RESEARCH PAPER 03/24
19TH MARCH 2003

The *Female Genital Mutilation Bill*

Bill 21 of 2002-2003

Female circumcision is currently prohibited under the *Prohibition of Female Circumcision Act 1985,* but there have been no prosecutions under the Act.

Ann Clwyd, Member for Cynon Valley, is bringing forward a Private Members' Bill to restate and amend this law. The Bill is scheduled for Second Reading on 21 March 2003.

The *Female Genital Mutilation Bill* proposes to repeal and re-enact the provisions of the 1985 Act, employing the term now in common usage, and to give them extraterritorial effect. It also increases the maximum penalty on indictment for female genital mutilation from 5 to 14 years imprisonment.

The Bill does not extend to Scotland.

This paper provides background to the Bill, and should be read in conjunction with explanatory notes issued by the Home Office [Bill 21-EN].

Alex Sleator

SCIENCE AND ENVIRONMENT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

03/07	The *Electricity (Miscellaneous Provisions) Bill* [Bill 39 of 2002-03]	21.01.03
03/08	The *Co-operatives and Community Benefit Societies Bill* [Bill 15 of 2002-03]	29.01.03
03/09	The *Sunday Working (Scotland) Bill* [Bill 16 of 2002-03]	03.02.03
03/10	The *National Minimum Wage (Enforcement Notices) Bill [HL]* [Bill 51 of 2002-03]	03.02.03
03/11	Economic Indicators [includes article: Changes to unemployment rates for parliamentary constituencies]	03.02.03
03/12	The *Police (Northern Ireland) Bill* [Bill 52 of 2002-03]	05.02.03
03/13	Employment and Training Programmes for the Unemployed	10.02.03
03/14	Unemployment by Constituency, January 2003	12.02.03
03/15	The *Industrial Development (Financial Assistance) Bill* [Bill 5 of 2002-03]	13.02.03
03/16	The Convention on the Future of Europe: the deliberating phase	14.02.03
03/17	The *Fireworks Bill* [Bill 17 of 2002-03]	26.02.03
03/18	Economic Indicators [includes article: The Economic Background to the 2003 Budget]	03.03.03
03/19	The *Retirement Income Reform Bill* [Bill 18 of 2002-03]	05.03.03
03/20	The *Municipal Waste Recycling Bill* [Bill 19 of 2002-03]	13.03.03
03/21	The *Northern Ireland Assembly Elections Bill* [Bill 74 of 2002-03]	13.03.03
03/22	Iraq: developments since UN Security Council Resolution 1441	13.03.03

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.uk***

ISSN 1368-8456

Summary of main points

Female circumcision is prohibited in the UK under the *Prohibition of Female Circumcision Act 1985.*

This Act, together with child protection measures provided under the *Children Act 1989,* provides the legal basis to investigate violations. The Children Act and most recently the *Criminal Justice (Terrorism and Conspiracy) Act 1998* also empower the Courts to prohibit parents from removing their children from the UK to have the operation done elsewhere, if the procedure is also illegal in that country.

No prosecutions for female circumcision have been brought under these measures. However, the practice of female circumcision, now commonly known internationally as female genital mutilation, is known to be continuing within communities in the UK originating from countries where it is rooted in cultural tradition, such as Somalia and the Sudan.

In those countries where it is carried out it is a cultural and traditional practice which occurs across religious groups. Although some practitioners associate it with religious observance, the practice is not called for in any religious scripture and is not limited to any religious group. The practice is opposed by the World Health Organisation.

Following recommendations made by the All Party Parliamentary Group on Population Development and Reproductive Health, Ann Clwyd is introducing a Bill to restate and amend the law, employing the term Female Genital Mutilation. It proposes to create extra-territorial offences so that it will be an offence in certain circumstances to carry out FGM abroad, and to aid, abet, counsel or procure the carrying out of FGM abroad, including in countries where the practice is legal. It also increases the maximum penalty on indictment for female genital mutilation from 5 to 14 years imprisonment.

The Bill does not extend to Scotland.

The Bill is expected to have Government support, and Explanatory notes on the Bill have been issued by the Home Office.[1]

---

[1] [Bill 21-EN]

CONTENTS

I Introduction

Ann Clwyd, who was seventh in the ballot for Private Members' Bills, is bringing forward a Bill "to restate and amend the law relating to female genital mutilation; and for connected purposes." Bill 21 of 2002-2003 is scheduled for Second Reading on 21 March 2003.

Female genital mutilation (FGM) is a term used to describe a range of practices involving the removal or alteration of parts of healthy female genitalia, performed for cultural or non-therapeutic reasons. It is also known as Female Genital Cutting (FGC) or referred to by traditional names. Female circumcision (FC) is the term currently employed in UK legislation. The term Female Genital Mutilation is employed by the United Nations and the World Health Organisation (WHO), and has gained popular currency internationally. In line with this, the term Female Genital Mutilation will be employed for the purposes of this paper, while noting the importance of the sensitive use of language when dealing with individuals. The Royal College of Midwives says:

> Female Genital Mutilation and Female Circumcision are different terms for the same practice. But because of the nature of what they describe, both have inevitably become emotionally and politically loaded, and for that reason there is some debate about which term is preferable. Some prefer FGM because it describes more accurately the damage done to the women and girls concerned, and sends out a clear message on what WHO describes as 'a violation of human rights'. Others, including many women who have undergone it, feel that FGM is a value-loaded and emotive term, degrading to women who have been circumcised, and insulting to those parents who believe it is in their daughters' best interests. Midwives are advised to be aware of the political and cultural sensitivities attached to each term, and to use them appropriately.[2]

The practice of female circumcision or female genital mutilation, performed without medical reasons, is prohibited throughout the UK under the *Prohibition of Female Circumcision Act 1985*, but there have been no prosecutions under the Act. This has raised concerns about the effectiveness of the legislation, and about awareness of the prohibition of FGM.

Although there are measures under the *Criminal Justice (Terrorism and Conspiracy) Act 1998* which make it an offence for a person to conspire to commit an offence outside the United Kingdom, this applies only when the substantive offence constitutes an offence

---

[2] Royal College of Midwives, *Female genital mutilation (Female circumcision)* Position Paper 21, June 1998
http://www.rcm.org.uk/files/info/documents/190602121225%2D74%2D1%2Edoc

both under the law in the UK and under the law in the country in which the act is to be committed.[3,4]

A report issued by the All-Party Parliamentary Group on Population, Development and Reproductive Health in 2000 called for a change in the law to ensure that UK residents who take girls abroad to have them circumcised can be prosecuted on their return, regardless of the legal status of the mutilation in the country where it took place.[5] Among other recommendations, such as an information and media campaign targeted at specific community groups, the All Party Group recommended also that the name of the Female Circumcision Act should be changed to incorporate the term FGM.[6]

The purpose of the Bill is to give effect to two of these recommendations. It proposes to repeal and re-enact the current Act as the Female Genital Mutilation Act, thus incorporating the term now widely employed internationally, and to extend the Act to make it a criminal offence to procure a female genital mutilation abroad. It also increases the maximum penalty for FGM, on conviction on indictment, from 5 to 14 years imprisonment.

The World Health Organisation (WHO) considers that there are no medical, hygiene or health reasons to support FGM in any of its forms, and condemns it as a form of violence and discrimination against girls and women, adding that this stance attracts widespread support, including from within the communities concerned. Although there is widespread opposition to the practice in the UK there may be resistance to the measure within communities which believe the practice ensures chastity and marriageability. It is a deeply rooted traditional practice among many African, South East Asian and Middle Eastern communities.

The Bill is expected to have Government support, and Explanatory Notes on the Bill have been prepared by the Home Office. The Home Office held meetings with interested groups about this issue, but no official consultation exercise has been carried out.[7]

Ann Clwyd has commented:

> The Female Genital Mutilation (FGM) Bill… will - if it becomes law - repeal and re-enact the 1985 act and give extra-territorial effect to its provisions. Repealing and re-enacting the existing provisions allows the short title of the bill (which

---

3 *Criminal Justice (Terrorism and Conspiracy) Act 1998* http://www.legislation.hmso.gov.uk/acts/acts1998/19980040.htm

4 for further details of this legislation see Library Paper RP 98/87 *The Criminal Justice (Terrorism & Conspiracy) Bill 1998* [Bill 24 of 1997/98], 2 September 1998

5 All Party Parliamentary Group on Population, Development and Reproductive Health. *Report of the parliamentary hearings on female genital mutilation held on 23 and 24 May 2000.* November 2000

6 See section VI of this paper for recommendations of the All-Party Group

7 Home Office official, personal communication, 9 January 2003

would otherwise have to be consistent with that of the 1985 act) to describe more accurately the prohibited acts and remove any suggestion of acceptability that the word "circumcision" might imply. (Substituting the term "genital mutilation" for "circumcision" in the legislation was another recommendation of the All-Party Group.) But the main effect of the bill is to create extra-territorial offences so that it will be an offence in certain circumstances to carry out FGM abroad, and to aid, abet, counsel or procure the carrying out of FGM abroad - even in countries where the practice is legal. Legislation alone will not eradicate the practice but strengthening the law in this way will send a strong message about human rights and hopefully have a deterrent effect.[8]

II Prevalence and cultural perspective

An estimated 100 to 140 million girls and women world-wide have undergone genital mutilation, with a further 2 million girls at risk at any one time.[9] It is found in many African countries, and also in South East Asia and the Middle East, although the practice is declining in some countries. The highest prevalence rates, of 98 percent or more, are found in Djibouti, Guinea and Somalia. In addition, prevalence rates of around 90 percent are found in Eritrea, Mali, Sierra Leone and Sudan.[10] Rates are very high in Egypt but are declining.[11] The practice is also found in Europe and elsewhere among communities originating from such areas.

In the UK, FGM is most often seen in minority ethnic populations from Djibouti, Eritrea, Ethiopia, Sierra Leone, Somalia, Sudan and Nigeria.[12]

The extent of FGM in the UK is not known. In November 2000, a Report of the All Party Parliamentary Group on Population, Development and Reproductive Health[13] acknowledged that there was a severe shortage of data about prevalence in the UK, and that such data as exists are old and based on small samples.[14] One estimate from 1994 found that there are 3,000-4,000 new cases each year in this country.[15]

---

8 Ann Clwyd, "The cruellest cut of all", PH7 No. 5 Vol 1, February 26 2003

9 World Health Organization. *Female genital mutilation*, 2001. www.who.int.

10 World Health Organization. *Prevalence rates for FGM (updated February 2001), 2001*. www.who.int.

11 British Medical Association, *Female genital mutilation Caring for patients and child protection Guidance from the British Medical Association*, Approved by Council January 1996, Revised April 2001 http://www.bma.org.uk/ap.nsf/Content/Female+Genital+Mutilation?OpenDocument&Highlight=2,female,genital,mutilation

12 Royal College of Midwives, *Female genital mutilation (Female circumcision)*, Position Paper 21, June 1998

13 http://www.appg-popdevrh.org.uk/

14 All Party Parliamentary Group on Population, Development and Reproductive Health. *Report of the parliamentary hearings on female genital mutilation held on 23 and 24 May 2000.* November 2000

15 Boot J. *Female genital mutilation*. November 1994.

The Foundation for Women's Health Research and Development, FORWARD,[16] a leading organisation working in this field in the UK, estimates that approximately 74,000 first generation African immigrant women in the UK have undergone female genital mutilation. It also estimates that at least 7,000 girls under the age of 16 who live in practising communities may be at risk of undergoing it.[17]

The All Party Group recommended that funds should be allocated for the collection of data and subsequent research into the incidence of female genital mutilation in the UK, to be collated by the Department of Health. Such data should be incorporated into the Government's core policies, including its strategy for sexual health.

In cultures where it is an accepted norm, female genital mutilation is practiced by followers of all religious beliefs as well as non believers. FGM is usually performed by a traditional practitioner with crude instruments and without anaesthetic. Among the more affluent in society it may be performed in a health care facility by qualified health personnel. WHO is opposed to medicalisation of all the types of female genital mutilation.[18]

FGM is most commonly carried out on girls between the ages of four and ten, but it is also performed shortly after birth, at adolescence, at the time of marriage or of the first pregnancy.

The reasons given by families for having FGM performed include:

- psychosexual reasons: reduction or elimination of the sensitive tissue of the outer genitalia, particularly the clitoris, in order to attenuate sexual desire in the female, maintain chastity and virginity before marriage and fidelity during marriage, and increase male sexual pleasure;
- sociological reasons: identification with the cultural heritage, initiation of girls into womanhood, social integration and the maintenance of social cohesion;
- hygiene and aesthetic reasons: the external female genitalia are considered dirty and unsightly and are to be removed to promote hygiene and provide aesthetic appeal;
- myths: enhancement of fertility and promotion of child survival;

---

16 FORWARD is a non-government organisation (a registered charity) dedicated to serving the health and human rights needs of African women and girls in the UK and Africa, and is a leading advocate of opposition to FGM in the UK. http://www.forward.dircon.co.uk/

17 HL Deb 5 November 2002 c 566

18 World Health Organization. *Female genital mutilation*, 2000. www.who.int.

- religious reasons: Some Muslim communities practise FGM in the belief that it is demanded by the Islamic faith. The practice, however, predates Islam.[19]

The widespread nature of the practice is emphasised by the charity Research, Action and Information Network for the bodily integration of Women (RAINBO), which campaigns for eradication of FGM internationally:

> It is practiced in 28 African countries and among minorities in Asia. The custom cuts across religions and is practiced by some Muslims, Christians, followers of traditional religion and by …Ethiopian Jews now living in Israel. Because of regional, ethnic, family and individual differences, it is almost impossible to identify, by her general characteristics, whether a woman is circumcised, approves of the custom, or has even heard of it. In assessing the health care needs of women, each woman or girl must be considered individually.[20]

The Report of the All-Party Parliamentary Group on Population, Development and Reproductive Health observes that:

> FGM is not sanctioned by either Christianity or Islam, and is not mentioned in the Koran or the Bible. However, FGM is practised by followers of both religions, as well as by people of other traditions.[21]

The religious dimension is discussed by Amnesty International:

> FGM predates Islam and is not practised by the majority of Muslims, but has acquired a religious dimension. Where it is practised by Muslims, religion is frequently cited as a reason. Many of those who oppose mutilation deny there is any link between the practice and religion, but Islamic leaders are not unanimous on the subject. The Qur'an does not contain any call for FGM, but a few hadith (sayings attributed to the Prophet Muhammad) refer to it. In one case, in answer to a question put to him by 'Um 'Attiyah (a practitioner of FGM), the Prophet is quoted as saying "reduce but do not destroy". Mutilation has persisted among some converts to Christianity. Christian missionaries have tried to discourage the practice, but found it to be too deep rooted. In some cases, in order to keep the converts, they have ignored or even condoned the practice.
>
> FGM was practised by the minority Ethiopian Jewish community (Beta Israel), formerly known as Falasha, a derogatory term, most of whom now live in Israel, but it is not known if the practice has persisted following their emigration to

---

19 World Health Organization. *Female genital mutilation*, 2000.

20 http://www.rainbo.org

21 All Party Parliamentary Group on Population, Development and Reproductive Health. *Report of the parliamentary hearings on female genital mutilation held on 23 and 24 May 2000.* November 2000

> Israel. The remainder of the FGM-practising community follow traditional Animist religions.[22]

A spokesman for the Muslim Council of Britain has said that only male circumcision was required by the Koran, and that 'For women, it is not required by Islam and it is more of a cultural practice in East Africa.' [23] The Chair of the Women's and Families Affairs Committee of the Muslim Council of Britain confirmed that there is no requirement under Islam for female genital mutilation and raised no objection to this terminology, but commented that many in practising communities might not understand it.[24]

BBC News online reports opposition to the practice voiced at an international conference on women and Islam in March 2002:

> Delegates at an international conference on women and Islam have heard a strong condemnation of female genital mutilation - the practice known as female circumcision.
> The controversial topic was not part of the official agenda, but came up in discussions on domestic violence.
> The organisers say the practice is not recommended in the Koran, and has too often been mistaken by people in the West as an Islamic custom.
> The conference has brought together more than 200 Muslim women - most of them living in Spain - although speakers have included women from Libya, Sudan and Iran.
> Organisers say they are hoping to counteract the predominantly negative image in the Western media of Islam and Islamic women, which has been exacerbated by the 11 September bombings and the American-led war on terrorism.
> Too often, they say, this comes from ignorance or misunderstanding, as in the case of female genital mutilation - this is traditional practice in some African societies, and has got nothing to do with the Muslim faith or the Koran, say the organisers.[25]

FGM is considered internationally to be a human rights issue, but there are difficulties in addressing the practice because it is rooted in cultural tradition. A discussion in the journal *Community Care* acknowledges the differing perspectives:

> From a Western perspective, FGM is hard to comprehend. However, in practising communities it is not seen as child abuse but as a religious or cultural requirement or a rite of passage. Adwoa Kwateng-Kluvitse [acting director of FORWARD, a London-based non-government organisation working internationally to eradicate female genital mutilation (FGM) and other gender-based violence] explains: "The

---

22 Amnesty International, *Female Genital Mutilation – a Human Rights Information Pack*, 1997

23 "Jail threat to parents over girl circumcision parents face jail in UK", *The Observer*, 1 December 2002

24 Chair of the Women and Families Committee of the Muslim Council of Britain, personal communication, 25 February 2003

25 "Muslims condemn genital mutilation", BBC News online, 3 March 2002
http://news.bbc.co.uk/2/hi/europe/1851930.stm

> child is a loved child and families do it because it's a cultural tradition. Other communities believe it is a religious obligation. Often the language used puts it in a religious context. People use expressions like 'sunna' which means an obligation of the prophet, or 'halal' or 'haram' which translates as ritually pure or impure."
>
> She points out that for migrants and refugees fleeing war and persecution, adhering to traditional practices may be particularly important: "People need to identify with home and so they cling to these practices."
>
> Because FGM is not talked about openly in practising communities, women who have undergone it accept it without question and assume that it is done to all girls. Fadema Hussein, a Somali doctor who sees many women with health problems arising from genital mutilation in her clinic in east London, explains: "Even in my community people don't talk about it. Culturally a girl won't expose herself [to be examined by a doctor] unless there is a very severe problem." Although girls experience a variety of complications from pain and difficulty passing urine and problems with their periods to kidney infections and back pain, they rarely make the connection with FGM. They are told by female relatives that the pain is normal.[26]

Sarah McCulloch, National Director of the Agency for Culture and Change Management, who has been working in Sheffield to change cultural attitudes to FGM, also emphasises the differing cultural norms:

> … "I was very naive to think I could just go into the community and raise awareness and educate people that this is a human rights abuse and had no health benefits. But women would go into shock. They have a multitude of health problems but they assume that everyone is circumcised because it's not discussed. There is so much anger and abuse. People feel we are betraying them." Currently, a Somali family worker at the project is under police protection.
>
> Despite the hostility, the agency has been successful in changing the attitudes of younger people. "People started saying 'it's not really religion, we are just harming ourselves'. Now they are talking about it more openly. Younger parents feel they don't want to infibulate[27] and do the clitoridectomy[28] instead. They are still holding onto something but there is a change in attitude."[29]

Community Care goes on to say:

> …Although she would like to see prosecutions of FGM practitioners and parents as have occurred in France and a number of African countries, McCulloch believes new legislation will be most effective if area child protection committees

---

[26] Sarah Welland, "Culture and cruelty", *Community Care*, 16-22 January 2003, p 32-33
[27] stitching/narrowing of the vaginal opening
[28] excision of the clitoris
[29] ibid

> use it proactively. In July last year the Sheffield area child protection committee wrote an open letter to all Somali parents informing them of the health problems associated with FGM and advising them that if they were planning to take their children on holiday for FGM they should reconsider.
>
> McCulloch says: "It caused a furore. People were so angry and said we were attacking their culture. But the feedback was that people were afraid and some families cancelled their trip."[30]

III Health risk of the procedure

The immediate and long-term health consequences of female genital mutilation vary according to the type and severity of the procedure performed. These have been categorised by the WHO:[31]

> Type I - excision of the prepuce, with or without excision of part or all of the clitoris;
> Type II - excision of the clitoris with partial or total excision of the labia minora;
> Type III - excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);
> Type IV – unclassified – all other procedures that involve partial or total removal of the female external genitalia and/or injury to the female genital organs for cultural or any other non-therapeutic reasons. These include:
> - pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue;
> - scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts);
> - introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition given above.

According to the World Health Organisation, the most common type of female genital mutilation is excision of the clitoris and the labia minora, accounting for up to 80% of all cases; the most extreme form is infibulation, which constitutes about 15% of all procedures. Different degrees of FGM are practised by a variety of cultural groups in the UK. As indicated above, in some groups the observance is largely symbolic.

The British Medical Association (BMA) has issued guidance for doctors on FGM. It describes the health risks involved:

---

30 ibid

31 World Health Organization. *Female genital mutilation*, 2000.

> …All forms are mutilating and carry serious health risks. Female genital mutilation is not comparable with male circumcision, over which there is no consensus about the health risks and potential benefits.
>
> Mutilation has immediate risks, including severe pain, haemorrhage, tetanus and other infections, septicaemia or even death. These consequences are worsened when traditional "circumcisers", who may be brought by immigrants to the UK from their home country, work in unsterile conditions without anaesthesia.
>
> In the longer term, women experience problems with their sexual, reproductive and general health. They may have difficulty with voiding or menstruating, and be prone to fistula and keloid formation, recurrent urinary tract infections or pelvic infections. These may leave women infertile and others who do conceive are likely to experience difficulties with childbirth due to a scarred birth canal. This increases the risk of stillbirth or haemorrhage from internal tearing which may lead to maternal death. Female genital mutilation doubles the risk of the mother's death in childbirth, and increases the risk of the child being stillborn by three or four times.
>
> …Sexual sensitivity may be reduced after mutilations that remove the clitoris or leave large areas of tough scar tissue in place of sensitive genitals. Narrowing of the vaginal opening can make intercourse painful for both partners.[32]

The BMA adds that, although little documentation exists about psychosexual or psychological consequences of the procedure, long term consequences might also include behavioural disturbances as a result of the childhood trauma and possible loss of trust and confidence in carers who have permitted, or been involved in, a painful and distressing procedure. It is also reported that women may have feelings of incompleteness, anxiety and depression, and suffer chronic irritability, frigidity, marital conflicts, or even psychosis.[33]

In addition, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations, but this has not been the subject of detailed research.[34]

Originally the province of traditional practitioners, the procedure has been gradually “medicalised” in some countries where the adverse health effects are recognised. Some individuals and local organisations have promoted the performance of the procedure in clinical conditions in order to reduce the health risks. The WHO argues against medicalisation or institutionalisation of the procedure:

---

[32] British Medical Association, *Female genital mutilation Caring for patients and child protection Guidance from the British Medical Association*, Approved by Council January 1996, Revised April 2001

[33] ibid

[34] World Health Organization, *Female genital mutilation*, 2000.

> A major effort is needed to prevent the "medicalisation" of all forms of FGM. The case for doing so has to rest on the basic ethics of health care where body mutilation cannot be condoned by health services personnel. The health complications from FGM are also a serious problem and they serve as a good basis for dissuading people from continuing to perform the practice.
> Given WHO's commitment to advance the health, and protect the lives of women and children, including their reproductive and psychological health, the Organization continues to advise unequivocally that FGM must not be institutionalized, nor should any form of FGM be performed by any health professionals in any setting, including hospitals or other health establishments**.**
> Over the years, both nationally and internationally, within nongovernmental and intergovernmental organizations, and among professional, religious and community leaders, the seriousness of the scope and consequences of FGM has become more apparent. Progressively, it is becoming less sensitive as a policy and programme concern. These changes in the perception of the problem are a reflection of the understanding that the inequitable position of women is not only a threat to their own health and development, but a major impediment to social and economic development in general. It is also a reflection of the recognition that FGM is a violation of the basic human and health rights of the girl child. Such rights are protected by several international and regional instruments and it is accepted that all governments must strive to make these rights a reality for all women and children.[35]

The Royal College of Midwives also considers that there are no medical, hygiene or health reasons to support FGM in any of its forms.[36]

IV Opposition to female genital mutilation

Although it is common to argue in favour of protection of traditional cultures, female genital mutilation has been opposed for many years within the international human rights community. It is argued that FGM is in conflict with human rights, but it is a sensitive issue, being deeply rooted in traditional cultures and relating to beliefs about gender, sexuality, marriage and reproduction.

There is support for eradication of the procedure from international bodies such as the World Health Organisation (WHO) and the United Nations and from advocacy groups.

A joint statement by the World Health Organisation, the United Nations Children's Fund, and the United Nations Population Fund was issued in 1997 confirming “the universally

---

[35] WHO information pack on female genital mutilation, World Health Organisation 1996 http://www.who.int/frh-whd/FGM/index.htm

[36] Royal College of Midwives, *Female genital mutilation (Female circumcision)* Position Paper 21, June 1998

unacceptable harm caused by female genital mutilation, or female circumcision, and issuing an unqualified call for the elimination of this practice in all its forms".[37] While noting that female genital mutilation continues as a deeply rooted traditional practice, the statement maintains that culture is in constant flux, capable of adapting and reforming. It states that the clear position of the three agencies is presented "in the hope that this harmful practice will end when people understand the severe health consequences and indignity it inevitably causes".[38]

The three agencies unveiled a Joint Plan to bring about a major decline in FGM within ten years and to completely eradicate the practice within three generations. The plan emphasises the need for a multi-disciplinary approach, and the importance of teamwork at a national, regional and global level. This teamwork would bring together governments, political and religious institutions, international organisations and funding agencies. The basis for this cooperation at a country level would be national "inter-agency teams" supported by international organisations. The plan takes a three-pronged approach: educating the public and law makers on the need to eliminate FGM; "de-medicalising" FGM - tackling it as a violation of human rights as well as a danger to women's health; and working with the entire UN system to encourage every African country to develop a national, culturally specific plan to eradicate FGM.[39] Several countries where FGM is a traditional practice are now developing national plans of action based on the FGM prevention strategy proposed by WHO.

Amnesty International argues that the human rights implications of FGM are unequivocally recognised at an international level:

> …FGM has only recently found a place on the international human rights agenda.
>
> Several factors prevented it from being seen as a human rights issue for many years. FGM is encouraged by parents and family members, who believe it will have beneficial consequences for the child in later life. Violence against women and girls in the home or in the community was seen as a "private" issue; the fact that perpetrators were private actors rather than state officials precluded FGM from being seen as a legitimate human rights concern. An additional barrier was the fact that FGM is rooted in cultural tradition. Outside intervention in the name of universal human rights risked being perceived as cultural imperialism.
>
> Today, however, the human rights implications of FGM are clearly and unequivocally recognized at an international level. The 1993 UN World Conference on Human Rights in Vienna was a milestone in this respect. The Vienna Declaration and Programme of Action sounded a historic call for the

---

[37] World Health Organization. *Female genital mutilation: A joint WHO/UNICEF/UNFPA statement*, 1997 http://www.who.int/frh-whd/publications/p-fgm1.htm

[38] ibid

[39] Amnesty International , "Female Genital Mutilation: United Nations Initiatives", October 1997 http://web.amnesty.org/802568F7005C4453/0/212A0CF45E42AD35802569A50071872F?Open

> elimination of all forms of violence against women to be seen as a human rights obligation:
>
> "In particular, the World Conference stresses the importance of working towards the elimination of violence against women in public and private life... and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices."
>
> The Universal Declaration of Human Rights and a host of international standards that flow from it, underscore the obligation of states to respect and ensure respect for basic human rights, such as the right to physical and mental security, freedom from discrimination on the basis of gender, and the right to health. Governmental failure to take appropriate action to ensure the eradication of FGM violates these obligations.
>
> Moreover, a number of more recent international standards, including widely ratified treaties, contain explicit prohibitions of FGM. The issue has been on the agenda of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities since the early 1980s. FGM was recognized as a form of violence against women in the UN Declaration on the Elimination of Violence against Women and in the UN Beijing Declaration and Platform for Action. A range of UN specialized agencies have more recently developed policies and programs on FGM…[40]

Most recently, at the meeting of the United Nations General Assembly in December 2002, the Assembly expressed "deep concern" at the persistence of female genital mutilation, as well as other forms of violence against women.[41]

In 1999 the House of Commons Select Committee on International Development, in its report on "Women and Development", included the issue of FGM in relation to violence against women and contravention of human rights, arguing that international conventions provide a mandate for action:

> FGM contravenes several international agreements, including CEDAW[42], the Convention on the Elimination of Violence Against Women, and a General Assembly resolution passed in 1997 on traditional or customary practices affecting the health of women and girls.

---

[40] Amnesty International "Female Genital Mutilation; a Human Rights issue", 1 October 1997
http://web.amnesty.org/802568F7005C4453/0/ACDB13F7F1479259802569A5007186EC?Open

[41] M2 Presswire, "UN General Assembly adopts 75 resolutions on social, humanitarian issues…", 23 December 2002

[42] The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979 by the UN General Assembly
http://www.un.org/womenwatch/daw/cedaw/cedaw.htm

> International Planned Parenthood Federation pointed out the impact of FGM on women's health: "not only is [FGM] a violation of basic rights, but it also poses a lifelong risk to women's health ... The WHO has stated that FGM doubles the risk of the mother's death in childbirth, and increases the risk of the child being born dead by three or four times"…
>
> DFID told us in written evidence that it was involved in supporting work to "bring the practice of female genital mutilation to an end". Sir John Vereker[43] said: "we have to tread delicately. There is no doubt in our minds that female genital mutilation contravenes several United Nations conventions and it is, therefore, the case that we have legitimacy in trying to do something about it". But there appears to be a certain reluctance on the part of donors to take action against the practice of FGM because of its cultural significance.
>
> …In difficult matters of women's human rights, an argument which is often put forward, either openly or implicitly, is that to pursue a rights-based agenda is to trample disrespectfully and prematurely upon the culture and tradition of sovereign states. Of course there exist cultural sensitivities, but, as was stated to us in evidence by UNICEF, "Culture cannot be used as an excuse for denying women and girls their rights". DFID, along with the rest of the signatories to the various UN Conventions and Declarations which together make up the rights-based development agenda, has a clear mandate to pursue that agenda. Sir John Vereker stated: "we are careful to be conscious of the cultural context in which we are operating, and we are careful to keep our feet firmly on what I would describe as the ground of absolutes. There are some absolutes here that are enshrined in international convention; there are absolute rights, and those are the ones we are prepared to help women to secure"…[44]

The Report of the All-Party Parliamentary Group on Population, Development and Reproductive Health observes that:

- FGM is a fundamental human rights issue with adverse health and social implications. FGM violates the rights of girls and women to bodily integrity and results in perpetuating gender inequality.
- FGM is not sanctioned by either Christianity or Islam, and is not mentioned in the Koran or the Bible. However, FGM is practised by followers of both religions, as well as by people of other traditions.[45]

---

[43] Sir John Vereker KCB, then Permanent Secretary, Department for International Development

[44] Select Committee on International Development, Seventh Report, *Women and Development*, Report, 15 November 1999, HC 160-I 1998-99, paras 141, 142, 146

[45] All Party Parliamentary Group on Population, Development and Reproductive Health. *Report of the parliamentary hearings on female genital mutilation held on 23 and 24 May 2000.* November 2000

A. Legal action abroad

Several governments in Africa and elsewhere have taken steps to eliminate the practice of FGM in their countries. These steps range from laws criminalizing FGM to education and outreach programmes.

According to a report by the Center for Reproductive Law and Policy in 2000, Burkina Faso, Central African Republic, Côte d'Ivoire, Djibouti, Ghana, Guinea, Senegal, Tanzania, and Togo have enacted laws criminalizing FGM. The penalties range from a minimum of six months to a maximum of life in prison. Several countries also implement monetary fines. In Egypt, the Ministry of Health issued a decree declaring FGM unlawful and punishable under the Penal Code.[46] The report indicates that as of June 2000, there had been prosecutions or arrests in Burkina Faso, Egypt, Ghana and Senegal.

Seven industrialized countries that receive immigrants from countries where FGM is practised - Australia, Canada, New Zealand, Norway, Sweden, United Kingdom, and United States - have passed laws criminalizing the practice. In Australia, six out of eight states have passed laws against FGM. In the United States, the federal government and 16 states have criminalized the practice. There have been no known prosecutions in any of these countries.

France does not have specific legislation relating to FGM, but has brought a number of prosecutions under the Penal Code, which states that acts of violence against children shall be tried in the highest criminal court.[47] In 1999 a Paris court sentenced a Malian woman to eight years in prison for her mutilation of 48 girls. 27 parents who used her services were given suspended sentences. In March 2002 a court in Bobigny gave suspended sentences to five parents for having their daughters mutilated in the 1980s. [48]

In addition, education and outreach programmes have been funded by many governments. The BMA comments on success in this area:

> A successful programme to reduce the prevalence of female genital mutilation is happening in Kenya, where an initiation ceremony of "circumcision through words" leads to young women's right of passage to adulthood. It includes education in schools, community outreach programmes involving men as well as women, and teaching girls, their mothers, fathers, aunts and godmothers about the advantages of this new approach. In Mozambique and 10 other countries in eastern and southern Africa, the Adolescent girl communication initiative in 1998

---

46 Center for Reproductive Law and Policy, "Female circumcision/ Female Genital Mutilation (FC/FGM): Global Laws and Policies Towards Elimination", factsheet, November 2000 http://www.crlp.org/pub_fac_fgmicpd.html

47 *1998 Country Report on Human Rights Practices in France*, US Department of State, January 1999

48 *New York Times*, 18 February 1999

> sought to raise awareness about the adverse health implications of a range of practices affecting young women, including female genital mutilation. Some countries, including Senegal, Burkina Faso, the Central African Republic, Djibouti, Ghana and Togo have banned female genital mutilation.[49]

The Pan-African Committee on Traditional Practices, which included delegates from 30 African countries, urged the eradication of FGM, calling it an extreme form of violence. BBC news online reports on the meeting on 6 February 2003:

> …The Committee says that neither Islam, nor Christianity, permits the destruction of a healthy human organ.
>
> It says that religion has been distorted to justify circumcision.
>
> The Committee argues that if men were subjected to the same kind of cutting as women have to undergo then the practice would have been stopped a long time ago.
>
> …The Committee on Traditional Practices denies that it is importing western, liberal values into Africa.
> It insists that it is not against tradition, but says that circumcision is about violence against women, which should not be acceptable anywhere.[50]

V Current UK legislation

A. Prohibition of Female Circumcision Act 1985

The *Prohibition of Female Circumcision Act 1985* prohibits all forms of female genital mutilation in the UK.

Section 1 of the Act states that it is a criminal offence for any person:

(a) to excise, infibulate[51] or otherwise mutilate the whole or any part of the labia majora or labia minora or clitoris of another person; or

---

[49] British Medical Association, *Female genital mutilation Caring for patients and child protection Guidance from the British Medical Association*, Approved by Council January 1996, Revised April 2001

[50] BBC news online, "Zero tolerance for genital mutilation", 6 February 2003
http://news.bbc.co.uk/2/hi/africa/2732561.stm

[51] stitching together of the labia

(b) to aid, abet, counsel or procure the performance by another person of any of those acts on that other person's own body.

The maximum penalty for this offence is five years imprisonment, an unlimited fine, or both. Before a prosecution can be brought a complaint must be made to the police, an investigation carried out and evidence obtained that would support a prosecution. [52]

The prohibition in the Act is not absolute. Section 2 of the Act provides an exception where a surgical operation is necessary for the physical or mental health of the woman on whom it is performed or where it is performed on a woman for purposes connected with labour or birth by a registered medical practitioner or registered midwife, or someone training for these professions. The BMA comments:

> There has been no clarification of the circumstances in which procedures falling within this definition might be necessary for mental health purposes. It is likely that Parliament's intention in permitting genital surgery that might fall within the scope of the Act for mental health reasons was to ensure that gender reassignment surgery, cosmetic surgery and possibly also surgery for patients with body dysmorphia, were not prohibited by this Act. It is clear, however, that in determining whether an operation is necessary for the mental health of a person, "no account shall be taken of the effect on that person of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual"[53].
>
> In many communities, including those based in the UK, custom demands that a woman be re-infibulated after each childbirth. The Royal College of Obstetricians and Gynaecologists issued a press release in June 1993, to note that the agreed definition of the word infibulation is that it is a "stitching together of the labia". Therefore, when an obstetrician is faced with the repair of the vulva of a woman who has delivered a baby vaginally following previous infibulation, it is illegal to then repair the labia intentionally in such a way that intercourse is difficult or impossible. A person found guilty of an offence under this Act could be imprisoned for up to five years. At the time of writing, however, there have been no prosecutions under the Act.[54]

There have been no prosecutions brought under the Act since it was introduced.[55] However, there is evidence that female circumcision continues to be performed illegally in the UK, by medically qualified as well as by unqualified practitioners.

---

52 Department of Health, personal communication, 12 December 2002

53 Prohibition of Female Circumcision Act 1985 s2 (2)

54 British Medical Association, *Female genital mutilation Caring for patients and child protection Guidance from the British Medical Association*, Approved by Council January 1996, Revised April 2001

55 HC Deb 28 November 2002 c 423W and Home Office official February 2003

Two doctors have been found guilty of serious professional misconduct before the General Medical Council. The first of these, in 1993, involved a doctor who had performed female genital mutilation while knowing that it was illegal. The doctor was struck off the medical register but was not prosecuted. In 2000, another doctor was struck off for offering to carry out female genital mutilation.

B. Conspiring to commit an offence outside the UK

Some girls are sent to their country of origin to have the operation performed, often on the pretext of a family holiday.

Under the *Criminal Justice (Terrorism and Conspiracy) Act 1998* it is an offence for a person to conspire to commit an offence outside the United Kingdom, provided the substantive offence constitutes an offence both under the law in the UK and under the law in the country in which the act is to be committed.[56,57] Although this enables courts in the UK to deal with conspiracies in this country to commit offences against children abroad, no prosecution regarding FGM has been undertaken under this legislation.[58] It is unlikely to be widely useful in this context as cases where the mutilation occurred abroad cannot result in a prosecution if this occurred in a country where it is not unlawful.

C. Child Protection

In addition to the *Prohibition of Female Circumcision Act 1985*, measures can be taken to protect children under the *Children Act 1989*.

s.17 of the Act states it is a 'general duty of every local authority (a) to safeguard and promote the welfare of children within their area who are in need and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families'.[59]

s.47 places a duty on local authorities to make such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare when they have reasonable cause to suspect that a child is suffering, or is likely to suffer significant harm.

---

[56] *Criminal Justice (Terrorism and Conspiracy) Act 1998*
http://www.legislation.hmso.gov.uk/acts/acts1998/19980040.htm

[57] for further details of this legislation see Library Paper RP 98/87 The *Criminal Justice (Terrorism & Conspiracy) Bill*, 2 September 1998

[58] Department of Health official, personal communication, 12 December 2002

[59] Lesley Vickers, "Scarred for life", *Solicitors Journal*, 24 January 2003, p78-79

Where persuasion fails, a Prohibited Steps Order may be applied for under s.8, to prevent a child being taken abroad for example. As a last resort, an application can be made under s.31 for a care supervision order.

The steps that should be taken to initiate child protection proceedings where there is concern about the welfare of a child are set out in Government guidance *Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children*.[60] This states that a local authority "may exercise its powers under s.47 of the *Children Act 1989* if it has reason to believe that a child is likely to be or has been the subject of female genital mutilation".[61]

1. Guidance to doctors and midwives

In 1996 the British Medical Association issued guidance to doctors on *Female genital mutilation: Caring for patients and child protection.* [62] This acknowledged the need for an approach sensitive to the beliefs and culture of the family, while remembering that any participation by any person, including a doctor, is a criminal offence. It addresses the issue of children being taken abroad, and advises doctors to consider initiating child protection measures to prevent a child being taken abroad for mutilation if persuasion fails:

> …The aim is to find effective mechanisms for ensuring the protection of the child in a way that promotes her overall welfare. Doctors are unlikely to be able to initiate all of this work as individuals and should consider seeking help from social services, counsellors and other health professionals. In initial enquiries to seek general help, advice and information, it is unlikely to be necessary to identify the child or family.
>
> Female genital mutilation is perceived in the UK as a form of child abuse; it is illegal, performed on a child who is unable to resist, medically unnecessary, extremely painful and poses severe health risks. Members of communities that practice female genital mutilation do so, however, with best intentions for the future welfare of their child and do not intend it as an act of abuse. Where parents cannot be persuaded that their daughter should not be subjected to female genital mutilation, doctors will have to find sensitive ways to explain that steps may be taken to prevent the child from being mutilated. It is usually appropriate for

---

60 Department of Health, Home Office, Department for Education and Employment. *Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children,* 1999

61 Department of Health, Home Office, Department for Education and Employment. *Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children,* 1999:74.

62 British Medical Association, *Female genital mutilation: Caring for patients and child protection Guidance from the British Medical Association,* Approved by Council January 1996, Revised April 2001

doctors to contact social services where they believe a girl is at risk of female genital mutilation, for example where a mother becomes pregnant again in a family whose existing daughters have been mutilated in infancy.

Parents' rights to control information about their young children may be overridden where this is necessary to protect the child from serious harm, although wherever possible, their permission for disclosure of information to social services or another appropriate agency should be sought. In judging how to broach the issue with parents, doctors must bear in mind the likely attitude of parents in such circumstances and the risk that the child may simply disappear by being concealed within the community or sent to relatives abroad. This can be extremely difficult and doctors must take great care to ensure that their reactions are supportive of the child's overall welfare wherever possible.

Girls being taken abroad for genital mutilation

Where there are fears that a girl may be taken abroad for genital mutilation, doctors should counsel the parents, explain the health and legal issues, and try to persuade them not to do it. Involving community paediatricians may be helpful. Ultimately, a doctor might have to consider initiating child protection proceedings if there is no other feasible way of protecting the child.

Although the Prohibition Of Female Circumcision Act 1985 does not currently make any provision to stop children being taken out of the country, under the Children Act 1989 the local authorities can apply to the court for various orders to prevent a child being taken abroad for mutilation.[63] As noted above there are calls to clarify the law to allow for the prosecution in the UK of UK residents who take girls abroad to have them mutilated.

Child protection

The steps that should be taken to initiate child protection proceedings where there is concern about the welfare of a child are set out in Government guidance 'Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children'. A summary of the relevant points from this is appended to these guidelines although the document offers little specific advice on female genital mutilation. It states that a local authority "may exercise its powers under s.47 of the Children Act 1989 if it has reason to believe that a child is likely to be or has been the subject of female genital mutilation". [64] Section 47 requires local authorities to make or initiate enquiries to establish whether action is needed to protect a child's welfare, and to take such action is necessary. As was noted by the All Party Parliamentary Group on Population, Development and Reproductive Health, it is regrettable that the Government's

---

[63] Detailed advice for health professionals about the powers available under the *Children Act 1989* is given in British Medical Association. *Consent, rights and choices in health care for children and young people,* BMJ Books, 2001: 46-51.

[64] Department of Health, Home Office, Department for Education and Employment. *Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children,* 1999:74.

> guidance makes little mention of female genital mutilation and does not even identify it as a form of physical abuse.

The Royal College of General Practitioners also emphasises the need for sensitivity in approaching this subject, commenting on difficulties for social services in addressing the practice:

> One of the difficulties for social services is that they may feel uncertain about their involvement due to concern that intervention will lead to the break up of families. There is also the danger that any action taken could be construed as racism, as it could be seen as interfering with the customs and traditions of a particular ethnic group. One important point, however, is that failure by a social services department to pursue a course of action for fear of an accusation of racism or because of antagonism in the community, is in its own way a form of racism in that it is a retreat based on racial considerations to the detriment of the child. There is also an important role for counsellors and psychotherapists; if families are to be convinced that FGM is an abuse of a child's fundamental human rights then they are likely to suffer from problems such as guilt, confusion, anger or depression and counsellors will need to be able to help the families overcome these feelings.[65]

The Royal College of Midwives issued a Position Paper in 1998 stating that:

> It is the responsibility of all care professionals to protect future generations of women from FGM. Midwives must always involve child protection services where they have reason to believe a child may be at risk of female circumcision, either in this country or overseas. It is important, however, not to make minority ethnic communities feel scrutinised or persecuted. The approach should stress support to families through counselling and persuasion; resourcing of community groups for grassroots educational activities; training of health and other professionals in counselling and monitoring; systematic inter-agency co-operation; with removal of the child only as a last resort (WHO, 1996).[66]

VI Government policy

The Parliamentary Under-Secretary of State for the Department of Health, Lord Hunt of Kings Heath, said in response to a Parliamentary question in the House of Lords on 23 March 2000:

---

[65] Royal College of General Practitioners *Paper from the RCGP patients' liaison group on female genital mutilation* , May 2001
http://www.rcgp.org.uk/rcgp/information/publications/working_group/wgd0002.asp

[66] The Royal College of Midwives, *Female genital mutilation (Female circumcision)*, Position Paper 21, June 1998

> ...education is central to eradicating the brutal practice of FGM. My department continues to fund relevant voluntary organizations. In addition, the Government will ensure that the findings of the All-Party Parliamentary Group on Population, Development and Reproductive Health hearings on FGM are fed into the development of our sexual health strategy.[67]

The Government's *National strategy for sexual health and HIV*[68] includes in its outline implementation plan preventive measures for groups at special risk. This includes plans for the Department of Health to work with the charity Foundation for Women's Research and Development (FORWARD) "to meet the needs of women and girls affected by female genital mutilation".

In November 2002 Dr Jenny Tonge, Member for Richmond Park, asked the Secretary of State for Health what steps he is taking to ensure that female genital mutilation is not carried out in the UK. The Minister replied:

> Ms Blears: To support our continuing work to educate the practising communities to abandon female genital mutilation (FGM), we increased funding for Forward, the leading organisation working in this field, from April 2002 to an annual total of £90,000.
> We have also been exploring how we might strengthen the legislation governing FGM.[69]

Government opposition to the practice was confirmed in the Lords:

> **Baroness Rendell of Babergh** asked Her Majesty's Government:
> What progress they have made since 1st January 2002 towards putting an end to female circumcision in the United Kingdom.
> **The Parliamentary Under-Secretary of State, Department of Health (Lord Hunt of Kings Heath):** My Lords, female genital mutilation is a brutal practice that is illegal in this country. The Government condemn the practice and wish to see it eradicated. We are continuing to work to educate the practising communities to abandon female genital mutilation. We have increased funding for FORWARD, the leading organisation working in this field. We have also been exploring how we might strengthen the current legislation governing that practice.
> **Baroness Rendell of Babergh:** My Lords, I am grateful to my noble friend for that encouraging and helpful Answer. Is he aware of whether Her Majesty's Government have any plans to prevent parents from taking their small daughters out of the United Kingdom for the purposes of genital mutilation in the countries

---

[67] HL Deb 23 March 2000 c 402.
[68] *National strategy for sexual health and HIV Implementation Action Plan*, 24 June 2002
[69] HC Deb 26 November 2002 c 213W

of origin? Is he also aware that preventive measures are in operation in some other member states in the European Union?

Lord Hunt of Kings Heath: My Lords, I am aware of that. I am ensuring that the Department of Health obtains information about the successes of other countries in dealing with this practice. On the question of taking young girls abroad, that is—or can be—an offence if female genital mutilation is also an offence in the country to which those people are travelling. However, not all countries have made the practice an offence. That is why we are considering possible amendments to the current law. If a local authority has reason to believe that a child might be taken abroad so that mutilation can be carried out, it is obliged, under the Children Act, to make such inquiries as it considers necessary to decide whether it should take any action to safeguard or promote the child's welfare.

Baroness Trumpington: My Lords, is the Minister aware that I took on the Bill[70] concerning female genital mutilation from my noble friend Lord Glenarthur? At the same time, I was engaged with another Bill on intimate body searches. I strongly wondered whether I was ever going to do any legislation above the waist. Is the Minister aware of any fatalities in this country as a result of this disgusting practice, as do occur in parts of Africa?

Lord Hunt of Kings Heath: My Lords, I am not aware of figures detailing the number of fatalities. One of the problems is that very little information comes to the attention of public authorities because the practice is kept completely under wraps. That is the great difficulty. I pay tribute to the noble Baroness for her work in producing and taking forward legislation in this area. She will know that there have been no prosecutions since the Act came into effect because so few complaints have been made.

Lord Walton of Detchant: My Lords, is the Minister aware that 25 years ago the General Medical Council passed a decree to the effect that any doctor who was guilty of performing this kind of operation for social reasons in the United Kingdom might well be guilty of serious professional misconduct and would face the risk of being erased from the register? What has been the effect of that particular decree of the GMC?

Lord Hunt of Kings Heath: My Lords, my understanding is that two doctors have been struck off: one for undertaking female genital mutilation in 1993 and one for offering to perform the operation in 2000.

Lord Chan: My Lords, in view of the life-threatening complications of female genital mutilation, particularly during labour, will the Minister tell us what plans there are to have partnerships between the NHS, trusts and local communities when female genital mutilation occurs? I refer to an example involving the Liverpool Women's Hospital and the Somali community.

Lord Hunt of Kings Heath: My Lords, I am glad to commend a number of excellent schemes around the country that attempt to deal with this very difficult and reprehensible issue. There are a number of specialist clinics in the NHS, all of which have trained staff to deal with girls and women and which offer reversal surgery. We are undertaking further research into the scope of the problem.

---

[70] Prohibition of Female Circumcision Bill 1984/85

> Among the issues that we shall examine are the scale of NHS provision and the extent to which we need to encourage statutory agencies to collaborate more.
> **Baroness Thomas of Walliswood:** My Lords, the Minister told us of the educational efforts that were being made in this area. Can he tell us whether a change in attitude towards this serious problem is thought to be taking place among the generations in some communities? Are any of the educational programmes directed at young men as well as at young women?
> **Lord Hunt of Kings Heath:** My Lords, we are funding a number of educational programmes through FORWARD. I believe that the noble Baroness made some important points. So far as concerns the number of women affected, FORWARD estimates that approximately 74,000 first-generation African immigrant women in the UK have undergone female genital mutilation. It also estimates that as many as 7,000 girls under the age of 16 who live in practising communities may be at risk. Clearly we need to redouble our efforts in terms of education and support from statutory agencies. Above all, we need to make it clear that such an act cannot be tolerated under any circumstances.
> **Baroness Gardner of Parkes:** My Lords, I refer to the case of the person who was struck off for offering to carry out this operation. Can the Minister tell us whether such an operation is currently illegal? If he is considering changes to strengthen legislation in this respect, will that operation become illegal under his new proposals?
> **Lord Hunt of Kings Heath:** My Lords, although no prosecutions took place in the case of the doctors, it is not for me to comment on whether they should have done. The problem in relation to legislation does not concern prosecution; it concerns the fact that FGM is not illegal in certain countries. Therefore, in law we cannot take action against parents or other adults who take young girls from this country to those countries.[71]

The Government has also commented with regard to international representations:

> **Dr. Tonge:** To ask the Secretary of State for Foreign and Commonwealth Affairs what recent representations he has made to (a) the Government of Sudan and (b) the United Nations regarding plans to legalise female genital mutilation. [64600]
>
> **Mr. MacShane**: Our embassy in Khartoum has made representations at ministerial level in Khartoum, both bilaterally and in co-ordination with EU partners, on the Sudanese Government's reported plans to legalise female genital mutilation (FGM). The Government of Sudan reassured us that there were no plans to legalise the practice. The embassy also works closely with Sudanese civil society groups in advocating the eradication of FGM. It forms part of the campaign for ratification of the UN Convention on the Eradication of Discrimination Against Women (CEDAW) in which we have actively supported the growing women's rights movement and UN attempts to address these issues. In particular, our embassy has on-going discussion with UNICEF. We have also

[71] HL Deb 5 November 2002 c 565

funded various projects aimed at eradication of FGM, including the national advocacy campaign for 2002-03.[72]

VII All-Party Parliamentary Group recommendations

A report on Female Genital Mutilation was issued by the All-Party Parliamentary Group on Population, Development and Reproductive Health in 2000.[73]

The All Party Group held two parliamentary hearings, with witnesses from UK health and education authorities, social services departments and refugee councils, as well as witnesses from Europe and beyond. Prior to the hearings, information was also sought from organisations working in the field of FGM in the UK, Europe, Africa and the USA by means of a questionnaire. The aim of the hearings was to raise awareness of FGM in the UK and abroad and to generate support for FGM prevention and eradication programmes.

The first hearing was for witnesses from the UK and covered issues such as training, the effectiveness of the law against FGM, support services and care available and work with community based organisations. The second day of the hearings was for witnesses from Europe and beyond and covered activities in other EU countries with migrant populations who are likely to practice FGM. Evidence was also taken from a project in Senegal, RAINBO[74] and the United Nations Population Fund (UNFPA).

With regard to UK legislation, the Report notes:

1. There is a specific Law on FGM in the UK: Prohibition of Female Circumcision Act, which entered into force in July 16 1985.
2. The 1985 FGM Act together with the 1989 Children Act provides the legal basis to investigate violations. The Children Act and most recently the Criminal Justice (Terrorism and Conspiracy) Act 1998 also empowers the Courts to prohibit parents from removing their children from the UK to have the operation done elsewhere.
3. FGM is performed almost exclusively on children who are unable to give consent, it should therefore be seen in the context of violence against the child.
4. Social workers, not police, are usually the first point of contact for UK FGM issues.
5. The legal backdrop of an FGM law gives legitimacy to FGM eradication projects, but the adoption of legislation alone to ban FGM is not enough

---

72 HC Deb 10 July 2002 c 1014W

73 All Party Parliamentary Group on Population, Development and Reproductive Health. *Report of the parliamentary hearings on female genital mutilation held on 23 and 24 May 2000.* November 2000

74 RAINBO (Research Action and Information for the Bodily Integrity of Women), an international campaigning organisation, http://www.rainbo.org/

in both developed and developing countries and the formulation of FGM specific legislation is not as problematic as the enforcement of the law.

6. FGM prosecution in developed countries should not be perceived as racist. As legislation is based on the principles of human rights, enforcement of the law is the opposite of racism as black children are not distinguished from white children.
7. International law will not act in a direct way to legislate against FGM practice, but international law contains an obligation for states to adapt, improve or establish their own legislation.[75]

It regrets that:

i. There have been no prosecutions in the UK to date.
ii. "Working Together to Safeguard Children" does not specify FGM as a category of physical abuse to a child and provides no guidance to professionals about registration in these cases.[76]

The Report made detailed recommendations with regard to legislation, education, grass root community organisations, health and research.

The Report recommends that in the UK:

a) The UK Government undertakes a full assessment of local authorities provision and guidance of FGM, particularly with reference to child protection.
b) FGM should be mentioned specifically in all Child Protection data and integrated training programmes are established.
c) The UK Law on FGM is amended to ensure that UK residents who take girls abroad to have them circumcised, can be prosecuted under the UK Law on their return, regardless of the legal status of FGM in the country where the circumcision takes place.
d) The name of the Female Circumcision Act is changed to incorporate the term FGM.
e) Changes in UK Female Circumcision Act should require health professionals and other relevant authorities to report incidences of FGM.
f) Efforts are made to communicate the implications of the Female Circumcision Act to communities in the UK.
g) An information/media campaign targeting specific groups on awareness of the Act is developed and the Act is translated into different languages.
h) Supplementary Guidance to "Working together to Safeguard Children" is developed on FGM, along similar lines of the "Safeguarding Children Involved in Prostitution" Supplementary Guidance[77].[78]

---

[75] All Party Parliamentary Group on Population, Development and Reproductive Health. *Report of the parliamentary hearings on female genital mutilation held on 23 and 24 May 2000.* November 2000

[76] ibid

[77] Department of Health, Home Office, Department for Education and Employment, *Safeguarding Children Involved in Prostitution – Supplementary Guidance to Working Together to Safeguard Children*, May 2000

An Early Day Motion tabled by Christine McCafferty, Chair of the All Party Group on Population, Development and Reproductive Health, called on the Government to act on the recommendations, and was signed by 77 MPs.[79]

VIII The Female Genital Mutilation Bill

Ann Clwyd has introduced Bill 21 of 2002-2003 to "Restate and amend the law relating to female genital mutilation; and for connected purposes". The following is a brief guide to the Bill, prepared with the assistance of explanatory notes issued by the Home Office. The Bill extends to England, Wales and Northern Ireland only.

Offence of female genital mutilation

Clause 1 makes it an offence for a person to perform an FGM operation on a girl (girl is defined in clause 6 to include a woman). It provides a saving, or exception, for surgical operations necessary for her physical or mental health, and for operations carried out in connection with childbirth, where these are carried out by a registered medical practitioner or registered midwife, or someone training to be one. The Home Office comments that operations necessary for physical health are likely to be rare, but could, for example, include operations to remove malignant tumours. Operations necessary for mental health could include, for example, cosmetic surgery for gender reassignment.[80] Subsection (5) provides that in assessing a girl's mental health no account is taken of any belief that the operation is needed as a matter of custom or ritual. These provisions are in line with existing provisions in the *Prohibition of Circumcision Act 1985*.

These exceptions also apply (Clause 1(4)) where the operation is performed outside the UK by overseas equivalents of registered medical practitioners or registered midwives or those in training to be one. In many countries there will be no official registration of such persons. The Home Office acknowledges that there is no fixed procedure for determining overseas equivalence of such professionals, and that if a prosecution is brought, it will be a matter for the UK courts to decide.[81]

Offence of assisting a girl to mutilate her own genitalia

It is not an offence for a girl to mutilate her own genitalia, but **Clause 2** makes it an offence for another person to help her to do so.

---

78 All Party Parliamentary Group on Population, Development and Reproductive Health. *Report of the parliamentary hearings on female genital mutilation held on 23 and 24 May 2000.* November 2000

79 EDM 1169, 1999-2000, Female genital mutilation, 21 November 2000

80 Home Office, Female Genital Mutilation Bill Explanatory notes, Bill 21-EN

81 ibid

Offence of assisting a non-UK person to mutilate overseas a girl's genitalia

Clause 3 makes it an offence for a person in the UK to aid, abet, counsel or procure the performance outside the UK of a relevant FGM operation (as defined in Clause 3(2)) that is carried out by a person who is not a UK national or permanent UK resident. UK national and permanent UK resident are defined in Clause 6.

Clause 3(2) provides that this offence only applies where the victim of the FGM operation is a UK national or UK resident.

An example is given by the Home Office: a person who arranges by telephone from his home in England for his UK national daughter to have an FGM operation carried out abroad by a foreign national (who does not live permanently in the UK) commits an offence.

The same exceptions apply to this offence as to the offence of FGM under Clause 1.

Extension of the above offences (Clauses 1 to 3) to extra-territorial acts

Clause 4 extends clauses 1, 2 and 3 so that any of the prohibited acts done outside the UK by a UK national or permanent UK resident will be an offence under domestic law and triable in the courts of England, Wales and Northern Ireland. The Home Office describes the effect of these clauses:

> 12. The effect of the extension of clause 1 is that it will be an offence for a UK national or permanent UK resident to carry out an FGM operation outside the UK. By virtue of section 8 of the Accessories and Abettors Act 1861, it will also be an offence for a person in the UK (or a UK national or permanent UK resident outside the UK) to aid, abet etc a UK national or permanent UK resident to carry out an FGM operation outside the UK. For example, if a person in the UK advises his UK national brother over the telephone how to carry out an FGM operation abroad, he would commit an offence.
> 13. The effect of the extension of clause 2 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc a person of any nationality to carry out an FGM operation on herself wherever it is carried out.
> 14. The effect of the extension of clause 3 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc a foreign national (who is not a permanent UK resident) to carry out an FGM operation outside the UK on a UK national or permanent UK resident. For example, a permanent UK resident who takes his permanent UK resident daughter to the doctor's surgery in another country so that an FGM operation can be carried out will commit an offence.[82]

[82] ibid

Penalties for offences

Penalties for the new offences remain the same, on summary conviction, as those that currently apply under the 1985 Act: a fine not exceeding the statutory maximum, or a maximum of six months imprisonment, or both (**Clause 5** (a)).

The maximum penalty, on conviction on indictment, is however, increased from 5 to 14 years imprisonment (**Clause 5** (b)).

Definitions and consequential provisions

Clause 6 defines girl, UK national and permanent UK resident for the purposes of the Bill.

Clause 7 repeals the *Prohibition of Female Circumcision Act 1985*. It also substitutes the new Act in the Schedule to the *Visiting Forces Act 1952* (offences against the persons in respect of which a member of a visiting force may in certain circumstances not be tried by a United Kingdom court).

Short title and extent

The short title will be the *Female Genital Mutilation Act 2003*. The Act does not apply to Scotland.

IX Comment

The aims of the Bill have been welcomed, but there have been criticisms about the drafting of the Bill, and concerns that it will not be sufficiently effective.

An Early Day Motion welcoming the Bill was tabled on 10 March 2003 by Christine McCafferty, Chair of the All-Party Group on Population, Development and Reproductive Health. This has received cross-party support. (120 signatures by 17 March 2003):

> That this House condemns the practice of female genital mutilation, which violates the human rights of girls and women to bodily integrity and has adverse health and social implications; notes that an estimated 130 million women and girls in the world have undergone female genital mutilation and that two million girls are at risk of undergoing some form of the procedure every year; further notes that in the UK women who have undergone female genital mutilation are increasingly presenting themselves to health care professionals, and specialist clinics are treating hundreds of women with female genital mutilation related complications; regrets that there have been no prosecutions under the UK Prohibition of Female Circumcision Act 1985; welcomes the Private Members

> Bill on Population, Development and Reproductive Health's Hearing's Report on female genital mutilation; and urges Her Majesty's Government to act on this Bill, changing the law on female genital mutilation to enable people who attempt to circumvent UK laws by taking girls abroad for female genital mutilation, even to countries where the practice is lawful, to be prosecuted on their return to the UK.[83]

Sarah McCulloch, National Director of the Agency for Culture and Change Management, welcomed the Bill as an opportunity to increase awareness of the issue and to provide backup for those working to eliminate the practice:

> The new review will close loopholes, target FGM practising communities and give agencies campaigning against FGM or the elimination of the harmful practices the power to tackle, protect and investigate cases. Since 1985 all campaigns have been too soft on the issue, claiming sensitivity, by trying not to offend or create anger amongst FGM practising communities. This has allowed these communities to carry on practicing FGM in the UK as well returning overseas with the purpose of performing FGM with knowledge that no one is going to challenge them or stop them.
>
> …Majority of the FGM practising or non-practising communities are not aware of the health, legal and human rights issues relating to FGM despite that the Act has been around since 1985, as they are not provided with or informed of these issues on their arrival. This also applies to the majority of professionals in statutory, voluntary and legal organisations. After three and half years working on FGM issues in West and South Yorkshire I have found very little evidence of these Agencies or communities being aware of the law or their responsibilities towards eliminating it…[84]

She comments that any success will depend on increased funding and support from all Departments including Department of Health, Department for Education and Skills, Home Office and others.

The Foundation for Women's Health, Research and Development (FORWARD), like other activists campaigning against Female Genital Mutilation, demanded a strengthening of the existing Prohibition of Female Circumcision Act 1985 to protect girls from being taken out of the UK for purposes of genital mutilation. FORWARD is critical of the drafting of the Bill, particularly the restriction of groups to whom it will apply:

> The Female Genital Mutilation Bill fails to provide protection for a vast number of girls at risk i.e. girls who are not UK nationals or UK permanent residents. FORWARD is of the view that the vast majority of parents who will be seeking

---

83 EDM 864, 2002/03, Female Genital Mutilation, 10 March 2003

84 Sarah McCulloch, National Director of the Agency for Culture and Change Management, "Review of Female Circumcision Prohibition Act 1985, Personal views", Personal communication, February 2003

> FGM will be the newly arrived communities who will therefore not be nationals or permanent residents, thus the girls most in need of the protection of the law are excluded. It is morally abhorrent to FORWARD that this inequality exists between white UK girls and Black African girls. It is just as bad or worse to have a difference between one group of (say) Somali / Sudanese / Ghanaian / Liberian etc girls, just because one girl is a national and the other is a resident. Both girls are equally deserving of protection.
>
> FORWARD would like to highlight the fact that other European countries (Norway and Sweden) have passed FGM laws that protect all children whether they are nationals, residents or not. This is what we would like to see the UK law do.
>
> The Bill makes mention of surgical operations during labour or for health reasons– there is no need for this, as FGM by definition is performed for reasons of culture, tradition and erroneously religion. Inclusion in the bill will just cause confusion.
>
> The idea of the bill is a good one, but they way it has been drafted leaves a lot to be desired.[85]

RAINBO is an organisation started and led by African women and is one of the leading technical and advocacy agencies working against female genital mutilation in Africa, Europe and the United States.

RAINBO's comments are summarised in two points:

> The first is a major loop-hole in the current draft of the bill and the second is a concern over the possible interpretation of the bill that will affect individuals (particularly women) who may already be vulnerable within their own families.[86]

RAINBO considers that the attempt to differentiate cosmetic surgery for reasons of mental health when a perception of abnormality exists creates a large loop-hole in the Bill that will allow non-therapeutic operations on the genitals to continue:

> The implication of this is that the validity of the prosecution will rest on a value judgement of which cultural differences are “good” and which are “bad”. An example would be:
>
> > "Two sixteen year old girls, one a second generation African immigrant born and raised in the UK, and the other a white English girl, go to a surgeon to have their labia shortened. This is

---

85 Adwoa Kwateng-kluvitse, Director of FORWARD, personal communication, 17 March 2003

86 Research, Action and Information Network for the bodily integration of Women (RAINBO), comments on Female Genital Mutilation Bill, personal communication, 17 March 2003

> considered trendy in the youth culture of their generation. Both girls consider it too dangly and ugly, therefore "perceived" to be abnormal.
>
> Will they both be considered to be requesting an illegal operation as they are responding to the demands of the "cultural" aesthetics of their generation? Or will the white girl be allowed the operation as she comes from a "community" that does not ritually practice female genital mutilation while the black girl comes from a "community" that does practice FGM?
>
> Do we know if the black girl relates to her African immigrant community more and is therefore influenced by them, or to her British peer group community and is more influenced by *them*?"

Additionally, if the courts are forced to define "custom and ritual" on the basis of skin colour or ethnic origin, this sets the stage for legal challenges based the violation of internationally recognised principles of non-discrimination (be it racial, ethnic, or religious).

The bill stipulates that what applies to girls also applies to women without defining an age limit to what constitute an under-age girl and a consenting adult woman. This creates a situation wherein women over the age of consent are allowed to undertake health risk behaviour including smoking, alcohol consumption and requesting cosmetic surgery on the genitals, as well as other parts of the body, if they are from the majority culture, since they are considered to be free rational individuals who can make choices. While other women who come from "suspect" minority cultures are not considered free individuals able to make decisions about their own risk-taking. This would be a violation of the spirit of the rule of law, which promotes the equality of all citizens under the law.[87]

RAINBO recommends that in order to close the loop-hole and to treat all citizens and residents as equals under the law:

1. That the bill applies to all non-consenting minors under the age of 18 regardless of their race, racial or religious origins and regardless of whether the request is for cosmetic surgery for mental health based on perceived abnormality or on conformity with "cultural" custom and ritual.

2. That the bill does not apply to consenting adults regardless of their reasons of their request that is whether cosmetic or customary.

---

[87] ibid

3. To help protect adults over the age of 18 who may be experiencing undue pressure from their families, communities, peer groups, husbands or boyfriends through emergency support services (therefore non-consenting). Help- lines can be set up so that a woman who chooses to escape such pressures is provided with alternative accommodation, financial and legal support etc. by her local council the same as other women who are suffering violence and violation be it emotional or physical.

RAINBO is also concerned that a woman who is financially and legally completely dependent on the status of her husband might be found guilty of aiding or abetting or as having procured the operation for her daughter when she was in no position to resist it. RAINBO suggests that legal means should be sought to empower such vulnerable women, such as giving them independent legal status within two years of arriving in the UK.

Comment in the *Solicitors Journal*, made before publication of the Bill, foresees difficulty in bringing a successful prosecution where a child has been taken abroad for FGM. Describing a scenario where a family go on holiday to their homeland, Somalia, where the five year old daughter is infibulated, and this is subsequently discovered in their return to the UK, the author states:

> A reasonably competent lawyer may be able to show
> - The parents had not wished for FGM to take place
> - They had been absent when the deed was done; or
> - The procedure was not against the law of Somalia and was carried out by someone who had no intention of ever coming to this country.[88]

She considers, however, that strengthening the law may have a deterrent effect, benefiting the first child's younger sisters.

The Chair of the Women's and Families Affairs Committee of the Muslim Council of Britain commented that this is not a religious issue, but a cultural one. She confirmed that there is no requirement under Islam for female genital mutilation, and that there would be no objection to the term female genital mutilation, as the procedure did indeed involve mutilation, although many in practising communities might not understand it.[89]

---

88 Lesley Vickers, "Scarred for life", *Solicitors Journal*, 24 January 2003, p78-79

89 Chair of the Women and Families Committee of the Muslim Council of Britain, personal communication, 25 February 2003