

TOPICS

ENDING FEMALE GENITAL MUTILATION



Female Genital Mutilation and Legislation

INTRODUCTION ■ It is estimated that some 140 million women, girls and babies throughout the world have been genitally mutilated. Another three million girls are at risk of such mutilation each year. Female genital mutilation (FGM) is primarily practised in 28 African countries, to a lesser extent in certain countries in Asia and the Middle East and also, as a result of migration, in western host countries.

Although the elimination of FGM was originally regarded as a mere question of health education and information, today FGM is recognised as a socio-cultural problem that is deeply rooted within the societies in which it is practised. Thus social change is indispensable if the practice is to be ended permanently. Commitment to ending FGM is symbolic of the effort to strengthen the position of women and women's rights generally, because FGM is a serious violation of human rights, and its elimination would serve to advance virtually every one of the UN Millennium Development Goals.

WORLD HEALTH ORGANIZATION CLASSIFICATION:

Type I: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy).

Type II: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision).

Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation).

Type IV: All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.

BANNING FEMALE GENITAL MUTILATION ■ There have long been attempts to end FGM by banning the practice. In Kenya, first missionaries and later the colonial authorities sought to end the practice - often to no effect. In the 1940s in Sudan, the British administration also tried to forbid infibulation - in vain. To this day the practice is widespread in the north of the country.

Thus experience shows that FGM can only be ended by means of approaches based not only on government rules and regulations but on historically evolved, local, traditional social structures. Even if the state views FGM as a violation of human rights, the practice may be seen as a positive social norm in local communities. FGM can be successfully eliminated only if these opposing points of view are taken into consideration.

NATIONAL LEGISLATION ■ Since the 1990s, a number of African countries have passed legislation banning FGM, among them Egypt (2008), Ethiopia (2004), Burkina Faso (1996), Côte D'Ivoire (1998), Eritrea (2007), Djibouti (1995), Ghana (1994), Guinea (2000), Kenya (2001), Senegal (1999), South Africa (2005), and Tanzania (1998). Accordingly, violations in these countries are punishable by law.

The constitutions of many African countries, such as Ethiopia and Ghana, prohibit 'harmful traditional practices', which would include FGM. In countries with no legislation against FGM, there are usually regulations in criminal law relating to assault and grievous bodily harm, and these can be used to bring persons practising mutilation to justice. On the whole legal action is seldom initiated to penalise infringements of these laws, but sentences are known to have been handed down in Burkina Faso, Egypt, Ghana and Senegal. Furthermore, the governments of a number of African countries have drafted national action plans to eliminate FGM and are in the process of implementing them.

In Switzerland and in some EU member states, including Belgium, Denmark, the United Kingdom, Italy, Norway, Sweden and Spain, the practice is specifically banned. In other EU countries, FGM can be punished via legislation covering bodily harm and child abuse. Those convicted face fines and sometimes years of imprisonment. Still, in Europe as in Africa, offences are seldom reported

to the police and rarely come before the courts. A number of countries now have or are in the process of drafting national action plans to end FGM.

In Germany, the German Network to Overcome Female Genital Mutilation (INTEGRA) has drawn up essential elements for a national action plan. The main points include the listing of FGM as a crime in itself, comprehensive protection of girls at risk and women affected within Germany, and greater participation of migrants in combating the practice. Additionally, a working group for the elimination of FGM that brings together representatives of federal government, state governments and NGOs, was established in April 2009.

BENEFITS AND LIMITATIONS OF LEGAL BANS ■ Numerous arguments justify legal bans on FGM: elimination of the practice has a positive impact on girls' and women's development; legislation can protect the most vulnerable members of a society; and legislation makes clear within the respective society that legal protection is appropriate since FGM violates girls' and women's rights.

Legislation also serves to support efforts to eliminate the practice; for instance, non-governmental organisations can draw on it in their work when they need to. The sanctions resulting from the law can also act as a deterrent to those who defend the continuance of the practice. Health service staff can derive support from relevant laws to oppose FGM and the medicalisation of the procedure. Equally legislation can prevent them performing FGM in hospitals or private medical practices. Furthermore, legislation is considered a key factor in social change. The international community supports the policy of African countries to use the law as one method of combating FGM.

Still, legal bans alone cannot change customs and traditions. Frequently, with prosecution by definition turning the practice into a crime, FGM is simply driven underground and practised in secret on younger and younger girls. A further consequence of the fear of criminal prosecution is that health problems are kept secret. Those subjected to FGM are not brought to a doctor following the procedure or endure in silence the severe health consequences from which they suffer.

A legislative ban can also arouse resentment and resistance. If the reasons for ending the practice are not effectively introduced into the society, an unbridgeable gap develops between the ban and the practice, which is regarded as good and right by the majority of the population.

As a rule, legislation should reflect social norms, in this case rejection of unacceptable social behaviour. In many countries, large sections of the population feel no affinity to a modern (national) legal system. National laws are often entirely unknown at the local

The case of Eritrea

Proclamation 158/2007 of 20 March 2007:

As punishment for persons practising FGM, the law stipulates two to three years of imprisonment and a fine of 5,000 to 10,000 nafka (ca. 257 to 514 euros). In cases resulting in death, the period of imprisonment is five to ten years. Persons commissioning the cutting (parents, family members, etc.) are punished with a fine and imprisonment of between six months and one year.

level, where people do not identify with them and thus do not feel obliged to conform to them. To such persons, the positions of local traditional authorities are of far greater significance than national law.

CONCLUSION ■ Many African countries have already passed legislation banning FGM. The mere existence of a law does not necessarily entail compliance, however. There are many reasons for this, not the least of which is a lack of political will to enforce the law and to interfere in a deeply rooted tradition. Only if a law is introduced after thorough preparation and accompanied by flanking measures can it be a strong political and legal instrument for supporting and accelerating social change.

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