excision in Burkina Faso,[49] 66.35% of women aged 0 to 49 years are excised.

Excision is practiced both in rural and urban communities, and is generally performed on girls between the ages of 0 and 12 years.

Factors such as town, ethnic group, and religion effect the incidence of the practice.

Three principal factors have led to the passage of legislation against FGM in Burkina:

The consciousness-raising campaigns conducted since the creation of the CNLPE[50] in May 1990 have increased awareness in local populations about the harmful effects of this practice.

The involvement of politically committed civil society[51] in the battle against FGM has caused it to become more involved in the various meetings, in the course of which recommendations have been formulated calling for the repression of the practice of excision.

Finally, Burkinese authorities have demonstrated unequivocal political determination to fight the practice of excision.

These are the conditions that encouraged the passage of the legislation against FGM: namely, law no. 043/96/ADP of November 13, 1996, with its penal code.

It should be noted that this law was the result of a long process:

July 1995,[52] the national committee for the second reading of the penal code is established and begins working on a draft of the document;

October 1996, the government passes the bill;

November 1996, the National Assembly votes on the law;

February 1997, the law is promulgated.

THE CONSTITUENT ELEMENTS OF THE LAW

Before excision was deemed an offence, Burkinese law dealt with mutilations in general under the heading of intentional cuts and wounds, under the chapter of first and second-degree murders, and under the label of acts of violence and assault and battery.

It bears reminding that Burkina Faso is one of the few African countries to have passed, very early on, a law explicitly prohibiting excision/FGM.

But what does this law consist of?

Three articles (380, 381, 382) in the penal code:

article 380: “a prison sentence of six months to three years and/or a fine of 150,000 to 900,000 CFA francs (approximately 215 to 1,286 US$).[53]

If the practice results in death, the penalty is a five to ten-year prison sentence.”

article 381: “a maximum penalty is applied if the guilty party is a member of the medical or paramedical profession. The court of law handling the case may also prohibit him or her from exercising his or her profession for a period of no more than five years.”

article 382: “a fine of 50,000 to 100,000 CFA francs (71 to 143 US$) for any person who, aware of the events provided for in article 380, fails to notify the concerned authorities

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thereof."

WHAT IS MEANT BY FGM?

According to the terms of the penal code, FGM comprises any act that "damages the integrity of a woman's genital organs by complete removal, excision, infibulation, anesthetization, or any other means."

The individuals concerned:
— the perpetrator of the act, that is, the person excising,
— the co-perpetrator(s), those who decide on the act,
— the guilty parties and accomplices,
— but also anyone who, aware of an imminent excision, fails to alert the concerned authorities.

THE APPLICATION OF THE LAW

The role of the CNLPE

The results of studies[54] carried out in 2000, 2001 & 2002 show prevalence rates ranging from 43% to 16%, depending on the region and age group. In other words, the phenomenon is on the decline, considering that the 1996 survey revealed a notably higher prevalence rate (66.35%).

One of the positive aspects of putting this law into effect has been the series of strategies developed by the CNLPE as part of a national program[55] against FGM that emphasizes consciousness-raising.

It has been necessary to encourage greater awareness on the part of the population to ensure that it upholds the spirit of the law.

In other words, the committee considers the law a deterrent measure that complements awareness-raising campaigns.

In keeping with this spirit, it has educated not only judges and lawyers, but police agents as well, about the contents of the law and the damaging effects of FGM.

Following these meetings, the police agents have suggested and put into effect various rehabilitation activities at the level of the general population and in the barracks.

A rapid intervention unit has also been set up within the CNLPE whose objectives are:
— to open files for all excised women who have been identified, and to follow up on them;
— to intervene directly in the case of an alert announcing an intended or actual case of excision; on this level, it is necessary to distinguish between two cases:
— cases of intervention following disclosure of an intended excision: a team consisting of a policeman assigned to intervention services, and one or more officials, goes directly to the concerned family to raise their awareness about the practice of excision and the law.
— cases of excision involving a police raid of the site where the excision is performed:[56] once the offence has been reported, the perpetrators and their accomplices are arrested and proceedings are immediately instigated. Local populations follow these trials[57] with interest.

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The intervention unit has an "SOS/excision" hotline (311571) where cases of excision can be reported; a fair portion of the population is familiar with this number, and anonymity is assured. The population is also familiar with deterrence patrols; these controls allow policemen to demonstrate their real and permanent presence in the region, and to explain the contents of the law. They have also led to the identification and registration of several excisionists.

By way of example, since the law was passed, there have been:
— 57 trials for cases of excision[58] (with the law on FGM applied), and, thanks to this program:
— 2,632 awareness-raising and deterrence patrols by policemen,
— 488 on-site visits in cases of excision

These positive effects have not come without difficulties; increasingly, one notes that:
— the practice of excision has gone underground;
— the age at which the practice is performed has fallen from 7 to 12 years of age formerly, to just 0 to 1 years of age currently;
— the excisionists migrate across borders to countries that have no law on FGM;
— parents continue to have their daughters excised, subsequently finding themselves passive witnesses likely to be taken in for questioning, prosecuted and sentenced as accomplices or co-perpetrators, as already mentioned above.

The immediate consequence of both parents being prosecuted is that the familial situation can be affected, especially in the case of a mother with young children. This makes it difficult for the penal law regarding excision to be strictly applied. In practice, depending on the particular case, the father or mother will be arrested.

OTHER PARTICIPANTS IN THE FIGHT AGAINST THE PRACTICE OF FGM

To oversee the application of the law, at the level of the public prosecutor's office in Ouagadougou, a judge has been trained in IEC (Information, Education, and Communication)/excision and informed about the consequences of the practice in order to follow all excision cases to assure that the various verdicts are actually carried out.

Numerous NGOs and associations are also actively engaged in working to eradicate the practice of excision in Burkina. These include Voix de Femmes, MWANGAZA, les Six "S," MUGNU and others.

Their activities include:
— awareness-raising campaigns
— pleading/lobbying with community leaders,
— research,[59]
— training,
— monitoring and supervision, etc.

I would like to emphasize the contribution of Voix de Femmes (Voice of the Women) here.

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Thanks to a partnership with AIDOS and the European Union in the context of the project "Stop FGM," it has succeeded in collecting some 1500 signatures in support of the official call launched for the eradication of FGM. *Voix de Femmes* has also integrated the legal aspect[60] in its awareness raising campaigns against excision.

It is worth noting that *Voix des Femmes* collaborates closely with the CNLPE in the context of the various activities concerning FGM. This spirit of joining forces and partnership also characterises Voix de Femmes' relationships with other associations engaged in this field. Thanks to this collaboration, last May 3rd, we were able to witness the practice of excision abandoned by 23 villages in the province of Zoundwéogo in Burkina.

Nonetheless, excision continues to be practiced and we must redouble our efforts against it. Thus, new approaches must be discovered to continue the fight.

SEVERAL APPROACHES

It is a question of:

— encouraging incentives for reporting abuses;

— working a great deal with young people (school and university students, local youths, etc.);

— working closely with the media;

— considering alternative measures such as the retraining of excisionists, but by encouraging them to become members of organizations and associations that would allow them to benefit from small loans, for example;

— creating databases of excision cases in which proceedings were successful.

IV. LEGAL TOOLS FOR THE PREVENTION OF FGM: A PERSPECTIVE FROM EUROPE

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INTRODUCTION

"Passing anti-FGM legislation is one of the most controversial aspects of the FGM elimination movement."[62]

This statement in a World Health Organization (WHO) publication highlights the complexity surrounding the theme of this conference. However, given that the WHO report focuses on Africa and the Eastern Mediterranean[63], it leaves one wondering whether the same can be said for northern countries where the people most likely to be affected by the legislation are in the minority?[64] This paper explores that question by looking at the practice of using law in eradication efforts of European countries focusing on Britain and France. These

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two countries have between them, the highest number of migrants from FGM risk countries.[65] Although both have legislation outlawing the practice,[66] they have dealt with the issue in very different ways. Britain has chosen the "softly softly approach" refusing to prosecute violators whilst France has elected to enforce the law by prosecuting offenders. The paper explores the rationales behind these two positions. In outline it could be that whilst Britain takes the laissez-faire approach where immigrant customs, 'cultures' and traditions are concerned, France adopts a more assimilationist stance/favours a policy of assimilation.[67] The paper then moves on to consider the more robust stance being taken in Europe to the FGM issue.[68] In particular, the paper considers the provisions of the European Parliament Resolution on FGM[69] and what they reveal about the current European approach to the problem. Finally the paper considers the asylum debate and the possibility of women using the United Nations Convention on Refugees, 1951 to seek protection from a fear of persecution based on FGM.

FGM AND THE LAW IN BRITAIN

In 1985 the United Kingdom Parliament enacted the Prohibition of Female Circumcision Act. The Act outlawed FGM and made violation of its provisions punishable by a fine or imprisonment of up to five years. Later came the enactment of the Children Act, 1989 which makes provisions for local authorities to investigate to see if a child is suffering or is in danger of suffering significant harm. There is also the possibility of applying for a prohibited steps order under the Children Act 1989 to prevent the child from being cut. The Prohibition of Female Circumcision Act has never been used. This is despite evidence that cutting does occur in the UK.[70] Indeed an empirically based survey amongst the Somali community found that some of the cutting had been performed by a medical professional in a hospital or clinic.[71] A policewoman wrote an article identifying the impediments to using the law.[72] A major impediment in her view was the fear of offending minorities who may feel persecuted and "picked upon" by the establishment. Prosecutions would lead to minorities feeling alienated. The policewoman also questioned the efficacy of using criminal law to deal with what she saw as an essentially cultural problem.

Dr. Toubia has noted that criminalization and regulation "are only effective once a substantial body of public opinion has been raised against the practice."[73]. This is an interesting argument which calls into question the use of law when FGM is practiced by a minority of the population (as in some northern states) and when it is "culturally" grounded and practiced by the majority (many) as in some African states.[74] In northern states it may well be that the majority opinion is in favour of laws prohibiting the practice whereas those from communities where the practice is prevalent are not –leading to an "us v. them" situation arising. If the "us" in this is the dominant group, then one can see how condemnation of the practice can be used by some of the more reactionary elements to justify racist behaviour towards non-white immigrants, whether or not they come from practicing communities[75] The British approach can be said to show cultural sensitivity and a desire to work with minority communities without criminalizing them. The problem with the British approach is that it panders to cultural sensitivity at the expense of the health and security of the victims.

France by way of contrast has taken a more robust approach.[76] The French Penal Code outlaws acts of violence "resulting in mutilation or permanent disability."[77] Like the English statute, violation is punishable by imprisonment or a fine. However, unlike the English,

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French authorities have used the law several times to prosecute both practitioners and the parents of the girls/young women who permit the cutting to occur.[78] A cause celebré was the case of the 19 year old woman who reported her mother for trying to get her cut as well as the woman who had been carrying out cuttings in their community. The circumcisor received a prison sentence of eight years and her mother was given a two-year prison sentence.[79] However more often than not, parents are given suspended sentences or made to do community service. [80]Weil-Curiel notes that this is because 'judges know that they are acting on the basis of a cultural context." [81]

The French approach is less tolerant of the "cultural defense" and more attuned to the uniform application of the law. Indeed France has made a declaration to article 30 of the United Nations Children's Rights Convention, 1989 which provides for the rights of children who are minorities to "enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language".[82] The French declaration makes clear that France does not consider itself bound by this provision so in effect contradicting the English "'respect for 'other' approach". In effect the French position is that all children within its jurisdiction should enjoy the same rights to be protected from parental or other abuse of their rights.[83] Arguably the French approach is in line with the provisions of the Children's Rights Convention, 1989 particularly those on abuse, health and development and the prohibition of harmful traditional practices.[84]

Until recently, authorities in the UK would no doubt have argued that prosecuting parents thereby separating them from their children or taking the children into care would do more harm than good. This is a dilemma not least because it is extremely rare for children in Africa to be removed from the family environment, widely constructed, and put into institutional care. The balance between protecting the child from potential harm and putting the child into an alien environment thus heightening their isolation is a difficult one to draw. Given what is known about the life chances of children who have been in care and indeed of abuses within the care system, there are powerful reasons for not taking the criminal route. In the context of Britain however, it is arguable that this last point has been overtaken by events following the Climbie case.[85] It remains true though that migrants may resent what they see as institutional "targeting" of them. This fear is borne out by empirical research carried out in Switzerland. Cottier's socio-legal study of the practice of Swiss child protection authorities showed a tendency to intervene on the basis of a perception of the superiority of values of the host system over the parental one.[86] This leads to an over representation of non European minorities in the care system and reflects, in Cottier's view, the racist underpinnings of the Swiss immigration and child care system which does not admit of any derogations from the "Swiss way."[87]

However, the French would no doubt counter the laissez-faire approach by saying that inaction or silence sends out a message that the behaviour –that is cutting of young girls– is acceptable. Prosecutions, especially when accompanied by widespread media coverage, make clear to practising communities that the action is illegal, and, also communicates the fact that the full force of the law will be brought to bear on them. Weil-Curiel notes that coupled with education, penalties can have a beneficial effect, reducing incidence of FGM. "In one Paris suburb for example, 500 excisions were carried out in 1985; after enforcement of the law, no excisions took place in 1997-1998." [88] A cynic might note wryly that the authorities did not discover/ record any excisions having taken place, which is a radically different proposition to saying that none actually occurred. Of course laws can only be enforced if health

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professionals and others know about their existence. Research undertaken by the Daphne project showed that knowledge of laws on FGM amongst health professionals working in Europe varied enormously. Swedish officials were the best versed.[89] (On a more cheerful note, FGM is also said to be "dramatically reduced" in Africa.[90])

These debates notwithstanding, it would appear that the UK has now begun to move towards the French position. Increasingly the "softly softly approach," is being criticized, with debates in the House of Lords indicating quite clearly that culture is not seen as a legitimate defense to a criminal charge and with a call to end the prevailing laissez faire approach.[91] With this in mind there have been debates in the House of Lords about amending the law to make it an offence to remove a child from the jurisdiction of the United Kingdom with the intention of having that child cut.[92] In 2003 a Private Member's Bill was introduced to the English parliament.[93] It seeks the repeal and re-enactment of the 1985 Act. The Bill aims to outlaw the removal of a child from England and Wales for the purpose of having her cut even if the practice is legal in the country where the cutting occurs.[94] It also aims to increase the maximum penalty for facilitating or performing the cutting from 5 to 14 years imprisonment.[95]

While one can welcome the renewed focus on the issue of FGM, it is not clear that it will bring about tangible change, not least because of enforcement issues already identified with the existing Act. Some NGOs working on the issue in the UK have questioned the efficacy of using law as a tool for eradication. Specifically it has been noted that:

"While the proposals to amend the 1985 Female Circumcision Act and strengthen legislation banning FGM are welcome, we have serious concerns about the extent to which legislation will in fact protect women and girls and prevent FGM. We feel that legislation must go hand in hand with awareness raising about changes in law among communities where FGM is practiced, and that careful measures must be put in place to ensure that the legislation does not cause further harm to children and break up families."[96] Questions have also been raised on the matter of jurisdiction. Specifically the Act seems to protect/cover only UK nationals or permanent UK residents who are defined thus:

> "6(2) A United Kingdom national is an individual who is-
> (a)A British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
> (b)A person who under the British Nationality Act 1981 (c.61) is a British subject, or
> (c)A British protected person within the meaning of that Act.
> (3) A permanent United Kingdom resident is an individual who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 (c.77))."

As the definitions do not cover illegal immigrants or people without residence can it be assumed that the Act will not prosecute the extra-territorial removal of a non-UK/non resident child? It would seem so. The explanatory note to the Bill provides:

> "This offence (assisting a non-UK person to mutilate a girl's genitalia overseas) only applies where the victim of the FGM operation is a UK national or permanent UK resident."[97]

This caveat notwithstanding, the new UK parliamentary initiative reflects the growing concern over FGM in Europe as a whole.[98] A collective response to the problem can be found

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in the European Parliament Resolution on FGM of 2001.[99] Over time there appears to be developing a European approach which is intolerant of practices such as FGC and which has little sympathy for calls for cultural sensitivity or respect for immigrant communities whose practices are out of step with the majority.[100] This is best seen by looking at the European Parliament Resolution on FGM[101] which although recognizing the need to work with communities to eradicate the practice,[102] explicitly notes that:

> "…The protection of cultures and traditions has its limits, consisting in respect for fundamental rights and the prohibition of customs which resemble torture."[103]

The Resolution makes clear that immigrants have to abide by the national legal systems which do not allow FGC and which punish by way of imprisonment or fine those who engage in the practice. To make sure that immigrants understand this ban, they are to be given information on the law before they leave their home countries and on arrival.[104] Although alive to the importance of adopting a multi-agency approach, the Resolution is clear on the place of law noting that member states are to:

> "Regard any form of FGM as a specific crime, irrespective of whether or not the woman concerned has given any form of consent, and to punish anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or girl…
> Approve legislative measures to allow judges or public prosecutors to adopt precautionary and preventive measures if they are aware of cases of women or girls at risk of being mutilated…
> Consider that, from the point of view of legislation to protect children, the threat and/or risk of being subjected to FGM may justify intervention by authorities"[105]

Clearly the European Union favours an assimilationist approach with direct intervention into the lives of immigrants, even if it involves the removal of children from their families in order to protect them from the risk of harm.

In the penultimate paragraph, the Resolution calls:

> "On the European Union and hence all the institutions and Member States vigorously and firmly to uphold European values based on human rights, the rule of law and democracy; no cultural or religious practice can be allowed to oppose these principles which underlie our democracy."[106]

Arguably some might see this penultimate paragraph linking "European values" with principles of human rights, good governance and democracy as arrogant and condescending. However the new Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of African Women has a similar provision on dignity which provides:

> "Women contribute to the preservation of those African values that are based on principles of equality, dignity, justice and democracy."[107]

It may well be then, that as Maya Angelou says, "we are more alike my friend, than we are

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unalike." Still, the European Resolution can arguably also be said to be somewhat "imperialist" in tone, particularly when it calls for the prioritization of FGM as a development concern in the agenda of donor receiving countries. It provides:

> "[Believes] that, in the context of the human rights provisions of the EU's development programmes, FGM constitutes such a grave assault on the rights of women that the Commission should be prepared to invoke these provisions, should the governments concerned not be willing to include the fight against FGM as a sector of cooperation." [108]

Now I am not so naïve as to suggest that Europe should just give money without asking for it to be accounted for, but some might find this level of prescription disturbing. As long as government ministers are not lining their own pockets, building expensive white elephants or buying Mercedes Benz (with apologies to the Germans), governments should be allowed to determine their own development agenda. However, in their defence European colleagues would no doubt point to paragraph 25 of the Resolution which provides:

> "Emphasises that medium and long term change must come from within the countries concerned and that there is a crucial complementary role to be played by international development assistance such as development programmes of the EC."

This takes us to the next point, which is the linking of aid with legislative change. The European Resolution calls:

> "…on the Council, Commission and Member States to use the human rights clause to make combating female genital mutilation a priority issue in relations with non-Member States, particularly with those States which have preferential relations with the EU under the Cotonou Agreement, and to put pressure (my emphasis) on them to adopt all the necessary legislative, administrative, judicial and preventive measures to end these practices." [109]

Far be it for me to tell the EU how to run its affairs, but I would argue that it is precisely dictates such as these which lead to African governments hastily passing legislation, the implications of which are not fully thought through, the implementation and enforcement mechanisms for which do not exist; for the "benefit" of a largely indifferent and unknowing population –and people wonder about backlash[110] and ask why law does not work.

Admittedly what I have just said is controversial, so I shall move on to consider issues of asylum. Unfortunately however, the controversy continues, not least because nothing more clearly highlights European hypocrisy on issues of human rights than the issue of asylum. Let us see if European states practice what they preach. If a young woman or girl presented herself as an asylum applicant fleeing her country on the basis of fear that she would be cut, would she be shown compassion, interviewed by a female officer, given accommodation and basic state provision and helped to find her feet in her new country, or would she be deprived of her liberty thrown into a "detention/holding center," her story received with the raised eyebrow which spells incredulity, and then promptly returned to her country "because they

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all lie?"[111] I am getting ahead of myself. Not all of her problems would be due to attitudinal barriers, some may be because of the framing of the provisions of the United Nations Convention on Refugees, 1951 which sets out the framework for claiming refugee status.

ASYLUM AND FGM

The United Nations Convention Relating to the Status of Refugees, 1951 defines a refugee as a person with a well founded fear of persecution on the basis of one or more of five grounds namely: race, religion, nationality, membership of a particular social group or political opinion. [112]The Refugee Convention has been criticized for not defining what is meant by persecution[113] and also for not including sex or gender[114] as a ground upon which a claim for asylum can be founded. However over time both criticisms have been addressed so that persecution is taken to include two elements, the first being serious harm or ill-treatment and the second being the "inability or unwillingness of the State to protect the victim from such harm or ill-treatment." [115] The omission of sex or gender from the grounds has also been mitigated by the issuing of guidelines by the United Nations High Commission for Refugees,[116] various governments[117] and judicial interpretation[118] all of which aim to show how issues of gender are to be considered when claims for asylum are presented. Much of what constitutes gender persecution has been considered under the heading social group.[119] This includes claims relating to a fear of persecution based on FGC.[120] Canada was the first country to grant asylum on the basis of FGC.[121] Since then other countries including France, Norway and Sweden have followed suit. Indeed the European Resolution 2001:

> "Expresses the hope that, in their work on the Community immigration and asylum policy provided for under Title IV of the Amsterdam Treaty, the Commission and the Council will, together with the Member States, take measures as regards the issuing of residence permits and protection for the victims of this practice and will recognize the right of asylum of women and girls at risk of being subjected to FGM."[122]

One of the most famous cases on FGM and asylum is that of Fauziya Kasinga,[123] a Togolese woman who fled being cut in preparation for marriage, and was granted asylum in the United States on the basis of belonging to a 'social group of Togolese women likely to suffer FGM and not receiving state protection'.[124] She faced a struggle with the authorities who initially rejected her claim as not being credible.[125] What is clear from cases where women claim asylum as a result of fear of FGM or other forms of violence, is the failure of state machinery to protect women and girls from violation of their rights at the hands of family and community members.[126] The cases also reveal the difficulties faced by women, often without independent resources, fleeing families and communities with which they are familiar and from which they may be forever ostracized and going to lands and cultures which are often unfamiliar and sometimes downright hostile. The "credibility test" such as that imposed on Kasinga, may be hard to meet not least because there may not be people available who can testify, with knowledge and expertise, on the practices of the group from which one comes, thus raising the possibility that the applicant's story will be disbelieved.[127]

Given that children are the main victims of FGC, issues of capacity arise. Often they are not able to access travel documents to enable them to leave. This is of course assuming that they know that fleeing one's country is possible. Internal flight may be equally problematic for reasons of ethnicity, language and custom. [128] Like adult women, children may often lack

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the necessary financial and socio-psychological resources needed to flee. Although UNHCR guidelines exist on the treatment of unaccompanied minors claiming refugee status,[129] they face added difficulties of isolation. Arguably the child's parent may accompany the child as happened in the Canadian case of Re Khadra Hassan Farah[130] but this action is more likely than not to result in the break up of the family unit.

The asylum issue also raises issues of diplomacy. This is because the granting of asylum to an applicant can be seen to constitute a negative assessment of the country from which the applicant is fleeing.[131] In short, when a country grants asylum it can more often than not be seen to be making a value judgement about the (negative) values of the "sending" state or about that state's inability to protect its citizens from harm.[132] Moreover, in accepting the claims of gender-based persecution, the receiving State may in itself be making a statement about what it considers to be acceptable societal norms around the treatment of women.[133]

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6. *The* «STOP FGM» *Project*

I. MEDIA CAMPAIGN AGAINST FGM IN TANZANIA

CHIKU LWENO-ABOUD
Stop FGM Campaign Coordinator
TAMWA (Tanzania Media Women's Association)

FGM IN TANZANIA

In Tanzania Female Genital Cutting (FGC), or Female Genital Mutilation (FGM), is carried out in 10 out of 26 regions of the country. The prevalence of women undergoing the ritual is estimated at 18%. The figure may look small compared to neighbouring Kenya that has 50%, or Somalia with over 90%, but the situation is so bad in some parts of Tanzania that it has been recorded that 81% of women are affected by FGM.

There are many NGOs and CBOs active in anti-FGM Campaigns in Tanzania, with activities ranging from offering counseling and shelter to victims to awareness raising for cultural decision makers and members of the societies. The organisations operate at the grassroots, at the regional level, as well as at the national level as part of international networks. They include the Inter Africa Committee, Tanzanian Chapter, and the Anti Female Genital Mutilation Network (AFNET), to name just a few.

Tanzania is one of the African countries that have a law against FGM. The Sexual Offences Special Provisions Act of 1998 criminalised FGM and the offense carries a sentence of up to 15 years imprisonment and/or a fine of up to 300,000/= (US$300).

Despite the campaigns and the enactment of the law on FGM, people still carry out the practices and, recently, the age, times and even locations of the practice have changed to avoid detection.

ABOUT TAMWA

TAMWA was formed in 1987 primarily to focus the media on women and children's rights in Tanzania. Through its over 100 members, the organisation advocated for the protection of women's rights in different social settings and sectors, particularly with regard to the issues of gender-based cruelty. Through its innovative and strategic use of radio, television, newspapers and magazines to disseminate messages in a simultaneous media blitz, TAMWA has succeeded in generating public debates, and therefore, facilitated the breaking of the silence on social issues that were considered taboo in the society.

Among the campaigns TAMWA has implemented are those against wife battery, the killing of elderly women due to misguided witchcraft beliefs, rape, discrimination against women in decision making, HIV issues from a gender perspective and FGM. TAMWA, on behalf of the

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Feminist Activism Coalition (FemAct) members in 1998, pioneered advocacy and lobbing campaigns for the enactment of a law that complements the organisation's goals. The Sexual Offences Special Provisions Act is designed to protect women and children from abuse. The following year, in collaboration with other civil society organizations, TAMWA lobbied for the enactment of the Land Act which, among other things, recognised for the first time women's rights to own, and have a voice on, land issues.

THE STOP FGM PROJECT

In 2002 TAMWA, in collaboration with AIDOS and NPWJ, embarked on the Stop FGM campaign.

Activities

Surveys; TAMWA conducted surveys in 5 regions that have the highest prevalence of FGM in the country: Arusha 81%, Dodoma 67%, Mara 43%, Kilimanjaro 37% and Singida 35%.

The surveys involved visiting villages to learn about their socio-cultural environment and the economic issues that are a priority to them.

TAMWA researchers also collected views regarding FGM: what it symbolises, their awareness level of health effects and legal implications, and what THEY think is the solution to the problem.

Radio programmes/spots: A fifteen-minute radio programme titled 'Tubadilike' (Let's Change) is produced weekly and aired by the state radio (RADIO TANZANIA). Experts as well as ordinary people are featured in the programme to highlight various issues including the human rights of women with regard to FGM.

Media Bangs: The launch of the campaign and its progress received publicity countrywide, and beyond Africa. The project's activities are constantly in the news.

'Sauti ya Siti' (The Magazine of TAMWA): A special issue on FGM was produced in Tanzania's two main languages --English and Kiswahili.

IEC Materials: We produced press kits regarding the issues and distributed these to journalists in all media houses for easy reference in their daily activities. Posters and calendars have been produced and distributed to fellow activists within the government and in the communities. Messages on the materials reflect results from TAMWA village surveys.

Training: Workshops for journalists and editors were held to raise their awareness on FGM so as to increase their participation in the campaign. Another workshop for theatre artists is being planned to raise their awareness to produce plays and songs in line with the Stop FGM campaign.

Achievements

— Over 150 information articles on the campaign have been published in local and regional newspapers.

— International media such as Voice of America (VOA), British Broadcasting Corporation (BBC), and Radio Deustche Welle (DW) have picked up the campaign in Tanzania through their Kiswahili service programmes.

— The Solemn Appeal Manifesto, launched on December 23 2002, received wide coverage

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and has already collected signatures from hundreds of Ministers, Members of Parliament, Judges, government officials, members of the civil societies, journalists and ordinary people from all corners of the country; signatures are still being collected.

— The 'Tubadilike' programme aired through the State Radio is popular and receives much feedback in the form of letters from listeners.

— Press Kits produced have been widely used by journalists and activists from other organisation for the campaigns. The kits include the survey findings.

— Villagers reached by TAMWA's campaign were mobilized to be part of the solution to eradicate FGM. They formed committees to monitor FGM practices in their areas and are willing to carry out social awareness-raising programs with fellow villagers.

— Public debate on the need to stop FGM has been initiated and there is regular feedback in the mainstream media through letters to the editor, editorials, cartoons and poems.

— There has been an increase in the number of people who visit TAMWA offices to inquire about the Stop FGM Campaign and request the use of IEC materials produced for campaigning.

— There has been more involvement of men in the campaign. In our view, this is one of the biggest successes because findings showed that men were the key decision makers in societies; at a conference a woman stood up and said, "If men assure us they will marry our daughters even if they are not circumcised, we will stop it."

— Among the number of visitors who flood the TAMWA office for information on FGM are secondary school students who are doing projects. They have approached TAMWA for data on various campaigns against violence against women, particularly FGM. I have personally attended to groups of over 25 students in the last 4 months. They were all boys!

CHALLENGES AND THE WAY FORWARD

Results from the surveys suggest that tackling FGM in Tanzanian villages requires a complex approach due to the various levels of understanding among numerous cultural stakeholders. Our journalistic approach to the issue realized its mission by shining light on areas that need attention. As mentioned during this meeting time and again, communication is important to the victims, parents and village leaders -- men and women.

— Some understand health risks

— Some reject any interventions

— For some, it is the issue of risking the loss of power and status (village elders, even Parliamentarians!)

— Victims reject interventions for fear of social outcasting (linked with poverty and illiteracy among women)

— Some are willing to change, and request security from members of the community

Communication on initiatives that need more support and possible duplication in other areas: Masai Girls Secondary School for Pastoral Children

Information dissemination regarding the legislation: Many are not aware of the Law

— Some escape punishment through loopholes in the law, e.g., 10,000/= for a Pastoralist who owns 300 cows worth millions makes a mockery of the fine and the good intention of the Law.

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— Some change tactics and mutilate infants
-Protection of women over 18 forced to be mutilated during delivery

It is a challenge for TAMWA and its partners and activists, to constantly monitor progress, change, even failure in campaigns, and to report these developments back through the media so that responsible organs, including the judiciary and members of the society, take up these issues. This is only possible through effective strategies of communication.

II. THE STOP FGM INTERNATIONAL APPEAL AND WEB PORTAL

CRISTIANA SCOPPA

AIDOS Project coordinator

The project "Stop FGM", presented in the framework of the European Initiative for Democracy and Human Rights, intends to give a contribution to the fight against Female Genital Mutilation (FGM), a traditional practice prevalent in 28 African countries and, more recently found among immigrant communities in Europe, North America and Australia.

BACKGROUND

Female genital mutilation is the collective name given to several different traditional practices that involve partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, ethnic, religious or any other non-therapeutic reasons. The most severe form is infibulation, which consists of the excision of part of the external genitalia and narrowing/stitching of the vaginal opening.

Based on the limited data available, it has been estimated that between 100 to 130 million girls and women, mostly from Africa, have been subjected to FGM, and each year an estimated 2 million more girls undergo some forms of the practice. Most of them live in Africa, a few in the Middle East and Asian countries, and increasingly in Europe, Australia, New Zealand, the United States of America and Canada due to the continuation of the practice by immigrants from countries where FGM is common.

The effects of FGM have severe short term and long term health consequences. Most physical implications result from infibulation. Obstetric complications are the most frequent health problems, resulting from vicious scars in the clitoral zone after mutilation.

PROJECT OBJECTIVES

The project specific objectives are the following:

1. increase the awareness in Africa and at European and international level on the severe violation of human rights resulting from the practice of FGM through the launch of an

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international Appeal signed by the world's prominent personalities;

2. collect and disseminate information to the various stakeholders on what is being done in various countries, both in Africa and in Europe, to eliminate the practice of FGM, and assess the strategies to change individual behaviour and social norms;

3. foster the role of civil society in monitoring Government efforts to eliminate FGM and in holding Governments (in Africa and in Europe) accountable for failure to fulfil their international obligations;

4. assess the role of the judiciary system in enforcing legislation prohibiting FGM;

5. develop information and communication campaigns to accompany legislative measures with a nation-wide appropriate pilot/demonstration campaign inTanzania;

6. enhance the capacity of African NGOs to collect and disseminate data and information on the practice through the internet;

PARTNERS OF THE PROJECT AND LEVEL OF INVOLVEMENT

The project has been presented by AIDOS, Associazione Italiana Donne per lo Sviluppo (Italian Association for Women in Development) in partnership with NPWJ, No Peace Without Justice, and TAMWA, Tanzania Media Women's Association.

AIDOS provides general co-ordination for the project activities and is responsible for the narrative and financial reporting to the EC. AIDOS has also to carry out the realisation of the web site.

NPWJ is responsible for the international Appeal publicity, the organisation of the Event in Brussels in December 2002 for the launch of the "Stop FGM" campaign and the organisation of the Experts consultation in June 2003 in Egypt.

TAMWA is responsible for the organisation of a Pilot project involving the media in Tanzania, a nation-wide education and information campaign.

Moreover; the project foresees the collaboration of seven African NGOs for the research and updating of information on the activities implemented in Africa, the collecting of signatures of local personalities, and the spread of the international Appeal and the Experts Consultation results on the African continent.

DESCRIPTION OF THE INITIATIVES

Activity 1 : Web site

A web site in English, French and Arabic, will be created as a comprehensive tool to document and spread information concerning the various activities for the eradication of FGM, as well as a concrete instrument to bring about change by reaching and involving different actors at the international level and by drawing attention to what is going on in Africa and in Europe.

Activity 2 : Training of local NGOs

An extensive assessment of the different activities to eliminate FGM in the African countries will be carried out by seven local NGOs, selected among those which have already worked with AIDOS in Africa and have the structure and capacity to carry out this activity. In principle the seven NGOs will be the National Committees of the Inter African Committee in

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Ethiopia, Egypt, Mali, Nigeria, Gambia, Benin, and Burkina Faso. The seven NGOs will act as area co-ordinators, in order to extend the project activities to all the African countries. They will collect the information regarding FGM prevalence and actions for its elimination not only in their own country, but also in the neighbouring countries. A 5-day training course was organised in November, 2002 in Rome for one researcher from each national committee on research methodology, collection, and preparation of the documentation for uploading the web site, and on the technical aspects involved in managing the information system and the software.

Activity 3: Appeal/Manifesto of Leaders of the International Community

On the occasion of the anniversary of the Universal Declaration of Human Rights, on December 10-11, 2002, AIDOS and NPSG organised a Conference/Media event in Brussels calling on the world's prominent personalities, e.g., Nobel prize winners, international personalities, and political leaders, to take a leadership role in the campaign against FGM and sign an Appeal/manifesto drafted on the basis of the motion presented in the European Parliament in November, 2001 by a wide group of European Parliamentarians.

The promoters and first signatories of the Appeal/manifesto were invited to this Conference. The Appeal/manifesto was published in several international and national newspapers and magazines, including African publications, in order to sensitise public opinion to the importance of legal instruments of protection from FGM and respect for Human Rights.

Activity 4: Experts Consultation

A 3-day Experts Consultation will be organised on June 21-23, 2003 in Cairo, Egypt with the participation of 2 representatives, one from the government and one from the civil society, from those countries which have already enacted legislation on FGM (Burkina-Faso, Central African Republic, Djibouti, Egypt, Ethiopia, Ghana, Guinea, Ivory Coast, Senegal, Sudan, Tanzania, Togo and Uganda), in order to compare policies and strategies, learn from success stories, discuss which measures are necessary to effectively enforce the legislation, and which additional activities have to accompany punitive legislation.

The Expert Consultation, which will include technical consultation from the Center for Reproductive Rights (New York), will focus on the analysis and comparison of laws and policies aimed at eliminating FGM, on increasing international awareness and strengthening the action of civil society and governments involved in the struggle against FGM, thereby identifying the most effective legal and political tools.

Activity 5: Pilot Project with the Media in Tanzania

A pilot project will be carried out in Tanzania for a nation-wide education and information campaign using all the media. The partners in the initiative deem of great importance a test of a media strategy in at least one African country, and Tanzania was chosen for a number of reasons related to the fact that FGM is practised with a high prevalence despite the adoption in July, 1998 of a specific law (Sexual Offences Special Provisions Act) which criminalises FGM. Moreover, in Tanzania, there is a high rate of HIV/AIDS infection, which can be linked with FGM practices.

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EXPECTED RESULTS

The expected results are the following:

— Efforts to address FGM are part of a long-term process that seeks to make governments accountable for women's rights. The challenges associated with stopping FGM should awaken us to the reality of the profound social and political changes that must occur to eliminate discrimination against women. Women's inequality is a global phenomenon that must be combated by a host of strategies and means that are responsive to the specifics of any given context.

— To eradicate an ancient practice such as FGM, and to be able to save the life and well-being of millions of African girls and women, will require a long-term commitment and the engagement of a multitude of actors in Africa: Governments, NGOs working on gender issues, NGOs working at the community level, the judiciary systems, and the media. Criminal laws alone will not change behaviour. On the other hand, educational efforts, while often successful, cannot entirely eliminate adherence to the practice.

— It is estimated that African Governments will make more firm commitments to fight against the practice by devoting attention and resources to a multi strategy approach toward eliminating FGM and accompanying these initiatives with legislative measures and nation-wide information, education and awareness-raising campaigns. It can be expected that governments will become more receptive to the efforts of local NGOs and international organisations also engaged in the struggle. It can also be expected that the European Governments will increase their engagement in financing programmes and projects at the local level through development aid.

— The pilot media project in Tanzania is expected to have a great impact at the community level and contribute directly to the eradication of the practice of FGM. The campaign will seek to raise the awareness of the people with regard to FGM, encouraging behavioural and attitudinal changes. On the other hand, it can be expected that this media project, the first of its kind in Africa, will be taken as an example by other African countries where the situation is conducive to a similar media campaign.

Apart from all the press features and radio and TV programs directly financed by the project, the media practitioners will also play a key role in disseminating information from the surveys, training sessions and meetings with the different stakeholders.

III. THE DICTIONARY OF FGM

SOPHIE BESSIS

Journalist and Writer

At the end of the '70s, the issue was almost totally hidden, but the knowledge of FGM has continued to spread and deepen since the end of that period. In fact, since the '80s, the issue of FGM has acquired legitimate standing on both the levels of denunciation and research.

However, a book has yet to exist that synthesizes the knowledge of this phenomenon and

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is accessible to the general public (mass media, governors from the North and South, NGOs not involved in the issue, and so on). This is the reason why the STOP FGM campaign has taken the initiative to write a "The Dictionary of FGM", which will be a valuable working tool and source of information for all the people and associations interested in this problem.

This tool will be even more useful since the phenomenon of FGM has extended and become more complex in recent decades. In those countries (above all African) where genital mutilations are frequent, the situation has changed according to the political will and the actions taken to eliminate the practices. On the other hand, as a result of South-North migrations, numerous western countries today count large communities of native people from countries where FGM is practiced. In Western Europe, in North America and Australia, FGM is no longer a far away exotic habit, but practiced every day.

Thus, we can justify an inventory of the places FGM is being practised in the world. Taking into account that available information remains insufficient and partial for many countries, the Dictionary does not pretend to be exhaustive. It will attempt to collect the maximum information available for every country, deal with the main topics, and give space to FGM questions within specific socio-cultural contexts, with the intention of provoking insights into more effective strategies for its elimination.

How is the Dictionary Structured?

The general presentation of the issue is followed by a dictionary for each country, organized by geographical area: the African countries, the Arabic countries, the Asian countries, the countries where FGM is sporadically practiced. Western countries will be subdivided in two sections.

1) General Information on FGM:
— Awareness raising steps
— Conventions and international resolutions which condemn FGM
— Types of FGM
— The consequences of FGM on women's health
— Short bibliography

2) African and Asian countries where the practise is ancient: Saudi Arabia, Bahrain, Benin, Burkina Faso, Burundi, Cameroon, Chad, Ivory Coast, Djibouti, Egypt, Emirates, Eritrea, Ethiopia, Gambia, Ghana, Guinea Bissau, Guinea Conakry, India, Indonesia, Iran, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Oman, Uganda, Center African Republic, Democratic Republic of Congo, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Yemen.

3) Western countries where the practise is new: Australia, Belgium, Canada, France, Germany, Great Britain, Israel, Italy, Norway, New Zealand, The Netherlands, United States of America, Sweden, Switzerland.

The main topics for each country:
— The socio-economic context

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— Country Statistics: population, demographic growth level, GDP, GDP per person, balance of expenses for health and education, population medical coverage, number of people living in poverty.

— Health and Education Statistics: mothers' and children's mortality, the number of girls enrolled at school.

— Government Policies on Population: family planning.

The Status of Women

Information on the subject is indispensable due to the fact that the general situation of women exposed to FGM is outside the global norm: the more women are dominated by tradition, laws and discriminatory social practises, the harder it is to eradicate FGM. For western countries, we will try – as far as possible – to understand the phenomena within the immigrant communities.

Social Conditions: marital status, prevalence of polygamy, median age at marriage, fecundity, age at first motherhood.

Economic and Political Conditions: paid work, political responsibilities.

The Prevalence of FGM

— Statistics: how many mutilations; which type of mutilations; ethnic, regional and religious subdivisions; age at mutilation, and so on.

— Improvements: if it is possible, comparative data to aid in understanding FGM's possible evolutions.

— Social Attitudes: men's and women's perspectives on FGM.

Legislation and Politics

— FGM Laws: which are the laws in the country taken into consideration? Is it a modern law? Laws in the other countries.

— Political Will: the attitude of the governments regarding this phenomenon, political commitment or its absence for the eradication of FGM. Is the law to abolish FGM respected?

Organisations and Activists

— Sources of Additional Information

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Notes

1) FGM in view of the legal liability in the Egyptian Law by Counselor Salah Eweiss, Vice President of the Cassation Court – Cairo 1993
2) Hereafter referred to as FGM
3) Second United Nations Conference for Women.
4) Note on terminology: The term "female genital mutilation" is most commonly used by advocates for women's rights and health who wish to emphasize the damage caused by the procedure. However, the term may be offensive to women in communities in which the practice is prevalent and constitutes a form of ethnic identity. Out of respect and sensitivity, many organizations have adopted local terminology or more neutral terms, such as "female circumcision" or "female genital cutting." Some scholars, such as Adrienne Katherine Wing, have also proposed the nomenclature "female genital surgeries." In recognition of these varying approaches, this paper will employ the dual term female circumcision / female genital mutilation (FC/FGM).
5) The term "customary law," as used here, refers to the legal systems that are applicable to particular communities. The term does not necessarily encompass practices that may be viewed as obligatory as a matter of culture, but are not mandated by "law."
6) Center for Reproductive Rights, Women of the World: Laws and Policies Affecting their Reproductive Lives, Anglophone Africa Progress Report 153 (2001) [hereinafter Women of the World Progress Report].
7) Premieres Arrestations pour Excision au Senegal, Agence France Presse, August 5, 1999; Circumciser Jailed in Ghana, Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) Newsletter, No. 24, Dec. 1998, p. 10.
8) Two Doctors Charged with Performing Illegal Female Circumcision in Egypt, Associated Press, July 21, 1998; Teenage Girl in Sierra Leone Dies after Female Circumcision, Reproductive Freedom News, Center for Reproductive Rights, September 2002.
9) Togo, Loi No. 98-016 of Nov. 17, 1998 concerning the prohibition of female genital mutilations in Togo, Journal Officiel de la Republique Togolaise, Nov. 21, 1998, p. 2-3, art. 7.
10) Center for Reproductive Rights & Groupe de Recherche Femmes et Lois au Sénégal (GREFELS) Women of the World, Francophone Africa 145 (1999).
11) Mali, Ordonnance No. 02-053 (June 4, 2002) on the creation of the national program to stop excision.
12) By 2002, at least eight states had banned the practice, including Bayelsa, Cross River, Delta, Edo, Ogun, Osun and Rivers. Women of the World Progress Report, supra note 3, at 82; Alamieyeseigha Signs Genital Mutilation Prohibition, Daily Champion, Oct. 22, 2002; NGOs, Politicians fight FGM in Benin, Nigeria, Africa News, April 12, 2001 (Lexis, World News Library). Two additional states, Akwa Ibom and Ebonyi, are in the process of enacting anti-FC/FGM legislation. Circumcision: Practice against Womanhood, Africa News, Jan. 9, 2002 (Lexis, World News Library). Benue State is also purported to be close to passing a bill prohibiting female circumcision. Benue to pass bill outlawing female genital mutilation, Vanguard (Nigeria), Dec. 25, 2002 ((Lexis, World News Library).

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13) Constitution of the Federal Democratic Republic of Ethiopia (1994), art. 35(4), translated in, Constitutions of the Countries of the World (G.H. Flanz, ed. 1996).
14) Id.
15) Constitution of the Republic of Ghana, Tema: Ghana Publishing Corp., 1992, art. 26(2).
16) Id., art. 39(2).
17) Constitution of Uganda (1995), art. 33(b), reprinted in Constitutions of the Countries of the World (G.H. Flanz, ed. 1996).
18) World Health Organization (WHO), Female Genital Mutilation, An Overview (1998), available at http://www.who.int/dsa/cat98/fgmbook.htm#National
19) Ghana, Criminal Code (Amendment) Act, 1994, sect. 69A(2), reprinted in 47 International Digest of Health Legislation, Vol. 47, No. 1, 1996, p. 30-31.
20) Republic of Senegal, Proposed Law Modifying Certain Provisions of the Penal Code (adopted 1999).
21) Canada, Criminal Code, Sect. 273.3(1), Consolidated Statutes of Canada; New Zealand, Crimes Act Amendment 1995 049, 204(B)(3)(a); Sweden, Act Prohibiting Female Genital Mutilation of Women (1982:316).
22) Benin, Loi No. 2003-03 prohibiting the practice of female genital mutilation in the Republic of Benin, art. 9, Jan. 21, 2003; Burkina Faso, Law No. 43/96/ADP of Nov. 13, 1996 on the Penal Code, arts. 380-382, Journal Officiel du Burkina Faso, Jan. 27, 1997.
23) Benin, Loi No. 2003-03 prohibiting the practice of female genital mutilation in the Republic of Benin, art. 10, Jan. 21, 2003
24) Committee for the Ethical Aspects of Human Reproduction and Women's Health, International Federation of Gynecology and Obstetrics, Ethical Framework for Gynecologic and Obstetric Care, 1994, available at http://www.figo.org/default.asp?id=6044 (last visited June 3, 2003). In its General Recommendation on Women and Health, the CEDAW Committee called upon states to "[r]equire all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice." Committee on the Elimination of Discrimination against Women, General Recommendation 24: Women and Health (20th Sess., 1999), para. 31(e), in Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 244, U.N. Doc. HRI/GEN/1/Rev.5 (2001).
25) Côte d'Ivoire, Loi no. 98-757, Dec. 23, 1998, on the prohibition of various forms of violence against women, Journal Officiel de la République de Côte d'Ivoire, Jan. 14, 1999, p. 25.
26) Marlise Simons, "8-Year Sentence in France for Genital Cutting," New York Times, Feb. 18, 1999.
27) United Nations General Assembly, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Resolution 46/119, Dec. 17, 1991, Principle 11, 2.
28) Id.
29) Tanzania, The Sexual Offences Special Provision Act, 1998, sect. 169A; Kenya, The Children Act, 2001, sects. 14, 20.
30) Edo State of Nigeria, Law no. 4 of 1999, A Law to Prohibit Female Circumcision & Genital Mutilation, art. 4(a), Nov. 4, 1999; Cross River State of Nigeria, Law to Prohibit Girl-Child Marriages

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and Female Circumcision or Genital Mutilation in Cross River State, sect. 4(b), 2000.
31) Kenya, The Children Act, 2001, sects. 14, 20.
32) Tanzania, The Sexual Offences Special Provision Act, 1998, sect. 169A.
33) Anika Rahman & Nahid Toubia, Female Genital Mutilation, A Guide to Laws and Policies Worldwide 101 (2000).
34) Togo, Loi No. 98-106 of Nov. 17, 1998 concerning the prohibition of female genital mutilation in Togo, Journal Officiel de la Republique Togolaise, Nov. 21, 1998, pp. 2-3.
35) Burkina Faso, Law No. 43/96/ADP of Nov. 13, 1996 on the Penal Code, arts. 381, Journal Officiel du Burkina Faso, Jan. 27, 1997; Republic of Senegal, Proposed Law Modifying Certain Provisions of the Penal Code (adopted 1999).
36) Togo, Loi No. 98-106 of Nov. 17, 1998 concerning the prohibition of female genital mutilation in Togo, art. 4, Journal Officiel de la Republique Togolaise, Nov. 21, 1998, pp. 2-3.
37) Cross River State of Nigeria, Law to Prohibit Girl-Child Marriages and Female Circumcision or Genital Mutilation in Cross River State, sect. 4, 2000.
38) See e.g., Legal Information Institute, Criminal Law: An overview, available at www.law.cornell.edu/topics/criminal.html; The Subject Matter of the Legal Systems, available at www.leeds.ac.uk/law/hamlyn/subject.htm.
39) Rahman & Toubia, supra note 30, at 179.
40) Order dated Dec, 13, 2000, by Daniel Ochenja (RM) (copy on file with the Center for Reproductive Rights).
41) See e.g., Legal Information Institute, Criminal Law: An overview, available at www.law.cornell.edu/topics/criminal.html;.
42) Rebecca Cook and Bernard Dickens, WHO, Considerations for Formulating Reproductive Health Laws , Ref. WHO/RHR/00., Chapter 4, Part 1, available at <http://www.who.int/reproductive health/publications/RHR_00_1/RHR_00_1_Chapter4part1htm.htm>.
43) "Egypt: Highest Court Upholds Minister's Ban on Female Genital Mutilation (FGM)," Women's Action, Vol. 8, No. 4, Equality Now, New York, Feb. 1998.
44) 'Sudan: Turning Point in the Sensitization Campaign' Inter-African Committee Newsletter, No. 19, June 1996, at 8.
45) Rahman & Toubia, supra note 30, 136, 153, 234.
46) The Traditional Medicine Act, 2000 §§ 10(1)(b), 22.
47) Id.
48) Center for Health Policy and Strategic Study, State of health in Nigeria § 9 (2000), available at www.expage.com/chpssstaeofhealth2000p5.
49) Source: Institut National de Statistique et de la Démographie (National Institute of Statistics and Demographics), EDS.
50) The CNLPE (Comité National de Lutte contre la pratique de l'excision, or National Committee for the Fight Against the Practice of Excision) is an institutional structure under the administrative supervision of the Ministry of Social Action and National Solidarity, which enjoys operational autonomy. The main objective of the CNLPE is to abolish the practice of excision in Burkina Faso.

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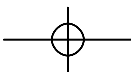
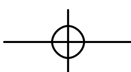
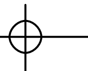
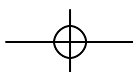


51) That is, shapers of public opinion (traditional, religious and customary leaders), non-governmental associations and organizations, etc.
52) The second reading of the Burkinese penal code was another factor that encouraged the passage of the law; previously, the penal code of French West Africa had been applied.
53) Assuming that 1 US$ = 700 CFA francs
54) Studies carried out by the CNLPE
55) The program was founded in 1998 in partnership with UNICEF
56) Two cases are worth noting: the case of Kaya, a former excisionist who repeated the offence in March 2003 and is currently serving a prison sentence despite the marches by local women in her defense; and the case of Ouahigouya, which also concerns a repeat offender. Further cases have been reported in Dédougou and Bobo.
57) The difficulty here arises from the lack of documentation available, as only the office of the public prosecutor retains documents concerning the trials, with the exception of those covered by the media.
58) See, in the appendix, the case of the excision nurse from Bobo, the second town in Burkina to be convicted in 2002.
59) VOIX DE FEMMES has just carried out a study entitled "Basic survey on the practice of excision in the province of Balé" (January 2003), one of the provinces of Burkina where the prevalence rate is still quite high (87.2%) among women 15 years and older.
60) VOIX DE FEMMES is currently carrying out a 24 month-long project called "Training course in legal tools concerning women's rights" in three of Burkina's provinces. This project consists in spreading the various tools (including the law on FGM), training law practitioners, etc.
61) Lecturer in Law, School of Oriental and African Studies, University of London, LONDON, WC1H 0XG. Email:fb9@soas.ac.uk
62) World Health Organization (WHO) (1999) Female Genital Mutilation Programmes to Date: What Works and What Doesn't. A Review (WHO, Geneva) WHO/CHS/WMH/99. at p. 14.
63) Ibid at p. 1
64) Cf. Boyle, E. and Preves, S. "National Politics as International Process: The Case of Anti-Female-Genital-Cutting Laws" (2000) Law and Society Review 703.
65) Leye, E. "The Daphne Project on Female Genital Mutilation in Europe" in Proceedings of the Expert Meeting on Female Genital Mutilation" Ghent, Belgium November 5-7, 1998. Downloaded from http:///www.fgm.org/ProceedExpert.html. Numbers are recorded as: "UK(303,454), France (180,997), Italy (133,847 in 1996) and Germany (77,795 in 1997).(at p. 8)
66) Britain has the Prohibition of Female Circumcision Act 1985 whilst France outlaws the practice in its Code Penal , 1992.
67) The positioning of the countries in this way is not to suggest that each adopts one approach and not the other. Clearly the two approaches are part of the same continuum and all countries move between these two positions depending on time (historical) and subject matter.
68) Some countries have laws expressly forbidding the practice. These include Norway and Sweden. See Rahman, A. and Toubia, N. (2000) Female Genital Mutilation: A Guide to Laws and Policies





Worldwide (Zed Press, London) See also Bonino, E. "Una Legge Contro le Muilazioni Sessuali" Il Reformista, 4 April 2003. Downloaded from:
http://coranet/radicalparty.org/pressreview/print_right.php?func+detail&par=5225. Some countries rely on penal laws and do not have specific legislation on FGM. Cf Meuwse, S. and Wolthuis, A. "Discussion Paper: Legal Aspects of FGM. Legislation on International and National Level in Europe" in Proceedings of the Expert Meeting on Female Genital Mutilation (1998) pp 59-64.
69) European Parliament Resolution on Female Genital Mutilation 92001/2035(INI)) A5—0285/2001
70) BBC News "3000 UK Girls Risk Female Circumcision Every Year, Wednesday 11 November 1998 downloaded from http://news.bbc.co.uk/hi/english/health/newsid_212000/212240.stm ,BBC News "Female Circumcision Clampdown Call" Wednesday 22 November 2000 downloaded from http://news.bbc.co.uk/hi/english/health/newsid_1033000/1033732.stm
71) Williams, L. Dirir, S. and Warsame, J. et al (1998) "Experiences, Attitudes and Views of Young Single Somalis living in London on Female Circumcision" (London School of Hygiene and Tropical Medicine and London Black Women's Health Action Project, London) as cited in Womankind Worldwide (2003) "UK Government Legislation, Policy and Practice on FGM" (Womankind Worldwide London) at p. 1. However doctors caught carrying out FGC have been struck off the medical register and prohibited from practicing medicine. FORWARD Newsletter, issue no. 3 (2001) 1.
72) Akers, S. "Female Genital Mutilation –Cultural or Criminal? 6 (1994) Journal of Child Law 27
73) Toubia, N. (1995) Female Genital Mutilation: A Call for Global Action (Rainbo, New York) at p.45.
74) In a House of Lords debate Lord Rea questioned the usefulness of law in trying to modify behaviour pointing to the failure of prohibition in the United States and the difficulty of enforcing drug laws in the United Kingdom. He went on to note the ineffectiveness and non use of law to tackle FGC in the United Kingdom thus seeming to suggest that even where there is majority consensus on values, this may not lead to the law being obeyed or enforced. Although supporting prosecution he noted: "…real progress will come only through education and through that a change in the knowledge and attitudes of the communities wehre it is a problem. And that applies in Britain as well as those countries wehre it is a problem."Lord Rea, House of Lords Debate on Female Circumcision 1998 column 738
75) However even in African states it may well be that FGM is practiced by minority groups. Rahman and Toubia (2002) note "…when FC/FGC is common among one ethnic group and not another, enacting and applying a criminal law could fuel ethnic animosities." At p. 62
76) Weil-Curiel, L. "Sexual Mutilation: The French Approach in the Application of Law" In Expert Group Meeting (1998) atp.23 Downloaded from http://www.fgm.org/ProceedExpert.html
77) As cited in Rahman, A. and Toubia, N. (2000) at p. 152
78) Le Progres "Petites Filles en Danger" Jeudi, 13 Juin 1996. I am grateful to Helene Desodt for forwarding this to me. Winter, B. "Women and Cultural Relativism in France: The Case of Excision" 19 (1994) Signs Journal of Culture and Society 139. Renteln, A. (1994) at pp.32-34
79) Rahman, A. and Toubia, N. (2000) at p. 152
80) Renteln, A. (1994) at p.68.
81) Weil-Curiel (1998) at p.24



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82) Convention on the Rights of the Child, 20 November 1989, General Assembly Resolution 44/25 Annex, 44 UN GAOR, Supp. no. 49 at 167, UN Document A/44/49, reprinted in 28 International Legal Materials(1989) 1448.
83) Cf. Eekelaar, J. "The Importance of Thinking that Children Have Rights" (1994) IJLFP 220. But see An Na'im, A. "Cultural Transformation and Normative Consensus on the Best Interests of the Child" in Alston, P. (ed) The Best Interests of the Child (1994) 62,66
84) Alston, P. and Gilmour-Walsh, B. (1996) The Best Interests of the Child: Towards a Synthesis of Children's Rights and Cultural Values (UNICEF, Innocenti Studies, Florence)
85) Victoria Climbie was an eight year old girl from the Ivory Coast who had been sent to live with a distant relative and her partner. Together the two adults tortured the child until she died. Although aware of the abuse, though arguably not its severity, the social services department did not intervene to take her into care. Her death led to a public inquiry which condemned social service practice and identified a lack of co-ordination between government bodies responsible for looking after the interests of children.
86) Cottier, M. (2001)
87) Cottier, M. at pp.109-110
88) Weil Curiel (1998) op cit
89) Leye, E. "The Daphne Project on Female Genital Mutilation in Europe" in Proceedings of the Expert Group Meeting on FGM (1998)op cit at 4.4.6
90) Agence France Presse "Genital Mutilation: African Body Says Practice Dramatically Reduced" 22 March 2003. Downloaded from
http:///www.coranet.radicalparty.org/pressreview/print_right.php?func=detail¶=2121. The report quotes the IAC Director of Communication as claiming that demographic studies indicate a reduction of a third in many countries. He is quoted as saying "This represents an important step forward…Ten years ago, no country would have dared to introduce legislation against female circumcision. Today it is banned in some 12 countries."
91) House of Lords Debate on Female Circumcision 10 November 1998-See Baroness Rendell at column 735, Lord Hunt at column 746. See also Lord Rooker, House of Lords Debate on Asylum Seekers: Female Circumcision, Tuesday 10 July 2001 column 1005. However Hunt questions the use of law and points to the difficulty of obtaining evidence with which to bring the prosecutions. Lord Hunt House of Lords Debate on Female Circumcision 1998 column 747. Similarly Baroness Gould urged caution on the cultural condemnation front noting: "Any intervention must therefore be culturally appropriate, tactful and sensitive and in no way make the women feel ashamed or guilty of their culture." House of Lords Debate on Female Circumcision 1998 Baroness Gould at column 733.
92) House of Lords Debate on Female Circumcision 1998, Baroness Rendell column 734. The European Parliamentary Resolution (2001) provides in para 11 : "pursue, prosecute and punish any resident who has committed the crime of female genital mutilation, even if the offence was committed outside its frontiers (extraterrortoriality)."
93) Female Genital Mutilation Bill 2003. This Bill, together with details from the second reading of the Bill, can be downloaded from:

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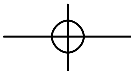
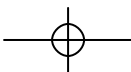


http://www.appg-opdevrh.org.uk/Parli%20News/commons/clwydFGM2ndreadingde
94) The Norwegian and Swedish statutes are examples of the new English approach. Indeed Sweden was the first country in Europe to enact legislation prohibiting FGM. Both countries have comprehensive programmes on fgm. For the Norwegian one see Ministry of Children and Family Affairs "Governmental Action Plan Against Female Genital Mutilation". Available at http://odin.dep.no/bfd/engelsk/publ/handbooks/004021-120008/index-hov001-b-n-a.h The law is covered in chapter 3. I am grateful to Anne Hellum for forwarding this to me.
95) Female Genital Mutilation Bill section 5(a)
96) Womankind Worldwide (2003) at p.1. (Paper collating the views of some NGOs working on the issue in the UK).
97) Female Genital Mutilation Bill Explanatory Notes. Downloaded from http://www.publications.parliament.uk/pa/cm200203.cmbills/021/en/03021x--htm at p. 3. Indeed section 3(2) of the Bill provides "An act is a relevant act of female genital mutilation if –
(a) it is done in relation to a United Kingdom national or permanent United Kingdom resident."
98) There was a special European Parliament hearing on FGM on 29 November 2000. Africa Online Com "Europe Impotent in Fighting Female Mutilation Among African Women" afrol.com 30 November 2000. Downloaded from
http://www.afrol.com/Categories/Women/Wom015_fgm_europe2.htm
99) This Resolution reflects the speech made by Commissioner Anna Diamantopoulu on "Female Genital Mutilation: What Europe Should and Can Do", Brussels 29 November, 2000.
100) There is however the Daphne Project which, amongst other things seeks to work with immigrant communities to eradicate the practice. Project title "Towards a Consensus on Female Genital Mutilation in the European Union" Ref: 97/096/WC; 99/036/WC. Website www.icrh.org. See also Proceedings of the Expert Group Meeting on Female Genital Mutilation Ghent, Belgium, November 5-7, 1998. Downloaded from http://www.fgm.org/ProceedExpert.html. Finally AIDOS "Female Genital Mutilation: A Bleeding Wound". Downloaded from http://www.facetoface.org/nl_april2001.html
101) European Parliament Resolution on Female Genital Mutilation (2001/2035 (INI))
102) ibid paras 4 and 11
103) ibid para Y
104) Ibid. Similar initiatives are underway in the United States. Center for Reproductive Law and Policy, "Legislation on Female Genital Mutilation in the United States" (1997) Reproductive Freedom in Focus at p. 3.
105) European Resolution on FGM (2001) at para. 11.
106) ibid para 28.
107) Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 13 September 2000, CAB/LEG/66.6. Article 3.
108) European Resolution on FGM para 23. See also paras 24 and 26.
109) Ibid para. 26. See also Osborne, A. and Boseley, S. "EU May Ban Aid to States that Allow Female Circumcision" The Guardian, London, Thursday 20 November 2000.
110) See for example the impact of the CNN report on circumcision in Egypt during the 1994



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International Conference on Population and Development. Sure the Egyptian government responded, but the people were not carried along, hence the resistance which followed. Boyle, E. and Preves, S. (2000)

111) See the analysis of British media reporting of the asylum issue and the intemperate language used about asylum seekers in Article 19 "What's the Story? Sangatte: A Case Study of Media Coverage of Asylum and Refugee Issues" (Article 19, London, May 2003) Available at http://www.article19.org

112) Article 1A(2), Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 150

113) See Immigration Appellate Authority (2000) Asylum Gender Guidelines at p. 6

114) Randall, M (2002) "Refugee Law and State Accountability for Violence Against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution" (2002) Harvard Women's Law Journal 281, Macklin, A. "Refugee Women and The Imperative of Categories" (1995) HRQ 213, Kelly, N. "Gender Related Persecution: Assessing the Asylum Claims of Women" (1993) Cornell Int'l L.j. 625. Beyani, C. "The Needs of Refugee Women: A Human Rights Perspective" 3 (1993) Gender and Development 29.

115) Immigration Appellate Authority (2000) Asylum Gender Guidelines at p.6.

116) UNHCR (1991) Guidelines on the Protection of Refugee Women. More recently the UNHCR has issued "Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees." HCR/GIP/02/01 7May 2002. See also UNHCR (1996) Sexual Violence Against Refugees: Guidelines on Prevention and Response. UNHCR Division of International Protection "Gender Related Persecution: An Analysis of Recent Trends" (1997) Int. J. of Refugee Law 79.

117) Immigration and Refugee Board, Ottawa, Canada, (1993) "Guidelines Issued by the Chairman, Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution" reproduced in (1993) Int'l. J. Refugee Law 278, for the United Kingdom see Immigration Appellate Authority (2000) Australian Department of Immigration and Multi-Cultural Affairs, (1996) "Guidelines on Gender Issues for Decision Makers" United States Immigration and Naturalization Service (1995)"Considerations for Asylum Officers Adjudicating Asylum Claims From Women" (updated?) Norway also recognizes gender based persecution as needing special consideration. See Norway's Sixth Periodic Report on the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 –Article 3 On Gender Equality and Human Rights" at pp.2-3. Downloaded from http://odin.dep.no/bfd/norsk/likestilling/intern_samarb/004071-220003/index-hov005

118) In Islam v. Secretary of State for the Home Department, R v. Immigration Appeal Tribunal, ex parte Shah [1999] INLR 144, Lord Steyn noted: "In 1951 the draftsman of Art 1A of the Convention explicitly listed the most apparent forms of discrimination then known, namely the large groups covered by race, religion, and political opinion. It would have been remarkable if the draftsman had overlooked other forms of discrimination. After all, in 1948 the Universal Declaration [on human rights] had condemned discrimination on the grounds of colour and sex. Accordingly, the draftsmen of the Convention provided that membership of a particular social group would be a further category." As quoted in Immigration Appellate Authority (2000) at p.39.

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119) See for example Lord Hoffman in Islam case ibid where he noted: "In my opinion the concept of discrimination in matters affecting fundamental rights and freedoms is central to an understanding of the [Refugee] Convention. It is concerned not only with cases of persecution, even if they involve denials of human rights, but with persecution which is based on discrimination…In choosing to use the general term 'particular social group' rather than the enumeration of specific social groups, the framers of the Convention were in my opinion intending to include whatever groups might be regarded as coming within the anti-discrimination objectives of the [Refugee] Convention." As quoted in Immigration Appellate Authority (2000) at p. 39. Three subgroups have been identified as constituting social group. These are "(1) groups defined by an innate or unchangeable characteristic: (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake their association; (3) groups associated by a former voluntary status, unalterable due to its historical permanence" in Vidal, M "Membership of a Particular Social Group and the Effects of Islam and Shah" 11 (1999) Int. J. of Refugee Law 528,528.
120) Although largely considered under the social group category, Crawley notes that FGC could be considered under any of the other Convention grounds. Crawley (2001) 193-196
121) Crawley, H. (2001) 196. Canadian Immigration and Refugee Board, Re Khada Hassan Farah, 13 July 1994 as cited in UNHCR Division of International Protection (1997) 79,98. However the earlier Conseil d'Etat decision in Mademoiselle X. Decision of September 19, 1991, although rejecting the application on the facts accepted the principle that fleeing from persecution based on a fear of being cut did entitle one to refugee status under the category social group of the 1951 Convention. Cited in Van Bueren, G. (1995) at p. 308 n.97.
122) European Resolution 2001 at para 14. See also paras Z and 15. Cf. The Draft Protocol to the African Charter on Human and Peoples' Rights (2000 draft) which provides in article 6(d) that States Parties undertake to: " protect and grant asylum to those women and girls who are at risk of, or have been, or are being subjected to harmful practices and all other forms of intolerance."
123) In re Fauziya Kasinga, 21 I.& N. Dec. 357 (B.I.A. 1996)
124) On the semantic gymnastics involved in construction of social group category by judges see Randall, M. (2002) at 290-91.
125) She writes about her experiences in detention in her autobiography: Kassindja, F. and Bashir,L (1998) Do They Hear You When You Cry? Bantam Books, New York
126) The Minister of State, Home Affairs (Lord Rooker) noted: "…the United Kingdom is quite ready to recognize as refugees those who have been persecuted by non-state agents as well as those persecuted by the state. In order to qualify for asylum, an applicant would have to show that female genital mutilation (FGM) is knowingly tolerated by her government or that the authorities are unable to offer effective protection." House of Lords, Tuesday 10 July 2001 column 1003. See also Immigration Appellate Authority (2000) at p.23
127) Even if believed it may be that FGM will be held not to fit into the 1951 Refugee Convention categories. The Minister of State, Home Affairs (Lord Rooker) noted that if that happened: "…and it was proved that it was taking place, we would grant exceptional leave to remain, even if refuges status were not granted." House of Lords, Tuesday, 10 July 2001, column 1005. However, it is important to

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note that in the United Kingdom, one is not necessarily entitled to access social security provision if one has merely been granted exceptional leave to remain. Someone given full refugee status would be able to access welfare provision immediately thus the categorization does have important practical considerations. See also the Women's National Commission of the United Kingdom "Submission to the United Nations' Committee on the Elimination of All Forms of Discrimination Against Women" February 2003 at pp. 7,12,22,23. See especially p.23 where it is noted (on the government's dispersal policy) that: "Government plans for dispersal of and holding centers for asylum seekers will jeopardize and severely curtail the access to support services that women who have undergone FGM will have."

128) Cisse, B. (1997) 442-444

129) UNHCR (1988) "Guidelines on Interviewing Unaccompanied Minors and Preparing Social Histories" cited in Van Bueren, G. (1993) International Documents on Children 379. See also Council of Europe Parliamentary Assembly "Protection and Assistance for Separated Children Seeking Asylum Motion for a Recommendation" 12 February 2003. Doc.9697. The document states that the motion had not yet been discussed in the Assembly. However it does include FGM as one of the reasons children may flee their homes. Downloaded from
http://www.assembly.coe.int/Documents/WorkingDocs03/EDOC9697.htm

130) Canadian Immigration Refugee Board, Re Khadra Hassan Farah, 13 July 1994.

131) Randall, M "Refugee Law and State Accountability for Violence Against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution" (2002) Harvard Women's Law Journal 281, 283, 307, 308, 309,315-16, 317

132) However Randall, M. (2002) "notes that because gender based violations occur in receiving states as well, and that receiving states have themselves often failed to protect women from gender based violence, it throws " into stark relief the paradoxical nature of the implicit assumption operating in many western states -that the problem has somehow been remedied at home." At p. 284.

133) However sometimes states use the cultural relativist argument to refuse applicants arguing that it would be wrong to interfere in other peoples' cultures. Of this, Crawley (2001:183) notes: "In these cases, the existence of other normative frameworks is used to undermine the principle of universal human rights."