

ICRH Publications N° 8

A comparative analysis of the different  
legal approaches towards female genital  
mutilation in the 15 EU Member States, and  
the respective judicial outcomes in  
Belgium, France, Spain, Sweden and the  
United Kingdom

Ghent - Belgium  
April 2004

Els Leye and Jessika Deblonde

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Gent, Belgium, April 2004**

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## **LIST OF ABBREVIATIONS**

CAMS	Commission pour l'Abolition des Mutilations Sexuelles
EU	European Union
FGM	Female genital mutilation
FORWARD	Foundation for Women's Health, Research and Development
ICRH	International Centre for Reproductive Health
NGO	Non governmental organisation
PFCA	Prohibition of Female Circumcision Act
PMI	Protection Maternelle Infantile
SSD	Social Services Department
UK	United Kingdom
UNFPA	United Nations Population Fund
WHO	World Health Organisation

## 1. FOREWORD

The World Health Organisation (WHO) defines female genital mutilation (FGM) as all procedures involving partial or complete removal of the external female genitalia or other injury to the female genital organs, whether for cultural or any other non-therapeutic reasons (1). These procedures are classified into four types ranging from the pricking, piercing, stretching or incision of the clitoris and / or labia (type IV), to the excision of the prepuce and clitoris (type I), excision of clitoris and part or all of the labia minora (type II) and to the stitching / narrowing of the vaginal opening (type III, infibulation) (1).

It is estimated that infibulation accounts for approximately 15% of all cutting procedures being performed on as many as 90% of women in Somalia, Djibouti and Northern Sudan. FGM types I, II and IV comprise the remaining 85% (2).

FGM affects between 100 - 140 million women and girls worldwide and it is estimated that at least 2 million girls a year are at risk of mutilation (1). Even though primarily practised in 28 African countries ranging from parts of central, eastern and western Africa to the Horn of Africa, international migration has extended the practice outside the African continent where it is now an issue of European concern (3).

Within the countries of its origin, campaigns against FGM have come to regard it as a 'harmful traditional practice', which is both deeply rooted within that society and also familiar to it. However, in Western countries, the practice is addressed as a violation of women's rights and is under no circumstances to be justified out of respect for cultural traditions or initiation ceremonies.

A coherent strategy throughout Europe concerning legislative measures and better understanding of their implementation will strengthen the global effort to eradicate FGM. In this context, it is paramount to assess the enabling factors and difficulties inherent to the implementation of the legislation.

This publication is the result of research into the legal provisions related to FGM in 15 European Member States<sup>1</sup>, and of the difficulties of implementing these laws in 5 countries: Belgium, France, Spain, Sweden and the United Kingdom (UK). These countries were selected because of the interesting comparison between those with specific legal provisions against FGM (Belgium, Sweden and the UK), and those where FGM is forbidden under the general penal code (Spain and France). During the course

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<sup>1</sup> In April 2004, the 15 EU Member States were: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Portugal, Spain, Sweden, the Netherlands, and the UK.

of the project, changes in the legal provisions occurred in the UK (the Prohibition of Female Circumcision Act [PFCA] 1985 was changed to the FGM Act 2003 on March 3, 2004) and in Spain (a specific legal provision was introduced on October 1, 2003).

The study was financed by the European Commission's Daphne Programme, and ran from January 1, 2003 to June 30, 2004. The project was carried out by the International Centre for Reproductive Health, Ghent University, Belgium, in partnership with:

- ✓ University of Valencia, Centre of Studies on Citizenship, Migration and Minorities (Javier De Lucas (Director), José García Añón (Coordinator))
- ✓ Foundation for Women's Health, Research and Development - FORWARD UK, (Adwoa Kwateng-kluitse)
- ✓ Lund University, Department of Sociology, Sweden (Sara Johnsdotter)
- ✓ Commission pour l'Abolition des Mutilations Sexuelles, France (Linda Weil-Curiel)
- ✓ Centre for Human Rights, Ghent University, Belgium (Eva Brems).

We kindly acknowledge Gert Vermeulen (Institute for International Research on Criminal Policy, Ghent University) and Patricia Jaspis (examining magistrate in Brussels) for their valuable contribution to the research project.

The 5 partner nations carried out research in their respective countries, and each compiled a national report on their country's legislation and implementation regarding FGM. Copies of these national reports can be requested at the following e-mail addresses and/or websites:

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## 2. INTRODUCTION

Legal provisions pertaining to FGM are found in a variety of domains, including criminal laws and child protection laws. Within Europe, some countries have developed specific legislation on FGM; while in other countries, FGM is prosecutable under the general penal code and/or child protection provisions exist that protect (possible) victims of FGM. European Union (EU) institutions (such as the European Parliament and the Council of Europe) have developed resolutions that amongst other objectives, urge Member States to develop specific legislation. Activists and NGOs sometimes have opposing opinions regarding legislation: while some are committed to lobbying national governments to develop specific legislation, others are convinced that existing criminal laws are sufficient to prosecute FGM. However, in those countries that already have a specific law in place with regard to FGM, no cases have ever reached the court, which raises questions about the efficacy of specific law provisions to prosecute FGM when it has been performed.

In general, before an action can be brought to court, some basic steps are followed:

- ✓ The offence must be considered as punishable by the law
- ✓ The offence must have occurred
- ✓ A case must be reported
- ✓ An investigation must be initiated and evidence found.

With regard to FGM, a number of factors influence this process, which we have tried to assess in an in-depth analysis of laws and law enforcement in each of the 5 EU countries reviewed (Belgium, France, Spain, Sweden and the UK). More specifically, the study focused on the following issues, and factors obstructing the successful implementation of laws:

- ✓ Presence of criminal law provisions with regard to FGM;
- ✓ Presence of FGM practising communities in these countries;
- ✓ Reporting of cases
- ✓ Investigation of reported cases
- ✓ Court cases (if any).

Before going into detail on the criminal and child protection procedures in the 5 countries (chapter 5), and how these procedures are put into practice (chapter 6), a general overview of criminal law provisions with regard to FGM is given in chapter 3. Chapter 4 provides an overview of the practising communities in the 5 European countries, while Chapter 7 identifies factors that both obstruct and favour the implementation of legislation, followed by a discussion in chapter 8. Conclusions and recommendations are included in chapters 9 and 10. This publication concludes with a review of issues that need further discussion when drafting specific laws (chapter 11).

## 3. RESEARCH METHODOLOGY

### 3.1. Questionnaire

This project compiled information about legislation regarding FGM in **all** EU Member States<sup>2</sup>, by sending questionnaires to key informants in those countries (included in annex 1). This questionnaire compiled information on general or specific criminal law procedures and child protection procedures, with regard to female genital mutilation.

### 3.2. Comparative analysis of 5 countries

A comparative pilot study in **5** Member States of the European Union, namely Belgium, France, Spain, Sweden and the United Kingdom, investigated the different legal approaches and respective judicial outcomes. This pilot study was performed in order to make a comparative analysis of factors inhibiting implementation of legislation applicable to FGM. The fieldwork was done at 3 levels:

- Police (registration and assessment of FGM)/child protection authorities
- Prosecution offices
- Court cases

The implementation analysis in this investigation focused on national legislation in the 5 countries, more specifically on criminal laws and child protection laws, in order to have an overview of both criminal approaches to FGM as well as preventive procedures. Criminal laws describe acts deemed unlawful by the state, carrying penalties such as imprisonment and fines. Child protection laws include protective procedures and preventive measures, sometimes without the legal intervention of a judge. Thus, the criminal approach is concerned with punishing parents, guardians or other performers of FGM while child protection laws emphasize the child's role as a possible victim of FGM.

In order to identify and analyse factors inhibiting the implementation of FGM legislation, the following research questions emerged:

1. Is legislation applicable to FGM being implemented in Belgium, France, Spain, Sweden and the UK?
2. What are the inhibiting factors concerning implementation of legislation applicable to FGM in Belgium, France, Spain, Sweden and the UK?

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<sup>2</sup> In April 2004, the 15 EU Member States were: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Portugal, Spain, Sweden, the Netherlands, and the United Kingdom.

The underlying assumptions to these questions are 1) that FGM is still being performed in Africa and consequently also among immigrants and refugees from countries where the practice is prevalent and 2) that in the 5 selected countries, legislation on FGM is not applied.

To assess whether or not legislation is being implemented, fieldwork has been performed based upon a two-folded strategy – an analysis of documents and a case study in a defined geographical area in each of the 5 countries.

### **Document analysis**

The document analysis was performed in the 5 EU countries and based upon a research methodology used in those 5 nations: an analysis of (classified) documents (archival records) with regard to jurisprudence concerning cases related to FGM.

### **Case study**

A case study was performed, to collect and analyse empirical evidence concerning the implementation of legislation applicable to FGM. This case study aimed at identifying whether legislation is implemented, in addition to identifying factors impeding the implementation of legislation.

- The case study started with the definition of a practising community in each country and the corresponding geographic jurisdiction. It then consisted of conducting semi-structured interviews with key-informants.
- The interviews were conducted following an interview guide (see annex II). The main issues addressed by interviews were knowledge about FGM and related laws, possible (dis)advantages of a specific law and difficulties of implementing legislation.
- The interviews were taped, transcribed and analysed by the partners in each country. Analytical categories were defined before the interviews were conducted. The implementation of laws was analysed at the levels of the police, prosecutors, child protection, correctional court and youth court. Obstacles were analysed according to 4 categories:
  - o Knowledge about the practice of FGM,
  - o Knowledge about the legal aspects of FGM,
  - o Perceptions and attitudes towards a legal intervention
  - o Practices and procedures to be followed in case of a legal intervention.

Each partner compiled a national report in which the findings of the fieldwork were described, analysed and discussed at length. Based on these national reports, Leye and Deblonde performed a comparative analysis of the 5 countries.

### ***3.3. Study results***

The study resulted in an inventory of existing laws in Europe, a review of judicial outcomes in 5 EU countries and a review of factors that impede the implementation of existing legislation in the 5 participating countries.

## **4. LEGISLATION IN EUROPE WITH REGARD TO FGM**

### ***4.1. Criminal law provisions in Europe with regard to FGM***

The following provides a review of existing laws regarding FGM in 15 EU Member States (Austria, Belgium, Denmark, France, Finland, Greece, Germany, Ireland, Italy, Luxemburg, Portugal, Sweden, Spain, the Netherlands and the UK). Key informants in all 15 Member States received a questionnaire to assess criminal law provisions in that country (specific or general), child protection provisions and professional secrecy laws, and their respective enforcement. All key informants returned the questionnaires. The following review is based on these completed questionnaires.

#### **General criminal law provisions applicable to FGM in EU Member States**

FGM is forbidden under general criminal law provisions in the following European Member States: Finland, France, Germany, Greece, (Southern) Ireland, Italy, Luxemburg, Portugal and the Netherlands.

At the moment, discussion is ongoing in Portugal and Ireland with regard to the inclusion of a specific criminal law provision for FGM in the Penal Code. In Portugal, the parliament is discussing a resolution to add the issue of FGM to Article 144 of the Penal Code, as Article 144a. In 2001, a Private Members Bill (the Prohibition of FGM Bill 2001) was unsuccessfully introduced in Ireland. In 2003, an Irish coalition of organisations (Irish Family Planning Association, Akidwa (Network of African Women) and Labour Party Women) called on the Irish Government to introduce legislation to prohibit FGM taking place in Ireland.

Criminal prosecutions for FGM have only occurred in France and Italy. Since 1988, 33 cases have been brought to court in France, while in Italy there was one case relating to FGM in 1999, and one case relating to child protection in 1997.

With the exception of the law in Finland, Greece, Ireland, Luxemburg and Portugal, the principle of extraterritoriality is applicable in the context of this general criminal law provision. This principle makes FGM punishable, even if it is committed outside the borders of that country. For example, parents can be prosecuted even if they have their daughters genitally mutilated outside the borders of the country, i.e., if they take their daughter(s) on holiday to the home country where FGM is performed.

Extraterritoriality, with the exigency of the principle of double incrimination, (applicable in the Netherlands and Germany), makes FGM only punishable when it is committed outside the frontiers of the country, but on condition that FGM is also an offence in the country where the crime was committed. In the Netherlands and Germany, an additional condition to this principle is that the offender must have Dutch or German nationality. Following a recent research report (4), the Netherlands is currently discussing the removal of this principle of double incrimination.

The scope of this research did not allow us to perform an in-depth analysis of the principle of extraterritoriality with regard to FGM, but it is obvious that the principle of double incrimination limits the possibilities of prosecuting an FGM offence. Other conditions pertaining to extraterritoriality are the nationality of the victim/offender, age of the victim, residency of victim/offender, and the country in which the offender was located.

Table 1 provides a detailed review of criminal laws in those European Member States where FGM is punishable under general criminal law.

### **Specific criminal law provisions in EU Member States**

To date (April 2004), specific criminal law provisions have been developed in 6 European Member States: Austria, Belgium, Denmark, Spain, Sweden and the UK (table 2). Sweden and the UK were the first countries to develop specific criminal law provisions, in 1982 and 1985 respectively. Sweden changed the law in 1998 and 1999, and the UK changed the PCFA of 1985 to the FGM Act 2003. Laws in the other countries have all been developed recently: in 2002 in Austria, 2001 in Belgium, 2003 in Denmark and Spain. No cases have been brought to court in any of these countries under these specific criminal law provisions.

In each of these countries, the principle of extraterritoriality is applicable. This principle first came into effect in the UK on 3rd March 2004. Prior to that it did not exist, which allowed parents to take their daughters out of the UK with no fear of punishment. The principle of double incrimination was only removed from Swedish law in 1999. As a consequence, all forms of FGM performed on girls residing in Sweden (citizens, refugees, residents, etc.) before 1999, could not be classified as illegal, as long as they had been performed in a country where such acts were not considered criminal (5).

While investigating the specific criminal law provisions, we came across several gaps in their content:

The specific criminal law provisions of Spain and Austria do not clearly specify that the law is specifically related to 'female' genital mutilation. The current Spanish legislation (Article 149 of the Penal Code) reads as follows: "Any person performing whatever form of genital mutilation shall be punished with a sentence of imprisonment of between six and twelve years. [...]" (6). Consequently, this law could also be applicable to the genital mutilation of boys, although it is questionable if this was the intent.

According to the WHO classification, piercing and tattooing fall under type IV of FGM. Specific criminal law provisions are not clear about piercing and tattooing except for Belgium, where these two forms of FGM are explicitly mentioned as being excluded from the law. In the UK, these two forms are implicitly excluded by virtue of the fact that they are not included in the definition of offences constituting FGM, as foreseen in the UK FGM Act 2003 (7).

Furthermore, these specific laws could also be applicable to cosmetic genital surgery, an increasing phenomenon in the West. This type of surgery, such as vaginal tightening, lifting of labia and trimming of labia minora, are performed for non-therapeutic reasons, and the results do not differ from those usually associated with FGM. For example, Swedish law does not mention age or ethnic background in its content, and considers consent irrelevant (5). Consequently, the Swedish Act on FGM technically outlaws genital changes also in non-African women, and all gynaecologists or plastic surgeons performing such alterations to the genitalia for non-medical reasons could be prosecuted. The English report makes reference to this problem, and states: "The question is, therefore, if some non-African women in the UK can purchase designer vaginas, why and how would adult African women be prevented from doing the same?" (7).

Specific criminal law provisions do not mention the issue of re-infibulation (i.e., the frequently requested process of 're-closing' the vagina following childbirth). The question herewith is: what is the difference between a re-infibulation and a normal resuture after episiotomy.

Table 2 provides details on the specific criminal law provisions in Austria, Belgium, Denmark, Spain, Sweden and the United Kingdom.

#### ***4.2. Other legislative texts indirectly addressing the practice of FGM***

In all Member States, other laws exist that can be brought against FGM, such as child protection procedures, laws addressing doctors, other officials and the public's

reporting duty in the event of suspicion of violence, unlawful medical practice, or texts that deal with the “duty to help a person in danger”. Tables 3 and 4 give details on 2 of the most important laws: child protection procedures and laws with regard to professional secrecy.

### **Child protection measures**

Child protection laws pertaining to child abuse exist in all 5 countries that were included in the in-depth analysis of this study, but in none of these countries do specific child protection provisions with regard to FGM exist. Specific child protection guidelines or protocols that guide those who are confronted with a girl at risk of FGM, are present in all 5 countries except in Belgium. In case of a suspicion of future performance of FGM, voluntary child protection measures are taken, such as a hearing with the family and parent counselling. Compulsory child protection measures are taken only as a last resort (e.g. removing the child from the home).

In France, Spain, Sweden and the UK, child protection interventions with regard to FGM have taken place. These interventions are discussed in detail in chapter 6.

### **Professional secrecy provisions**

Social workers and health professionals can have an important role in reporting actual cases or suspicion of FGM, or situations of risk. Yet it is critical for professionals to be knowledgeable about the laws in their respective countries, and whether such reporting is considered their duty or their right.

In France, Spain, Sweden and the UK, professionals have a duty to report child abuse, either to social authorities (Sweden, France and the UK) or to judicial authorities (France, Spain). In Belgium, professionals do not have a duty but a right to report.

Table 1: General criminal law provisions applicable to FGM in EU member states

Country	Criminal law provision	Criminal offence	Aggravating circumstances increasing penalty	Extraterritoriality	Criminal prosecutions for FGM	Penalty
<b>Finland</b>	Chapter 21, sections 5&6 of the Penal Code: assault or serious assault	I Bodily injury I Serious bodily injury I Illness, unconsciousness	I Loss of essential parts of the body I Offence endangers life of the victim I Offence causes death	No	No	I Assault: fine or imprisonment of max 2 years I Serious assault: imprisonment from 1 year to 10 years
<b>France</b>	Article 222-9/10 of the Penal Code: mutilation	Mutilation	I Offence against minor I Offence performed by parent/ person having custody (prosecuted as accomplices)	Yes, if the victim is a French national	Yes	Up to 20 years of imprisonment
<b>Germany</b>	Sections 224 and 226 of the Penal Code: serious and grave bodily harm	I Bodily injury I Serious bodily injury I Voluntary corporal lesion I Mutilation	I Loss of essential parts of the body I Permanent and incurable corporal lesions	I Yes, if the victim is a German national and exigency of double incrimination or I Offender is German and he/she has not been extradited to the country where the crime was committed	No	I Serious bodily harm: imprisonment from 6 months to ten years, and in less severe cases, from 6 months to 5 years I Serious bodily harm: from 1 year to 10 years
<b>Greece</b>	Articles 308-315 of the Penal Code: bodily injury	Bodily injury I Serious bodily injury	I Offence against minor I Offence performed by parent/ person having custody I Loss of essential parts of the body I Permanent and incurable corporal lesions I Offence endangers life I Offence causes death	No	No	The penalty varies from 10 years imprisonment to pecuniary, depending on the type, seriousness and special conditions of the offence
<b>Ireland</b>	Criminal Justice Act 2000: bodily injury	I Bodily injury I Serious bodily injury I Mutilation	I Offence against minor I Loss of essential parts of the body I Permanent loss of working capacity I Offence endangers life I Offence causes death	No	No	No details received
<b>Italy</b>	Article 583 of the Penal Code: bodily injury or serious bodily injury	I Serious bodily injury I Voluntary corporal lesion I Mutilation	I Offence performed by parent/ person having custody I Loss of essential parts of the body I Permanent and incurable corporal lesions	Yes, if offender is found on the territory and if a claim is made by the victim	Yes	Depending on the degree of injury, imprisonment from 3 to 12 years

Country	Criminal law provision	Criminal offence	Aggravating circumstances increasing penalty	Extraterritoriality	Criminal prosecutions for FGM	Penalty
<b>Luxemburg</b>	Article 392 of the Penal Code: voluntary corporal lesion	Voluntary corporal lesion	I Offence against minor I Offence performed by parent/ person having custody I Loss of essential parts of the body I Permanent and incurable corporal lesions I Permanent loss of working capacity I Offence causes death I Offence causes disease I Offence causes serious mutilation I Offence carried out with premeditation	No	NO	Voluntary corporal lesion: 8 days to 6 months imprisonment and fine of 251 to 1000 euros With premeditation: 1 month to 1 year, fine of 500 to 2000 euros
<b>Portugal</b>	Articles 143-149 of the Penal Code: bodily injury or serious bodily injury	I Bodily injury I Serious bodily injury	I Offence against minor I Offence performed by parent/ person having custody I Loss of essential parts of the body I Permanent and incurable corporal lesions I Permanent loss of working capacity I Offence endangers life I Offence causes death	No	No	Bodily injury: up to 3 years Serious bodily injury: 2 to 10 years
<b>The Netherlands</b>	Articles 300-304 Penal Code: bodily injury or serious bodily injury	I Bodily injury I Serious bodily injury	I Offence performed by parent/ person having custody I Serious corporal lesions I Offence causes death	Yes Exigency of double incrimination AND on the condition that the offender is a national OR Liability for preparatory acts in the Netherlands concerning a FGM operation abroad	No	Bodily injury: 2 years imprisonment or fine Serious bodily injury with premeditation: imprisonment of 12 years max or fine

Table 2: Specific criminal law provisions applicable to FGM in EU member states

	Austria	Belgium	Denmark	Spain	Sweden	United Kingdom
<b>Specific criminal law provision</b>	Section 90 of the Penal Code	Article 409 of the Penal Code	Articles 245-246 of the Penal Code	Article 149 of the Penal Code	Act prohibiting genital mutilation of women, 1982:316 and changed in 1998 and 1999	PFC Act 1985 and changed in the FGM Act 2003
<b>Date of entering into force</b>	01/01/2002	27/03/2001	1/06/2003	1/10/2003	1/07/1982, modified in 1998 and 1999	1985 modified to: FGM Act 2003 on March 3, 2004
<b>Applicable on genital mutilation of boys</b>	Yes	No	No	Yes	No	No
<b>Which forms of FGM are forbidden?</b>	Clitoridectomy Excision Infibulation All other forms  Re-infibulation not specifically stipulated as illegal.	Clitoridectomy Excision Infibulation All other forms, except piercings and tattoos.  Re-infibulation not specifically stipulated as illegal.	Clitoridectomy Excision Infibulation -  Re-infibulation not specifically stipulated as illegal. National guidelines are provided.	Clitoridectomy Excision Infibulation All other forms  Re-infibulation not specifically stipulated as illegal.	Clitoridectomy Excision Infibulation All other forms  Re-infibulation not specifically stipulated as illegal. National guidelines are provided.	Clitoridectomy Excision Infibulation All other forms, except piercings, tattoos and stretching of the labia. Re-infibulation not specifically stipulated as illegal. Health professional guidelines are provided.
<b>Criminal offence consists of</b>	Performance Participation I – Attempt to I –	Performance Participation Facilitation Attempt to I –	Performance Participation I – Attempt to I –	Performance Participation Facilitation* Attempt to I –  * Only if there is co-authorship	Performance Participation Facilitation Attempt to Procure for Failure to report knowledge of crime	Performance Participation Facilitation I – Procure for Counsel to procure
<b>Aggravating circumstances</b>	I – I – I Loss of essential parts of the body I Permanent and incurable corporal lesions I Permanent loss of working capacity I – I Offence causes death of the victim	I Offence is committed against a minor I Offence is performed by a parent/person having custody I – I Permanent and incurable corporal lesions I Permanent loss of working capacity I – I Offence causes death of the victim	I – I – I Loss of essential parts of the body I Permanent and incurable corporal lesions I – I Offence endangers life of the victim I Offence causes death of the victim	I Offence is committed against a minor I Offence is performed by a parent/person having custody I – I – I – I – I – I –	I – I – I – I – I Offence endangers life of the victim I – I The crime involved particularly reckless behaviour	I Not mentioned in the 1985 Act, or in the 2003 FGM Act

	Austria	Belgium	Denmark	Spain	Sweden	United Kingdom
<b>Does the consent of the victim affect the legal qualification of the act?</b>	No	No	No	No	No	No
<b>Applicability of the principle of extra-territoriality</b>	Yes	Yes	Yes	Yes	Yes	Not in the 1985 Act, but in the 2003 FGM Act
<b>Conditions for the applicability of the principle of extra-territoriality</b>	<ul style="list-style-type: none"> <li>I Double incrimination, unless both the victim and offender are Austrians</li> <li>I –</li> <li>I –</li> <li>I –</li> <li>I –</li> <li>I Offender must be found on the territory if he/she is a foreigner</li> </ul>	<ul style="list-style-type: none"> <li>I –</li> <li>I –</li> <li>I –</li> <li>I Victim is a minor</li> <li>I –</li> <li>I Offender must be found on the territory</li> </ul>	<ul style="list-style-type: none"> <li>I Double incrimination</li> <li>I –</li> <li>I Victim is a resident</li> <li>I –</li> <li>I –</li> <li>I –</li> </ul>	<ul style="list-style-type: none"> <li>I Double incrimination</li> <li>I –</li> <li>I –</li> <li>I –</li> <li>I Complaint of the victim</li> <li>I –</li> <li>I Offender has not been judged, absolved, condemned or indulted in a foreign country for the same charges</li> </ul>	<ul style="list-style-type: none"> <li>I –</li> <li>I –</li> <li>I –</li> <li>I –</li> <li>I –</li> <li>I Offender is in some way connected to Sweden</li> </ul>	<ul style="list-style-type: none"> <li>I Victim is a national or permanent resident</li> <li>Or</li> <li>I Offender is a national or permanent resident</li> </ul>
<b>Criminal prosecutions for FGM?</b>	No	No	No	Yes I In these court cases FGM was still treated under general criminal law	No	No
<b>Penalty</b>	Depends on the seriousness of the injury (up to 15 years of imprisonment if victim dies)	<ul style="list-style-type: none"> <li>I Performance: imprisonment from 3 to 5 years</li> <li>I Attempted performance: imprisonment from 8 days to 1 year</li> </ul>	Up to 6 years if the act does not have severe consequences. If the practice implies "severe consequences" the penalty can be up to 10 years.	6 to 12 years imprisonment	Imprisonment for max 4 years Imprisonment for min 2 years and max 10 years	<ul style="list-style-type: none"> <li>I From conviction or indictment, to imprisonment for a term not exceeding 14 years, or a fine or both (FGM Act 2003)</li> <li>I From summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory minimum or both (PFCA 1985)</li> </ul>

Table 3: Child protection measures in the EU

	Belgium	France	Spain	Sweden	United Kingdom
<b>Child protection provision(s)</b>	Child Protection law (1965)	Article 375 of the Civil Code	I Civil Code Articles 9.6, 92, 93, 156, 158, 216.2, 217 I Parliamentary Law of Judiciary Power: Articles. 22.3 and 5 I National child protection laws: organic law 21/1987, 11th November and organic law 1/1996, 15th January I Autonomous Communities have their own child protection laws	I Social Services Act I Care of Young Persons Act (1990) I Act regarding Special Representative for a Child (1999)	Children Act 1989
<b>FGM is specifically mentioned</b>	No	No	No	No	
<b>A specific FGM child protection guideline is provided</b>	No	Yes I Regional guideline applicable in Paris I Information brochures disseminated nationally	Yes I Girona Protocol (only applicable in Catalonia) I Interdisciplinary Commission on FGM was constituted on 14/11/2003 to discuss and approve the "Aragon Protocol"	Yes, elaborated by the Swedish Board of Health and Welfare (2002)	Yes, in the sense that FGM is mentioned in the chapter entitled "child protection in specific circumstances" elaborated by the Department of Health (1999)
<b>Voluntary child protection measures</b>	I Hearing with the family I Informing, counselling and warning	I Hearing with the family I Informing, counselling and warning	I Hearing with the family I Informing, counselling and warning	I Hearing with the family I Informing, counselling and warning	I Meeting with the family I Informing counselling and warning
<b>Compulsory child protection measures</b>	I Certain acts are subject to court permission, e.g. travel permission I - I Removing the child from the family I Suspending parental authority	I Certain acts are subject to court permission, e.g. travel permission I - I Removing the child from the family I Suspending parental authority	I Certain acts are subject to court permission, e.g. travel permission I Periodic medical (genital) examination of a child I Removing the child from the family I Suspending parental authority	I - I Medical (genital) examination of a child I Removing the child from the family I Suspending parental authority	I Certain acts are subject to court permission, e.g. travel permission I - I Removing the child from the family I Suspending parental authority
<b>Child protection interventions</b>	No	Yes	Yes	Yes	Yes

Table 4: Professional secrecy provisions in the EU

	Belgium	France	Spain	Sweden	United Kingdom
<b>Professional secrecy provision(s)</b>	Article 458 and 458bis of the Penal Code	Article 226-13 and 226-14 of the Penal Code Article 434-3 of the Penal Code	Article 263 of the Criminal Procedure Law	Secrecy Act (1980)	Working Together to Safeguard Children document Professional guidelines
<b>FGM is specifically mentioned</b>	Yes	No	No	No I Specific FGM guidelines elaborated by the Swedish Board of Health and Welfare (2002)	Yes
<b>Which professionals are envisaged?</b>	Health professionals "Other professionals bound to secrecy" such as education staff and social workers	Health professionals	Lawyers; Priests	Health professionals Social authorities	Health professionals Social workers Police; Education staff
<b>Conditions for disclosing information</b>	Article 458bis: crime of FGM is committed against a minor AND the victim is in danger AND he/she cannot ensure the integrity of the minor	When the law imposes or authorises disclosure, e.g. in case of deprivation or abuse, including sexual harm or assault committed against a minor or any person unable to protect herself	Not specified	In case of any crime which may lead to a minimum of two years imprisonment If the purpose is to prevent a crime	When there is a need to protect the child's welfare and safety
<b>Duty or right to report</b>	Right to report to prosecution authorities	Duty to report to administrative or judicial authorities	Health professionals and teachers have a duty to report to police or judicial authorities Citizens have an obligation to denounce to prosecutor, competent court instruction judge or police	Duty to report any suspicion of child abuse to the social authorities Social authorities may report a crime involving a child to the police	Duty to report to social services

## 5. PRACTISING COMMUNITIES IN THE 5 EU COUNTRIES

A recurrent issue when talking about FGM is the magnitude of the problem in Europe. To date, reliable cross-national comparative prevalence data on the epidemiology and practice of FGM in Europe are largely unavailable (8). Estimating the prevalence of women who have experienced FGM and the number of girls at risk of FGM, presents several critical problems.

The tables below show the number of women who might have suffered FGM, and the number of girls in the age group most at risk of FGM (0-17 years old). These estimations are based on the nationalities of women (country of birth or citizenship), but do not take into account the ethnic groups to which these women belong, which is unfortunate, because ethnicity or the region of origin would give a much more accurate picture of FGM practices than nationality. The figures also do not take into account asylum seekers or women residing in the countries illegally.

The percentages of women with FGM in the various African countries of origin are also based on estimations that vary in quality. For example, the African prevalence estimations in the Belgian and United Kingdom tables are derived from the following publication: *“FGM. Integrating the prevention and management of the health complications into the curricula of nursing and midwifery. A teacher’s guide”*. (WHO, 2001). WHO classified the estimations from those that derived from national surveys and that were the most reliable (marked with a +) over ‘other estimations’ (marked with \*) to those that were questionable (marked with -) (9). African prevalence estimations contained in the Swedish national report, are based on WHO figures from 1998 (1), while the national report of Spain has taken prevalence estimations mentioned in Kaplan et al (2002) (2), that are based on figures from the United Nations Population Fund (UNFPA) (date of these figures is not mentioned).

The foreign population of a country tends to change rapidly due to migration flows (numbers of migrants and diversities in origin).

Comparisons between countries are very difficult. Each country’s office of statistics has its own methods of keeping records of immigrants, which makes comparison impossible.

For the purposes of this project, we deemed girls to be at risk of FGM if they were within the age group 0 to 17 years and come from (or whose parents come from) a country where FGM is performed.

In conclusion, the following statistics are not conclusive, but provide some indication of the possible prevalence of FGM in the 5 European countries.

## 5.1. Sweden

In Sweden, the largest groups of Africans from an FGM practising country are Somalis. They live primarily in Sweden's 3 biggest cities: Stockholm, Gothenburg and Malmö.

Included in the table are the countries where FGM is practised by at least 20% of the population. The prevalence estimations are provided by the WHO (10), and the population figures by Statistics Sweden ([www.scb.se](http://www.scb.se), accessed August 28, 2003).

Not included in the table are: persons born in Sweden with at least one parent born in a foreign country, so-called "second generation immigrants" (5).

Table 5 African population in Sweden in 2002

Country of birth	Prevalence in Africa (WHO, 1998)	Total population	Females 0-15 years according to country of birth	Females 0-15 years according to citizenship	Number of girls in age group 'at risk' (0-15 years)
<b>Somalia</b>	98%	14,005	1,028	1,161	± 1,138
<b>Ethiopia</b>	85%	11,409	362	137	±308
<b>Eritrea</b>	95%	3,943	92	83	±86
<b>Gambia</b>	80%	2,681	115	140	±112
<b>Egypt</b>	97%	2,279	74	57	±72
<b>Kenya</b>	50%	1,402	115	59	±58
<b>Ghana</b>	30%	1,084	35	39	±12
<b>Nigeria</b>	50%	825	15	23	±12
<b>Sudan</b>	89%	793	57	60	±54
<b>Liberia</b>	60%	609	15	6	±9
<b>Senegal</b>	20%	273	15	14	±3

## 5.2. United Kingdom

It is impossible to ascertain the numbers of practising communities living in the UK, because the census information does not categorise communities by country of origin. Black people are only offered the following categories of identification: Black African Caribbean, Black African and Black Other (7). The figures below are rough estimates of possible prevalence based on statistics from the 1999 Labour Force Survey. These figures are based on 6 out of 28 African countries that practice some form of FGM, and only those immigrants that outnumber 6,000 are included in this Survey (7).

This Survey indicates that possibly 5,444 girls under 16 years are at risk of FGM and 69,875 women are already affected. If one extrapolates further (using the WHO May 2001 prevalence figures) to include the remaining countries known to practice FGM,

one could assume that nearly 22,000 girls are at risk and some 279,500 women already affected (7). Most of the women at risk come from Kenya, Somalia and Egypt.

Table 6 Female African population in UK in 1999 (7)

Country	Prevalence in Africa (WHO, 2001)	Total females under 16	Total females over 16	Total number of girls in age group at risk (under 16)	Total number of women over 16 possibly affected by FGM
<b>Kenya</b>	38%(+)	1,198	59,339	455.24	22,548.82
<b>Somalia</b>	98% (+)	3,460	11,985	3,390.80	11,745.30
<b>Egypt</b>	97%(+)	371	12,055	359.87	11,693.35
<b>Nigeria</b>	25%(+)	3,876	34,067	969.00	8,516.75
<b>Ghana</b>	30%(* )	515	22,147	154.50	6,644.10
<b>Sierra Leone</b>	90%(* )	1	6,050		5,445
<b>Tanzania</b>	18%(+)	0	12,081		2,174.58
<b>Uganda</b>	5% (-)	2,281	22,203	114.05	1,110.15

### **5.3. Belgium**

In the table below, foreigners who obtained Belgian nationality (population register) are included as well as foreigners who received permission to reside in Belgium for more than 3 months, but who did not obtain Belgian nationality (foreigners register). Asylum seekers are not included in this table; they are registered in the 'waiting register' (11).

The total number of female foreigners in Belgium from African FGM risk countries is 12,415. These figures are based on data from the population and foreigners' registers in Belgium on January 1, 2002.

To estimate the prevalence of women living in Belgium that might have suffered FGM, and the number of girls that might be at risk of being genitally mutilated, we have taken the female foreign population in Belgium according to nationality and age group and multiplied these numbers by the estimated prevalence in the African country of origin.

The total number of women that could be affected by FGM in Belgium is around 2,700, with some 500 girls who are in the age group that might be at risk of FGM (0 to 14 years). Most of these women/girls are from Ghana and the Democratic Republic of Congo (former Zaire).

#### Table 7

Female population with/at risk of FGM according to most prevalent nationalities, Belgium, January 1, 2002 (12)

FGM risk country	Total number of women in Belgium (0->65 yr)	Total number of girls in Belgium (0-14 yr)	Prevalence in Africa (WHO, 2001)	Estimated number of women in age group at risk of having FGM/at risk of being mutilated (0-\65yr)	Estimated number of girls in age group at risk of being mutilated (0-14yr)
<b>Ghana</b>	1,144	231	30% (*)	343.2	69.30
<b>DR Congo</b>	6,624	1,476	5% (-)	331.2	73.80
<b>Guinea</b>	243	48	99% (+)	240.6	47.82
<b>Egypt</b>	231	48	97% (+)	224.1	46.56
<b>Cameroon</b>	1,011	158	20% (-)	202.2	31.6
<b>Somalia</b>	197	58	98% (+)	193.1	56.84
<b>Nigeria</b>	640	96	25% (+)	160	24.00
<b>Ivory Coast</b>	335	43	43% (+)	44.1	18.49
<b>Sierra Leone</b>	109	29	90% (*)	98.1	26.10
<b>Ethiopia</b>	147	25	85% (*)	125	21.25
<b>Burkina Faso</b>	151	20	72% (+)	108.7	14.4

#### 5.4. Spain

Immigrants from FGM risk countries with a medium or high prevalence of FGM, constitute a clear minority among immigrants in Spain. Most of the women/girls come from Senegal, the Gambia, and Ghana.

About three thousand migrant girls, younger than 16 years, come from countries where FGM is practised. The Gambian girls represent the major risk group, both due to their number (1,265 girls younger than 16 years in November 2001) and to the index of women undergoing FGM in their country of origin (80%).<sup>3</sup>

Five autonomous communities - Catalonia, Andalusia, Madrid, Canary Islands and Aragon - have the greatest concentration of people from countries with a high prevalence of FGM. Although Catalonia does not have a significant number of girls at risk of suffering FGM, it is slightly higher than that of the rest of the autonomous communities in Spain (6).

<sup>3</sup> Prevalence in Africa is based on Kaplan et al (2002) (13)

Table 8 Female African population in Spain, census 2001 (6)

Country	Prevalence in Africa (Kaplan, 2002)	Total residents	Total no. of women	% of women	Women < 16 y.
<b>Senegal</b>	20%	11,532	2,295	19.9	556
<b>Gambia</b>	80%	8,473	2,838	33.4	1,265
<b>Guinea</b>	70%	3,710	1,523	41.5	343
<b>Mauritania</b>	40%	3,643	745	20.5	240
<b>Mali</b>	75%	3,313	308	9.2	96
<b>Ghana</b>	30%	3,176	527	16.5	90
<b>Guinea-Bissau</b>	70%	2,218	407	18.3	154
<b>Cameroon</b>		1,398	558	39.9	102

### ***5.5. France***

The total African population in France in 1990 was 137,438. The total population from Mali, Senegal and the Ivory Coast was 89,059. Paris is the region where most of the African population lives. Africans have also settled in Normandy (Le Havre), the North (Lille) and the cities of Lyon and Marseille (14)

No recent figures were available from France's national report.

## **6. GENERAL DESCRIPTION OF THE REFERRAL PROCEDURES IN THE 5 COUNTRIES**

As already described legal provisions pertaining to FGM are found in a variety of sources including criminal laws and child protection laws. In order to transform these legal provisions into practice, a succession of actions must be undertaken, involving the necessary public officials and respecting prescribed formalities. Referral procedures describe this process and, as such, are a tool for translating legal provisions into practice.

In all 5 EU countries, referral procedures differ according to actual prevalence of FGM or fear of future performance of FGM. Once the crime has been committed, criminal procedures should be started with the objective to prosecute parents, guardians or other performers of FGM. When the main concern is to protect the child's well-being and physical health and to prevent harm, child protection provisions should be initiated.

Both procedures, emphasising respectively the dimension of punishment and prevention, contain an established series of steps, starting with a report of a case or a suspicion of FGM, then an investigation phase and ending with the decision whether or not to take legal action.

### ***6.1. Criminal procedures***

#### **Sweden**

According to the Act Prohibiting FGM, all citizens have a duty to report information and knowledge about a performed act of FGM to the police. Furthermore, based on the Social Services Act, a crime involving children must be reported to the social authorities. While professionals in the health sector are bound to observe secrecy in their work, they are however obliged to report any suspicion of child abuse to the social authorities. The latter, also bound to secrecy, have the right to report a case of FGM to the police if they consider it appropriate for the best interest of the child.

If there is a suspicion that FGM has been performed, social authorities have a duty to undertake actions and measures in order to protect the child. A genital examination by a physician is recommended, although such a procedure requires cooperation from the parents.

Cases reported to the police are referred to the prosecution authorities and a prosecutor is appointed as head of the investigation. In the process of evidence

gathering, the prosecutor may request a special representative for the child who can authorise a medical examination, even when the parents refuse to grant permission. If it is possible to conclude that FGM has been illegally performed, the prosecutor can take the case to the criminal court.

### **United Kingdom**

Citizens are generally not duty-bound to report knowledge concerning a performed crime to the statutory sector that comprises, amongst others, the Department of Social Services, Local Education Authorities and the police. However, according to the policy document “Working together to safeguard children” issued by the Department of Health and endorsed by professional guidelines, any professional identifying a child who is suffering or is at risk of suffering significant harm, is duty-bound to share that information with the Social Services Department to ensure that the child is protected.

If there is a belief that a child has been subjected to FGM, a child protection investigation will be initiated as described in Section 47 of the Children Act. The Social Services Department acts as the lead agency. A multidisciplinary strategy meeting, involving police child protection, health and education staff is organised in order to determine the way forward for the protection of the child and to decide upon the opportunity to start criminal procedures.

The police conduct the criminal investigation. Based on the documentation prepared by the police, the Crown Prosecution Services decide whether or not the matter should be taken to court.

### **Belgium**

There is no legal obligation for members of the public to disclose information concerning a performed crime to the police or prosecution authorities. According to article 30 of the Code of Criminal Procedure, every citizen who is witness to an attempt upon somebody's life has the moral obligation to provide information to prosecution authorities concerning the place where the crime took place and/or the place where the offender can be found. There is no sanction foreseen in case of an omission to denounce. [...] Article 29 of the Code of Criminal Procedure determines that all public officials, such as police staff, have the duty to report any knowledge about a crime to the prosecution authorities. In case of omission to denounce, an administrative sanction can be imposed.

Cases reported to the police are referred to the prosecution authorities and a prosecutor is appointed as head of the investigation. At this point, two different scenarios can be followed. In the majority of cases, the prosecutor him/herself leads

the investigation in order to find evidence of the crime. It is ultimately the prosecutor who decides whether a case should be closed or taken to court.

Another scenario is initiated if the investigation requires compulsory measures, for example the performance of a medical examination. The prosecutor appoints an examining judge who will lead the investigation, under the auspices of an examining court. Upon receiving the conclusions of the investigation, the prosecutor can decide whether to close the case or to take it into a pre-trial examination in chambers, where a debate with all involved parties is organised. If the probable conclusion is that FGM was illegally performed, a court trial will be opened.

### **France**

According to Article 434-3 of the New Penal Code, every citizen is duty-bound to report the maltreatment of minors to administrative or judicial authorities. Article 226-14 of the New Penal Code stipulates that professional secrecy is not applicable when the law imposes or authorises the disclosure of confidentiality, for example as foreseen in cases of maltreatment of minors.

When the police are informed of a performed act of FGM, a first enquiry is initiated. In the process of evidence gathering, a medical examination of the victim is carried out with the objective of ascertaining whether or not mutilation was performed. The police then report findings to the prosecutor. Once the police investigation has been concluded, the prosecutor requests the opening of a criminal case, which is then handed over to an investigating judge who will be in charge of the proceedings. If the victim is a minor, a 'tutor ad hoc' is appointed by the investigating judge in order to safeguard the rights of the child. The tutor will, for example, choose a lawyer who will defend the child's interests.

The investigation explores how, when, where and with whose help or assistance the mutilation was performed. The investigating judge will request the opening of a trial at the Assize Court in order to judge the performer (if identified) and the parents as accomplices. This court is composed of three judges and a jury of nine citizens. If the Court decides on a 'guilty' verdict, the three judges examine the claims for damage that are introduced by the civil parties.

### **Spain**

Article 264 of the Criminal Procedure Law states that every citizen is obliged to denounce to prosecutors, the competent courts, investigating judges or the police, whatever knowledge they have about a performed crime. There is no sanction foreseen in case of an omission to denounce, except in the case of being witness to a crime. According to Article 262 of the Criminal Procedure Law, anyone who by reason of their status or profession has knowledge about a committed crime is duty-

bound to report it to prosecutors, the competent courts, instruction judges or the police. In case of omission to denounce, an administrative sanction is imposed. There is no exemption related to professional secrecy, except with regard to lawyers and priests (art. 263 Criminal Law Procedure).

An investigating judge treats cases directly reported to the competent court and may decide to open a criminal investigation. Cases reported to the police are referred to the prosecutor. He or she requests the opening of a criminal case, which is then handed over to an investigating judge who will lead the investigation as described in Article 311 of the Criminal Procedure Law. In the process of evidence gathering, the investigating judge may request a medical/genital examination of the victim.

After this investigation phase, the prosecutor may ask the investigating judge whether to close the case or to open the oral phase of the criminal procedure. In order to open the oral phase of a criminal procedure ('fase de juicio oral'), the judge is bound by the prosecution's requests. If the prosecutor asks for the case to be disallowed or not prosecuted, the judge must order the case to be disallowed. If there are several prosecutors (public and private), the judge is bound to requests made by all of them. It is also the judge who is bound to open the oral phase of a criminal procedure if asked to do so by any part of the prosecution.

## ***6.2. Child protection procedures***

### **Sweden**

According to the Act Prohibiting FGM, all citizens are duty-bound to report information and knowledge about a planned performance of FGM to the police. Furthermore, based on the Social Services Act, suspicion of future crime involving a child must be reported to the social authorities. Professionals in the health sector are bound to observe secrecy in their work, however, they are obliged to report any suspicion of child abuse to the social authorities. The latter, also bound by secrecy, have the right to report a suspicion of future performance of FGM to the police if they consider it appropriate for the best interest of the child.

If there is an impending risk that FGM will be performed, social authorities have a duty to undertake actions and measures in order to protect the child. A hearing with the family is organised and voluntary child protection measures can be provided. If a person under the age of 18 years has an immediate need for care or protection which cannot be met by means of voluntary solutions, the social authorities may

decide to immediately take that person into custody<sup>4</sup>. This compulsory decision, formally taken by a social committee, must be submitted within a week to the county administrative court where all the legal parties have their legal representatives. The judge and the lay assessors of the administrative court can confirm or revoke the decision taken by the social authorities. If the decision is confirmed, reconsideration in court must take place at least once in a six-month-period. During this time, the social authorities must take measures in order to solve the situation in the best interest of the child.

### **United Kingdom**

Citizens generally do not have the legal duty to report knowledge concerning a suspicion of a future crime to the statutory sector. However, according to the policy document “Working together to safeguard children”, issued by the Department of Health and endorsed by professional guidelines, any professional identifying a child at risk of suffering significant harm is obligated to share that information with the Social Services Department to ensure that the child will be protected.

If there is a belief that the child is likely to be the subject of FGM, a child protection investigation is initiated as described in Section 47 of the Children Act 1989. The Social Services Department is the lead agency. A multidisciplinary strategy meeting, involving police, child protection, and health and education staff, is organised in order to determine the way forward for the child’s welfare and to ascertain the level of risk to the child. In the first instance, the parents/guardians will be approached and concerns about the girl(s) protection explored with them. They will be informed about the law and the consequences if the law is disregarded. If parents are not willing to co-operate and it is deemed that the girl is at risk of FGM, court procedures will be initiated. According to the Children Act 1989, in cases where there is an impending risk that a child will be taken outside the United Kingdom for purposes of FGM, possible court orders can include being prohibited to leave the country (Prohibited Steps Order). Removal of the child from the family is a last resort, but is also a legally available option to the Social Services Department, if necessary. If, however, the family is willing to work with the Social Services Department and the girl(s) is able to

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<sup>4</sup> In custody means that children are placed in a so-called “family home” (foster parents) or in a care home or “residence” (institution). In this case (of compulsory measures), parents are still the legal guardians, but they have lost their right to make decisions concerning the child.

remain at home and be protected from FGM, the girl(s) may be kept on the 'at risk' register for some time until all threat of FGM is eliminated.

### **Belgium**

There is no legal obligation for members of the public to disclose information concerning a suspicion of a future crime. In the context of Article 458 of the Code of Criminal Law, a professional bound to secrecy can disclose confidential information as an '*ultimum remedium*' in order to prevent an immediate and serious threat to another right that outweighs the duty of professional secrecy. Appealing to this principle, information can be disclosed with the objective of protecting the physical or psychological integrity of a girl at imminent risk of genital mutilation, on the condition that there is an immediate danger and there is no other way to protect her. Article 29 of the Code of Criminal Procedure determines that all public officials, such as police staff, have a duty to report any knowledge about a crime to the prosecution authorities.

Child protection authorities follow-up references concerning an impending risk for FGM. A hearing with the family is organised and parents or guardians are counselled. If the health, security or morals of a minor are endangered by the behaviour of the parents or guardians, the case is referred to the prosecution authorities. Based on Article 36.2, the intervention of the youth court can be requested and a variety of measures can be taken in order to protect the child, such as the transfer of the child to another home.

In case of an immediate and serious threat to the child's physical or psychological integrity, and if the parents or guardians are unwilling to co-operate, the youth court can pronounce the suspension of parental authority as described in Article 32 of the Child Protection Law, if it is deemed in the best interests of the child. According to Article 33 of the Child Protection law, the suspension of parental authority can be integral, including the removal of the child from the family. The youth court can also pronounce a partial suspension, stipulating explicitly which rights are excluded from parental authority. In the latter case, the youth court can establish that the family remains together but that certain acts of the parents are subject to court permission, for example, the parental decision to take the girl abroad 'on holiday'. A tutor is appointed to be in charge of the rights that are excluded from parental authority.

### **France**

As described in Article 223-6 of the New Penal Code, every citizen who can prevent a crime from being committed or an attempt upon the physical integrity of a person by an immediate action, without incurring danger to him-/herself or others, and voluntarily fails to do so, is punishable by law. In this context, citizens must report a suspicion of a future crime to administrative or judicial authorities.

Child protection authorities lead the administrative proceedings. A hearing with the family can be organised and child protection measures can be provided with the consent of the parents or guardians. In case of an immediate and serious threat to the child's physical or psychological integrity, and if the parents or guardians are unwilling to co-operate, judicial proceedings are initiated and the case is referred to a juvenile judge.

According to Article 375 of the Civil Code, the intervention of a juvenile judge can be requested by the parents, by the person or administrative body who has custody, by the guardian, by the minor him-/herself or by the public prosecutor if the health, security or morality of a minor are endangered. The juvenile judge organises a hearing with the parents and may decide that there is a need for further investigation. The juvenile judge can take a variety of measures in order to protect the minor. In the context of an impending risk of FGM, a court order can be delivered with the objective of removing the child at risk from the family or prohibiting the removal of the child from French territory in case the danger lies abroad.

### **Spain**

As described in Article 450.2 of the Penal Code, every citizen who can prevent a crime being committed or an attempt upon somebody's life, his/her physical integrity or his/her sexual liberty, by an immediate action without incurring danger to him-/herself or others, and voluntarily fails to do so, is punishable by law. In this context, citizens can report a suspicion of a future crime to the prosecutor, the investigating judge or the police. Apart from this duty to report, professionals with knowledge about a child at risk are required to inform the relevant authorities about this situation as regulated in the Child Protection Laws (Ley 21/1987, 11/11 and Ley Organica 1/1996 de 15/01, de Protección Jurídica del Menor).

If there is an impending risk of FGM, protective measures in co-operation with the family are taken by social authorities or by a judge. A hearing with the family is organised and parents or guardians are counselled. If there is an immediate need for care or protection, which cannot be met by means of voluntary solutions, compulsory measures are taken by the judge. The judge can take a variety of measures in order to protect the minor, such as issuing a prohibition to leave the country, or an order to return after a designated period of time, confiscating the girl's passport or demanding a medical examination by a doctor.

## **7. IMPLEMENTATION OF EXISTING LEGISLATION APPLICABLE TO FGM**

Referral procedures as described above give an overview of the actions that should be undertaken in order to substantiate the legal provisions pertaining to FGM. Both criminal and child protection procedures contain an established series of steps and a variety of public officials and professionals are involved in each phase.

The implementation of the legislation constitutes the totality of actions that are undertaken de facto, to give effect to the legal provisions at distinct levels of interaction by a number of different agents, who make use of multiple strategies. While the referral procedures describe an ideal scenario to be followed, the reality of implementation concerns the performance of the scenario by the stakeholders involved.

The following provides a review of how legal provisions are actually implemented in Sweden, the United Kingdom, Belgium, France and Spain. This review is based upon research conducted in each of the countries, mainly through interviews with key informants and document analysis.

### ***7.1. Sweden***

Suspected cases of FGM or fear of future performance are reported both to the police and social authorities. A number of "hearsay" cases also reportedly occur (cases mentioned in the interviews with key informants; few of which involved police investigations). Only a few cases actually led to reliable conclusions concerning performed FGM, and many of the cases - especially those that are "hearsay" - were about fear of future performance of FGM. Regarding to cases involving suspicions of performed FGM, the suspicions were frequently found to be unfounded. In other cases, it has not been established whether or not FGM has been carried out. A few cases illustrate the difficulty of ascertaining whether FGM has actually been performed, due to uncertainty in the range of what can be regarded as 'normal' genitals. In some cases FGM has been admitted by a parent, but alleged to have been performed abroad before the change of law in 1999 thus not being illegal (5).

Many reports come from the school and pre-school sector and some originate from the health sector. Although social authorities do not have an absolute duty to report information about crimes, reporting to the police seems to be the recommended procedure by local guidelines when it comes to suspicion of FGM. None of the informants in this case study present knowledge of unreported cases in their sector.

The social authorities are key players with regard to the protection of girls and they do undertake actions in the interest of the child. In general, a hearing with the family and counselling activities are organised in order to follow-up an impending risk of FGM. To date, no minors have been taken into custody by the social authorities.

Cases reported to the police are, if substantiated, referred to the prosecution authorities and a prosecutor leads the investigation. Obtaining a medical examination of the girl is paramount in the evidence gathering process. Until now, no evidence has been found to take any case to the criminal court.

### ***7.2. United Kingdom***

According to the narratives of key informants, it is not clear if suspected cases of performed FGM or risk of FGM are systematically reported to the statutory sector. There is an expressed concern that a number of cases go unreported. FORWARD has been involved in 5 cases of children at risk in the past 2 years.

Yet there is also evidence that several cases do reach the Social Services Departments and that these cases are followed up by a child protection investigation as described in Section 47 of the Children Act. A multidisciplinary strategy meeting involving police, child protection, and health and education staff is organised. Although, there is no legal requirement to involve NGOs working in the field of FGM, key informants indicate that NGOs are consulted and invited to participate in the multidisciplinary strategy meeting in order to contribute specialist advice.

A meeting with the family is organised. An investigation and risk assessment is conducted with the objective of ascertaining the level of risk to the girl and any younger siblings. If required, a child protection plan is drawn up including the decision to allocate a social worker, his/her resources and tasks, and the implementation of the plan with time scales. If there are no concerns about the care the child is receiving, and the parents are willing to co-operate with the protection plan, the child remains at home with support from the social services. Alternately, if parents are not willing to co-operate, or are unable or unwilling to protect the girl, court procedures are initiated and legal steps taken to ensure her safety and welfare.

Since the FGM law was enacted in 1985, no evidence has been found to initiate a criminal prosecution. However, two medical practitioners have received administrative sanctions imposed by the Medical Council for offering to perform FGM.

### ***7.3. Belgium***

Key informants in this case study did not know of any reports from members of the public to the police or to child protection authorities concerning a suspicion of performed FGM, or concerning a risk of future mutilation. No report from the healthcare sector, child and family care, (pre-) school sector or social sector has been recorded.

There are currently no suspected cases of performance of FGM in Belgium. However, some key informants indicated rumours that FGM is performed in one district of Brussels.

The prosecution authorities of all 27 jurisdictions in Belgium declared unanimously that no case of suspicion of performed FGM has reached them, nor have there been any known cases of fear of future performance of FGM. Consequently, we can state that no cases in Belgium have reached the criminal court or the youth court with the aim of punishing or preventing the performance of FGM.

No evidence has been found regarding the implementation of the law at any level: police, prosecution, child protection and criminal court interventions.

#### **7.4. France**

While local guidelines for Mother and Child Health Services (PMI)<sup>5</sup> recommend a systematic inspection of the external genitalia of all girls and documentation of the baseline state of the genitalia in medical files, PMI services do report cases of suspicion of FGM. In addition, key informants indicate that not all health professionals follow the instructions of systematic screening. Furthermore, some marginalised population groups are not even traced by their local circuit of the PMI that offers health services on a voluntary basis.

In the context of a suspicion of a future crime of FGM, cases are reported to judicial authorities. The juvenile judge organises a hearing, summons parents and informs them about the prohibition of FGM according to French law. In the event of an impending risk that the girl will be mutilated abroad, the juvenile judge takes measures to prevent that the girl is undergoing FGM.

When the police are informed about a performed crime of FGM, the parents are summoned for interrogation at the police station where they can be kept for 48 hours. The police then report to the prosecutor. The prosecutor requests the opening of a criminal case, which is handed over to an investigating judge who is in charge of the proceedings. If the victim is a minor, the investigating judge appoints a 'tutor ad hoc'. A medical/genital examination of the victim is an essential part in the evidence gathering process. A psychological examination of the indicted party is carried out to assess their mental health status and a social investigation is conducted in order to collect information on the indicted party.

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<sup>5</sup> Protection Maternelle Infantile: Mother and Child Healthcare. This public service is provided in each department. PMI has a preventive role through education, help and counselling. Target groups are future parents, pregnant women and children up to 6 years. PMI offers a range of medical, psychological and social services, e.g. medical follow-up and monitoring of the child up to 6 years. (<http://jumeauxetplus73.free.fr/principal/Pratique/pmi.htm>, accessed March 18, 2004.)

Since 1988, 33 cases have been tried at the Assize Court, involving 120 children and 99 parents, and the imprisonment of parents and traditional excisors have been pronounced. Since a court decree in 1999, the child victim receives compensation up to 25,000 euros.

### **7.5. Spain**

In Valencia no documented court cases were found, while in Catalonia, there have been a number of cases (both fear of future performance and suspicion of performed FGM), 7 of which have been documented in the national report (6).

Key informants in the Valencia Community did not know about any reports to the competent court, the investigating judge, the police or to child protection authorities concerning a suspicion of performed FGM, or concerning a risk of future mutilation. In the autonomous community of Catalonia, cases with regard to FGM are reported to the competent authorities. Cases originate from the health sector, social services and citizens. In the context of this case study, it was not possible to establish how many cases remain unreported.

In the event of a reported risk of FGM, child protection procedures are initiated. In general, a hearing with the family is organised, parents are counselled, and possible upcoming journeys to Africa are made known to the police or the social authorities. If there is an immediate need for care or protection a judge orders compulsory measures, such as a prohibition to leave the country, removal of the girl's passport or a medical examination carried out by a doctor after returning from a holiday abroad.

According to the information collected, reports with regard to a suspicion of performed FGM are followed up by a preliminary police investigation. In the process of evidence gathering, it is paramount to carry out a medical/genital examination on the victim. Until now, no evidence has been found to open the oral phase of the criminal procedure.

## **8. OBSTRUCTING AND FAVOURING FACTORS**

### ***8.1. Sweden***

Key informants expressed that Swedish professionals have relatively good knowledge about the phenomenon of FGM, the existing legislation and the reporting mechanisms. Many professionals, such as prosecutors, police officers, gynaecologists and social workers, are informed about FGM and its legal aspects during their education or during further training in the field.

There is a strong consensus within Swedish society on the reprehensible nature of FGM, and that the implementation of FGM law is about focusing on the child as a victim. The level of awareness among authorities and the general public is high and professionals are open to dealing with the problem of FGM.

Professionals have access to specific guidelines concerning FGM. These guidelines, issued by the Swedish Board of Health and Welfare, provide professionals with information on how to act practically, and on actions and measures to be undertaken in a variety of situations. Furthermore, there is good co-operation between the various authorities and co-operative networks exist whose aim is to facilitate the handling of these kinds of cases.

Key informants pointed out the difficulty of identifying cases as the major obstructing factor to successful implementation of FGM law. Questions such as: "How does one find information about a practice that is surrounded by silence?" were often raised. Also reported was the general difficulty associated with crimes committed within the family. When perpetrator and victim belong to the same family, their relation is often characterised by a position of dependence, which can be problematic in efforts to protect the victim.

Another reported problem was how to assess whether or not FGM has been performed. According to key informants, few physicians know what a young girl's genitalia look like and what divergence there may be in normally shaped genitals. How does one then assess what can be considered as normal or what is the result of FGM?

Key informants mentioned the difficulty of determining precisely when a mutilation has been performed. Only in 1999 was the principle of double incrimination removed from the FGM act. This means that all forms of FGM performed on girls resident in Sweden before 1999 cannot be classified as illegal, as long they have been performed in a country where such acts are not considered criminal. A subsequent problem in police

investigations has been the inability to prove that certain performances of FGM actually took place after 1999.

## ***8.2. United Kingdom***

Key informants are concerned about the lack of knowledge concerning the practice of FGM and the legal implications among child protection police, judicial staff, school nurses, teachers and health visitors. Even the key informants themselves do not have a clear understanding of the criminal procedures that would be invoked in the event of a criminal prosecution of FGM because the procedures have never been tested.

Key informants stated that the statutory sector is clear about the need to share information among the various stakeholders in order to protect children. On the other hand, they also indicated the anxieties of many professionals in responding appropriately to issues generated by FGM, such as fear of being perceived as racist or accepting FGM because cultural traditions have to be respected.

Statutory agencies confronted with a problem of FGM automatically contact other relevant authorities and work in partnership with them. The policy document “Working together to safeguard children”, issued by the Department of Health, contains guidelines on how professionals should work together to promote children’s welfare. A specific reference is made to the practice of FGM.

The new London Child Protection Procedures (introduced in November 2003), replacing the local Area Child Protection Procedures, provide the statutory sector with a specific framework within which to work effectively to protect children from FGM. Professional bodies also have their own guidelines on the issue of child protection; health professionals have produced guidelines and position papers on FGM.

There is a longstanding tradition of grassroots activism by NGOs, working specifically on the issue of FGM and acting at the level of policy and legislation, training and advocacy, as well as at the level of practising communities and individuals. These NGOs are consulted on a regular basis by the statutory sector in order to give specialist advice on concrete cases of FGM. Nevertheless, key informants expressed that activists on FGM are working in a vacuum, as there is no accurate information on the number of children that might be at risk, on the extent of the practice within the country or on behaviour change in immigrant populations.

## ***8.3. Belgium***

In Belgium, key informants declared that professionals have scarce knowledge about the practice of FGM, the existing legal implications and reporting mechanisms. The

key informants themselves expressed that they do not have a clear understanding of the specific legislation and procedures that would be invoked in the event of criminal prosecution of an FGM case and the steps that should be undertaken regarding child protection. The link between FGM and child abuse or bodily injury has yet to be established among professionals.

According to the narratives of the key informants, there is no unanimous positive attitude towards a criminal intervention with regard to the practice of FGM. Key informants expressed a certain anxiety and feeling of powerlessness in tackling this traditional practice, which is strongly culturally bound. Therefore, preventive measures and counselling activities would be preferred over repressive intervention strategies. In addition, the general level of awareness among authorities and professionals regarding existing legislation with regard to FGM is low or even non-existent.

Key informants also indicated the difficulty of identifying cases: “How does one find information about a practice that is surrounded by silence and practised in closed migrant communities?” The sentiment was raised that the practice of FGM is a family matter and there would have to be high levels of disagreement before a family member would report it to the authorities. Furthermore, there is no systematic and compulsory genital examination of girls within Child and Family Care, nor is it integrated into medical check-ups at school. Another problem is how to assess whether or not FGM has been performed. Health professionals and police physicians have not been trained to distinguish between normal divergences in the genital area and mutilated genitalia. Key informants pointed out that the process of evidence gathering is further complicated if the crime has been committed abroad, as cross-border investigation requires international co-ordinated actions at the judiciary level.

In Belgium, there has never been a public debate about FGM, as the problem has never arisen in the media or in court until now. Neither (professional) guidelines with practical information concerning child protection cases of FGM nor national policy with regard to the prosecution of FGM have been developed. The only guideline available is the “Technical Advice for Health Workers in Belgium”, on the clinical management of infibulated women at the time of delivery (15).

#### ***8.4. France***

The publicity given to the death of babies due to FGM and the subsequent court trials in France, triggered awareness about the practice and its legal consequences among African communities, and the citizens and professionals confronted with FGM. This has led to grassroots activism that has provided stakeholders with information about the legal procedures by means of leaflets, film sessions and debates.

There is a strong consensus in French society on the reprehensible nature of FGM, and punitive actions are considered as a warning to practising communities that such a practice is intolerable in France. Although the backgrounds of the families are taken into consideration during legal proceedings, the cultural argument in favour of the practice is not taken into account.

Local guidelines targeted at Mother and Child Health Services (PMI), recommend a systematic inspection of the girls' genitalia, which is quite well implemented. Nevertheless, key informants indicate that not all health professionals apply these instructions and prefer not to inspect the genitalia in order to avoid the complexity of reporting FGM. Furthermore, some population groups escape from all social surveillance and are not traced by the PMI circuit, which offers health services only on a voluntary basis. A systematic screening of girls at school is not foreseen and no specific guidelines for school staff are currently provided, although information sessions are provided in the Paris area.

Another problem is how to assess if FGM has been performed. It is not always easy to find out during a medical examination if the genitalia are in the range of what can be considered 'normal' or if the genitalia have been mutilated.

In addition, the feeling that FGM is a crime committed within the family and is surrounded by secrecy within the community was also reported. Consequently, it is felt to be very difficult to find evidence: parents, grandparents, and supposed circumcisers remain silent and in general, there is no written material to prove the facts. The process of evidence gathering is further complicated if the crime has been committed abroad. An international approach at the judiciary level is lacking in order to prevent performance of the crime abroad.

Some key informants are worried about the fact that in each case, the prosecutor decides independently whether to request the opening of a legal proceeding or not. There is no direct control over the prosecutor's actions, and no national prosecution policy with regard to FGM has been established. The legal proceedings take many years before a case is opened de facto at the Assize Court: while present, the procedure is slow and heavy-going.

### **8.5. Spain**

Key informants stated that professionals in general have scarce knowledge about FGM, the existing law and the connection to bodily injury. However, in regions where groups that might be at risk are more prevalent, for example in the autonomous community of Catalonia, knowledge about the practice of FGM and its legal implications is more accurate and widespread. Professionals in districts of Girona and Barcelona, who have been confronted with a succession of concrete cases of FGM,

possess a very practical knowledge about the legal proceedings. Professionals in Catalonia also have access to a specific protocol concerning the prevention of FGM. This protocol, issued by the parliament of Catalonia, provides professionals with information on how to act practically, and on the actions and measures to be undertaken in a variety of situations.

Key informants indicated that there is a consensus among professionals that a legal intervention regarding FGM is necessary. Nevertheless, different professionals suggest varying degrees and types of emphasis concerning the content of intervention. Social services and health professionals prefer interventions emphasising education and prevention, while police officers tend to act at court level emphasising the more punitive strategies. It is clear that both dimensions are complementary, although the debate on how to lead the interventions and how to connect the different channels is far from complete.

Key informants pointed out the difficulty of identifying cases as the practice of FGM takes place in close family and religious circles. Furthermore, it is very difficult to find evidence: how does one assess whether FGM has been performed, where it has taken place or who the perpetrator was? The process of evidence gathering is again, further complicated if the crime has been committed abroad.

## 9. DISCUSSION

No evidence was found to state that specific criminal law provisions are necessary to guarantee the punishment of FGM, or that they are more successful in their implementation than general criminal law provisions. Specific criminal laws that were studied, do not clearly address the issues of male circumcision (Spain, Austria), re-infibulation, some of the type IV practices of FGM and cosmetic vaginal surgery. In each country, several conditions are attached to the principle of extraterritoriality, which limits the applicability of the principle. Although specific legislation highlights the issue of FGM, such legislation could be considered as stigmatising and discriminating against specific groups and/or other cultures. In general, criminal law is justifiable not as a means of punishment, but rather as an instrument to be used for the protection of legal rights. Consequently, FGM cannot be dealt with from within the legal system only.

There is an increasing body of anecdotal evidence that health services are frequently confronted with women with FGM (16-19). In this study, we have tried to assess the number of women that might be victims of FGM, and the number of girls that might be at risk of FGM. However, figures relating to the practising communities are biased and need to be interpreted with great caution. This makes it impossible to make comparisons between or estimate the total number of women with FGM or girls at risk of FGM in these five countries. Consequently, the lack of accurate FGM prevalence data in Europe makes it difficult to substantiate the claim for services, legislation and funds for prevention work.

Although there is evidence that a migration context can be a factor in abandoning the tradition of FGM (20), the empirical data of this research show that a number of girls living in Europe are at risk of undergoing FGM, either in Europe or in their parents' countries of origin. The Swedish report holds that the real risk group comprises girls who do not return to Sweden after a holiday in Africa because the parents do not want to risk the discovery of FGM upon their return to Sweden (5). This problem is also noted in France (14) and the UK (7).

One of the main barriers for efficient implementation of the law is the difficulty in reporting cases. In France, Spain, Sweden and the UK, several cases of suspicion of performed or future performance of FGM have been reported, although they are not many: 33 court cases in France, 7 cases in Catalonia and 5 cases in the UK in the last 2 years, where FORWARD was involved (in the UK there may be other cases of which FORWARD is unaware). It is believed that a number of cases go unreported (7;14). In Belgium, no cases have been reported (12).

Suspected cases are mostly reported by the health services (e.g. in Spain, Sweden, France and the UK), social services (Sweden, Spain and the UK) and citizens (e.g. Spain). All key informants have mentioned the difficulties in reporting cases. The key question here is how cases can be detected. It is paramount that professionals have good knowledge of the particular population groups that practice FGM, the practice itself and its different types, as well as the laws and child protection procedures to follow in case a girl is at risk. The existence of guidelines for professionals issued by professional associations play an important role in enhancing this knowledge, as well as the continued participation of activist organisations. Gynaecological screening of girls is often suggested as a method to increase the number of cases reported or as a way for communities to prove that they have abandoned this tradition. In France, a guideline for Mother and Child Health services (PMI) advises doctors in Paris to perform such examinations. In the Netherlands, a heated public debate took place in spring 2004, when Mrs Ayaan Hirsi Ali (member of the Dutch Parliament) proposed that a compulsory gynaecological examination had to be performed on all under aged girls from FGM risk populations.

As with other crimes committed within the family, FGM is surrounded by secrecy and it also involves members of the larger community, resulting in reluctance by those indicted to disclose details of the practice. This can complicate the reporting of cases and/or the finding of evidence.

In some countries, it is assumed that all new arrivals in the host country are or will be able to access the same amounts of information as indigenous peoples, and that the value systems of the new arrivals and the host community are congruent. FGM is an example where this is truly not the case. Also, not all practising communities are aware of the human rights dimension of FGM, or about the legal provisions in a country with regard to FGM.

Another barrier to the implementation of a law is the attitude of people confronted with FGM-related issues. In the UK, fieldwork showed that several professionals are paralysed into inaction because of fear being labelled 'racist' (7). In France, some key informants expressed their concern about the occasional lack of follow-up by prosecutors. In Spain and Belgium, reservations were expressed by professionals with regard to repressive interventions, and they indicated that punishment would only be used if all other means proved unsuccessful (6;12).

Another major barrier is the difficulty of finding evidence. Although cases were reported in France, Sweden, Spain and the UK, no sufficient evidence - except in France - was found to take a case to court. The main problems are related to the assessment that FGM has been carried out (e.g. divergence from normally shaped genitals); the time that FGM was performed (the year in which it was done can be crucial for

assessing whether the act is illegal or not); the country where FGM was performed (in case there is double incrimination), and finding evidence about the perpetrator of the action (Are the parents accomplices? How does one find the perpetrator?). Amongst the 5 countries, only France succeeded in bringing cases to court.

Given the difficulties of implementing criminal laws with regard to FGM and knowing that child protection measures have a more preventive function, one could argue that more attention needs to be paid to child protection measures in order to prevent girls from being genitally mutilated. Examples of such measures may include: temporary custody of a girl at risk; referral of parents to social services; provision of statutory financial assistance only (no extras); registering girls that are not allowed to leave the country; removing the child from her home; etc. Some of these measures are controversial, for example removing a girl from her home. In case of a child protection procedure, it is paramount that there is a good collaboration between stakeholders (e.g. multidisciplinary strategy meeting in the UK) or that there are guidelines or protocols such as in the UK (Working together the Safeguard Children, Department of Health, Home Office UK, 1999) or the Protocols of Catalonia and Girona in Spain<sup>6</sup>.

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6 Comissió de seguiment dels protocols en casos de violència domèstica i maltractaments infantils de Girona; Protocol de prevenció de la mutilació genital femenina a la demarcació de Girona, Departament de Justícia, Generalitat de Catalunya, 2003; (<http://www.gencat.net/justicia/ciutadans/atencio/cvdgir/protocolm/index.htm>); Comissió Interdisciplinària d'Experts. Integrada per tècnics dels Departaments de Sanitat, Interior, Justícia, Benestar Social, Ensenyament I de la Presidència, Protocol d'actuacions per a prevenir la mutilació genital femenina, Barcelona: Generalitat de Catalunya, Secretaria per a la Immigració, 2002, [http://www.gencat.net/presidencia/immigracio/guia\\_ab/index2CAS.html](http://www.gencat.net/presidencia/immigracio/guia_ab/index2CAS.html)

## 10. CONCLUSIONS

In conclusion, this study showed that criminal law provisions are not guaranteed to result in court cases, and that specific legislations are no more successful in punishing FGM than criminal law provisions. Furthermore, gaps in some of the specific criminal laws were identified, specifically with regard to the issue of male circumcision, re-infibulation, some of the forms of type IV FGM and cosmetic vaginal surgery. Specific criminal laws should be very clear about the type of actions that are prohibited. The study also showed that criminal laws are not sufficient in preventing FGM.

The implementation of legislation meets two main barriers: the identification of cases and finding sufficient evidence. Identifying cases and finding evidence is obstructed due to the lack of knowledge among professionals about FGM and the legal provisions; the attitudes of people confronted with FGM-related issues; the secrecy surrounding FGM as a crime committed within the family and involving other people belonging to the community.

In order to prevent girls from being genitally mutilated, specific child protection measures are important and more attention needs to be paid to such measures. Also, the problem of girls not returning from trips to Africa needs to be investigated. The true magnitude of the problem of FGM in Belgium, France, Sweden, Spain and the UK could not be assessed, and this lack of accurate FGM prevalence data makes it difficult to substantiate the claim for services, legislation and funds for prevention work.

Developing legislation to punish a crime is one thing; the implementation of such legislation is another. The example of FGM, as examined in this research, showed that the implementation of FGM legislation is a complex issue and not an obvious or automatic process. Several actors are active at various levels (such as medical doctors, child protection officers, social workers, police officers, prosecutors, etc.), and various determinants influence the process of implementation (for example knowledge about FGM, attitudes about FGM and/or the practising communities, consultation between the actors, etc.). Therefore, the implementation of legislation requires sufficient time, means and engagement in order to be successful. The next chapter provides some recommendations to better implement legislation.

## 11. RECOMMENDATIONS

### *1. Magnitude of the problem in Europe*

Two types of surveys need to be performed at the European level: a) quantitative surveys to assess the prevalence (according to ethnic groups) and a quantitative follow-up of migration flows and of girls travelling abroad; and b) qualitative surveys to follow up local behavioural changes among communities due to migration, and to give an accurate interpretation of the figures obtained from the quantitative surveys. Stakeholders should present any evidence of abandonment of the practice to the practising communities, so that a critical mass of people openly resisting the practice can be a positive force for change.

### *2. (Specific) criminal law provisions*

It is not essential to dedicate time and energy to enacting specific legislation against FGM, as general criminal law provisions can be successfully applied.

What is important is the monitoring of the girls at risk and the vigorous implementation of the law when a case is identified.

Government departments affected by FGM legislation must execute genuine consultation with stakeholders to ensure that the law is implemented in a consistent and fair fashion that will not alienate practising communities.

It must be made clear to FGM practising communities that the practice is against the law and that infringements will lead to prosecution.

Where specific law provisions exist, they should be very clear about the forms of FGM that are prohibited, especially with regard to the emerging practice of piercing/tattooing of the genitals and cosmetic vaginal surgery vis-à-vis FGM.

In the event that specific legislation is developed, or that there are amendments made to existing legislation, the government must ensure that members of the community and NGOs are fully consulted, and that they are adequately provided with resources to advocate for the implementation of the law. To avoid confusion, re-infibulation needs to be defined and specific law provisions need to be made clear regarding its practice.

The limits of applicability of extraterritoriality should be avoided; more specifically the exigency of double incrimination should be removed. Jurisdiction with regard to FGM should be extended to acts committed abroad upon residents, legal or otherwise.

In order to further prevent the practice of FGM, other measures (social and educational) must be taken. A multidisciplinary effort is required aimed at changing rather than punishing behaviour.

### ***3. Child protection measures***

It is important to reinforce the applicability of child protection provisions in the prevention of FGM.

Such measures depend on the circumstances of the case and need to be discussed in each country.

### ***4. Knowledge and training***

In those countries where public vigilance of FGM cases is not high, general knowledge of FGM and its legal implications must be improved, and a positive, constructive public debate must be initiated.

Targeted training and information campaigns about FGM issues, legislation and child protection procedures are necessary for all stakeholders, in order to effectively ensure that legislation is implemented to protect children from FGM.

Governments should make the effort to ensure that all new arrivals understand the country's laws and customs and the penalties attached for breaking the laws, particularly those laws that conflict with customs and traditions from home countries.

There is a need for information in the African consulates in Europe about the perception of FGM in Europe, and about the fact that it is forbidden and viewed as a crime and a form of child abuse. Yet, the information must not be given in such a way as to encourage parents to cut their daughters before they come into European countries.

It is important that communities are informed not only of the health implications of FGM but also about the wider perspective of the human rights violations implicit in the practice.

### ***5. Reporting cases***

Healthcare professionals must receive general information about FGM-related issues (for example by including the issue in their mainstream curricula).

Key persons among doctors, paediatricians and child protection authorities should be identified as experts, and should receive specialised training.

The feasibility and desirability of compulsory, systematic gynaecological check-ups integrated in the medical screening of all girls should be discussed in each European country at the national level.

### ***6. Guidelines and co-operation***

The international dimension of the problem of FGM needs attention. Within EU countries, international co-operation at the judicial level is necessary to facilitate the provision of evidence.

Co-ordination between fieldworkers (state agencies, NGOs, etc.) in Europe and Africa is necessary to protect girls who travel between Africa and Europe.

Co-operation is needed between various authorities in a country (child protection, police, health sector, schools, migration officials etc). The models in Sweden and the UK could be used as good practices, as well as the Girona Protocol of Spain.

National guidelines are necessary which explain how professionals dealing with FGM-related issues should respond to actual or suspected cases of FGM, as well as to requests for re-infibulations.

## 12. CONTENTIOUS ISSUES

The following issues are contentious, in that they are - or could become - highly controversial. They need further discussion and careful attention when developing a specific law.

### ***“Designer vaginas”***

In countries in Europe that have a specific law on FGM, no specification was made with regard to the maximum age at which FGM is forbidden. This means that the consent of the victim (e.g. an adult woman) does not affect the legal qualification of the act, or to put it in other words: any operation on the vagina for non-medical reasons is forbidden in these countries.

Designer vaginas (consenting adult women having alterations performed on their vaginas, such as reducing labia and narrowing the vaginal orifice) are an emerging practice in the USA and Europe. The end results of these “designer vaginas” are in no way different from the results of some types of FGM. Specific legislation is not clear about the difference between what is considered ‘FGM’ and what is considered a voluntarily cosmetically altered vagina. Or to put it another way: is the law clear that purchasing a designer vagina is prohibited for all women because it can be considered FGM, or is the law only applicable in relation to African women?

### ***Male circumcision***

In Austria and Spain, the specific criminal law provisions are also applicable to male circumcision, which makes male circumcision in these countries technically illegal. When enacting such legislation, male circumcision should be discussed and laws should be clear about the legality (or otherwise) and liability of male circumcision.

### ***Re-infibulation***

There is confusion with regard to re-infibulation. In the 6 EU Member States with a specific criminal law provision (Austria, Belgium, Denmark, Spain, Sweden, UK), re-infibulation is not stipulated as one of the forms of FGM that is forbidden. However, professionals are sometimes confronted with a demand to ‘re-close’ after delivery, and are unsure how to respond, particularly when no guidelines are provided by their professional organisations. Re-infibulation should be clearly defined, and an answer must be given to the key question: “what is the difference between re-suturing an episiotomy and a re-infibulation, and how should professionals respond to such requests made by adult women?”

### ***Type IV practices***

In countries with specific criminal law provisions, the types of FGM that have been defined as offences are: clitoridectomy, excision, infibulation and “all other forms”, which accord with type I, II, III and IV of the WHO classification (9). According to this classification, type IV FGM includes pricking, piercing or incision of the clitoris and/or labia; [...]; stretching of the clitoris and/or labia; [...]; introduction of corrosive substances or herbs into the vagina or for the purposes of tightening or narrowing it, and any other procedure [...]. Consequently, piercing of the labia or clitoris is liable. However, only Belgium and the UK have specifically excluded piercing and tattooing from the types of FGM that are forbidden. The UK 1985 Act and the 2003 FGM Act, implies by omission that stretching of the labia is not forbidden. Specific criminal law provisions should be very specific about the forms of type IV FGM that are illegal. This issue also needs careful attention when developing child protection measures.

### ***Compulsory measures for child protection***

Compulsory measures for child protection are highly controversial, as the key question is “what is an acceptable level of risk for a child?”. A universally applicable compulsory measure is not feasible; measures will have to be considered on a case-by-case basis. Examples of such compulsory measures are: taking a child into temporary custody, withholding her passport, or compulsory gynaecological screening of girls.

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## Annex I. Questionnaire FGM legislation

\* For the explanation of the terminology: see glossary at the back

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### ***Does your country have a specific criminal law provision prohibiting female genital mutilation (FGM)?***

- Yes, then go to section 1
  - No, then go directly to section 2
- 

### ***Section 1. Treatment of FGM in a specific criminal law provision***

- 1.1. What are the contextual factors (background), which contributed to the realisation of this criminal law provision?
- 1.2. What is the date of entering into force of this criminal law provision?
- 1.3. Has the criminal law provision ever been modified?
  - Yes, in ....
  - No
- 1.4. Is the criminal law provision also applicable on genital mutilation of boys?
  - Yes
  - No
- 1.5. What is the exact content of this criminal law provision? Please add the text of the actual version of this criminal law provision in the original language and if possible with an English translation
- 1.6. Which items are included in the criminal law provision?
  - Clitoridectomy
  - Excision
  - Infibulation
  - Re-infibulation
  - All other practices involving female genitalia, such as piercing, pricking, stretching, burning of clitoris and/or surrounding tissues. Piercing and tattoo's are not included (based on the preparatory works of the criminal provision)

- 1.7. What does the criminal offence consist of?
- Performance FGM
  - Participation in the performance of FGM
  - Facilitation of the FGM performance
  - Attempt to perform FGM
  - Procure for FGM services
  - Other: ...
- 1.8. What is the penalty?
- 1.9. What are the aggravating circumstances that increase the penalty?
- Offence is committed against a minor
  - Offence is performed by a parent or by any person having authority or custody of the minor
  - Loss of use of essential parts of the body
  - Permanent loss of working capacity
  - Permanent and incurable corporal lesions
  - Offence endangers the life of the victim
  - Offence causes the death of the victim
  - Other: ...
- 1.10. Can a woman consent to the mutilation of her own genitalia?
- Yes
  - No
  - Only in case of an adult woman
- 1.11. Is the principle of extra-territoriality applicable?
- Yes
  - No
- 1.12. Conditions for the application of the principle of extra-territoriality:
- Exigency of double incrimination
  - The victim has to be a national from the prosecuting country
  - The victim has to be a resident from the prosecuting country
  - The victim has to be a minor
  - Exigency of a complaint of the victim
  - The offender must be found on the territory of the prosecuting country
  - Other: .....

## **Section 2. Treatment of FGM under general criminal law provisions**

- 2.1. Which general criminal law provisions can be applied to FGM? Please add the text of the relevant provisions in the original language and if possible with an English translation.
- 2.2. Which criminal offence(s) do(es) the provision(s) consist of?
- Bodily injury
  - Serious bodily injury
  - Voluntary corporal lesion
  - Mutilation
  - Others...
- 2.3. What is the penalty?
- 2.4. What are the aggravating circumstances that increase the penalty?
- Offence is committed against a minor
  - Offence is performed by a parent or by any person having authority or custody of the minor
  - Loss of use of essential parts of the body
  - Permanent and incurable corporal lesions
  - Permanent loss of working capacity
  - Offence endangers the life of the victim
  - Offence causes the death of the victim
  - Other: ...
- 2.5. Is any exception to the general rule of territoriality applicable?

## **Section 3. Other legislative texts tackling (indirectly) the practice of FGM**

- 3.1. Are there any other laws in your country of residence that can be brought against female genital mutilation?
- No
  - Yes, then please specify below
- 3.2. Are there any other provisions of criminal law in your country of residence that can be brought against female genital mutilation?
- Unlawful medical practice
  - Commission by omission
  - Doctor's reporting right in case of violence
  - Doctor's reporting duty in case of violence
  - Other: ...

- 3.3. Are there any provisions of child protection law in your country of residence that can be brought against female genital mutilation?
- Certain acts of the parents are subject to court permission
  - Suspending parental authority
  - Removing the child from the family
  - Other
- 3.4. Other legal provisions? ...

#### **Section 4. Law enforcement**

- 4.1. Do you know about criminal prosecutions for FGM in your country of residence?
- Yes
  - No
- 4.2. If yes, can you give more details of these cases of law enforcement?
- 4.3. Do you know about interventions based on the child protection law in your country of residence?
- Yes
  - No
- 4.4. If yes, can you give more details of these cases of law enforcement?

#### **Section 5. FGM and asylum**

- 5.1. Can fear for FGM be ground for asylum in your country of residence?
- Yes
  - No
- 5.2. Do you know about cases of asylum granted on the ground of fear for FGM in your country of residence?
- Yes
  - No
- 5.3. If yes, can you give describe the case(s)?

## **Section 6. Personalia**

What is your age:

What is your sex:

- Female
- Male

What is your profession:

### **Glossary**

Clitoridectomy: excision of the prepuce with or without excision of part or the entire clitoris

Excision: excision of the clitoris, with partial or total excision of the labia minora

Infibulation: excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening

Re-infibulation: re-stitching of the vulva after childbirth to make the vaginal opening smaller

Principle of territoriality: to pursue, to prosecute and to punish the practice of female genital mutilation, on the condition that the offence was committed within the frontiers of the country

Principle of extra-territoriality: to pursue, to prosecute and to punish the practice of female genital mutilation, even if the offence was committed outside the frontiers of the country

Principle of extra-territoriality, with the exigency of double incrimination: to pursue, to prosecute and to punish the practice of female genital mutilation, even if the offence was committed outside the frontiers of the country but on the condition that female genital mutilation is also an offence in the country where it was committed.

## **Annex II. Interview guide for interviewing key informants**

Sex: male/female

Age:

Profession:

Organisation:

Country:

Territorial competence:

1. What do you know about female genital mutilation (FGM) or female circumcision (assessment of knowledge about cultural and religious aspects)
2. Have you been in contact with FGM related issues in your country? If yes, how?
3. Have you ever heard about circumcisions being done in your country?
4. What's your attitude towards this problem? (assessment of possible fear of being accused of racism, of possible pressure of the African community, of fear for confrontation)
5. What is the legislation in your country with regard to FGM?
6. What are the advantages and disadvantages of such legislation?
7. What are the difficulties or obstacles to implement the law? (assessment of obstacles related to knowledge about FGM, to knowledge about legislation, to attitudes and values, to practice and procedures)
8. (For Public Prosecutor) Are there any guidelines or decisions concerning the persecution of FGM?
9. (For the Public Prosecutor) What is the policy with regard to the prosecution of FGM?
10. What is the procedure to be followed in case of FGM? (assessment of procedure, codification, referral)

## **Annex III. Texts of the laws in the 5 EU countries**

### ***1. Belgium***

#### **Article 409 Code of Criminal Law**

§ 1. Anyone who undertakes, facilitates or promotes any form of mutilation of the genitalia of a person of the female sex, with or without her consent, will be punished by a term of imprisonment of three to five years.

Attempted mutilation will be punished by a term of imprisonment of eight days to one year.

§ 2. If the mutilation is undertaken on a minor or in pursuit of profit, the punishment is confinement of five to seven years.

§ 3. If the mutilation has caused an apparently incurably illness or a lasting incapacity for work, the punishment is confinement of five to ten years.

§ 4. If the mutilation results in death, even though there was no intent to kill, the punishment is confinement of ten to fifteen years.

§ 5. If the mutilation referred to in § 1 is undertaken on a minor or a person who, by reason of their physical or mental state, is not in a position to provide for themselves, by their father, mother or another blood relation in the ascending line, or by any other person who has authority over the minor or the legally disqualified person, or by a person who has them in their care, or by a person who occasionally or usually lives with the victim, then the minimum punishment as referred to in §§ 1 to 4 is doubled in the case of a term of imprisonment and increased by two years in the case of confinement.

#### **Article 10ter Preceding Title Code of Criminal Procedure**

Anyone can be prosecuted in Belgium if they are guilty, outside the territory of the Kingdom, of:

1° [ ... ];

2° one of the criminal offences referred to in Articles 372 to 377 and 409 of the same Code, if this is perpetrated on a minor;

3° [ ...]

#### **Article 12 Preceding Title Code of Criminal Procedure**

Except in the cases of Article 6, Nos 1 and 2, Article 10, Nos 1 and 2, as well as Article 10bis, legal proceedings are instituted in the case of the criminal offences referred to in this chapter only if the suspect is found in Belgium.

[ ... ]

### **Article 21bis Preceding Title Code of Criminal Procedure**

In the cases referred to in Articles 372 to 377, 379, 380 and 409 of the Code of Criminal Law, the period for the preclusion of criminal proceedings by reason of lapse of time only begins as of the day on which the victim reaches the age of eighteen.

If an offence referred to in the previous paragraph is sent before a court of summary jurisdiction, the period for the preclusion of criminal proceedings by reason of lapse of time remains that stipulated for an offence.

### **Article 422bis Code of Criminal Law**

Anyone who fails to render or provide assistance to anyone who is in serious danger, whether they have noted the person's situation themselves or this situation has been described to them by the persons requesting their assistance, is liable for a term of imprisonment of eight days to one year and a fine of between fifty francs and five hundred francs.

For the offence, the person who failed to provide assistance must have been able to assist without serious danger to themselves or to others. If the person who fails to provide assistance did not themselves observe the danger threatening the person requiring assistance, then they cannot be punished, if they had reason to believe, on the grounds of the circumstances in which they were requested to assist, that the request was not serious or that it involved danger.

The punishment referred to in the first paragraph is increased to two years if the person who is in serious danger is a minor.

### **Article 458bis Code of Criminal Law**

Anyone who by reason of their status or profession holds secrets and thereby has knowledge of an offence as described in Articles 372 to 377, 392 to 394, 396 to 405ter, 409, 423, 425 and 426, committed on a minor, may, irrespective of the obligations imposed upon them by Article 422bis, inform the Public Prosecutor of the offence, provided that they have examined the victim or have been taken into the victim's confidence, note a serious and imminent danger to the mental or physical integrity of the person concerned and cannot protect this integrity themselves or with the help of other people.

### **Article 32 Law on the projection of young people**

The following may be partially or wholly divested of parental authority over all children, or one or more children:

1° the father or the mother given a sentence for a criminal or a minor offence for any act committed on the person or with the help of one of the children or descendants;

2° the father or the mother who, by poor treatment, misuse of authority, obvious poor behaviour or serious negligence, endangers the health, safety or morality of

the child.

3° [...] The divestiture is pronounced by the juvenile court, on the orders of the public prosecutor.

## **2. France**

### **New Penal Code (1994)**

Art. 222-9 Les violences ayant entraîné une mutilation ou une infirmité permanente sont punies de dix ans d'emprisonnement et de 1.000.000 FF d'amende.

Art. 222-10 L'infraction définie à l'article 222-9 est punie de quinze ans de réclusion criminelle lorsqu'elle est commise:

- 1° Sur un mineur de quinze ans;
- 2° Sur une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, est apparente ou connue de son auteur;
- 3° Sur un ascendant légitime ou naturel ou sur le père ou mère adoptive;
- 4° Sur un magistrat, un juré, un avocat, un officier public ou ministériel, [...]
- 5° Sur un témoin, une victime ou une partie civile, soit pour l'empêcher de dénoncer les faits, de porter plainte ou de déposer en justice, soit en raison de sa dénonciation, de sa plainte ou de sa déposition;
- 6° Par le conjoint ou le concubin de la victime;
- 7° Par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public dans l'exercice ou à l'occasion de l'exercice de ses fonctions ou de sa mission;
- 8° Par plusieurs personnes agissant en qualité d'auteur ou de complice;
- 9° Avec préméditation;
- 10° Avec usage ou menace d'une arme.

## **3. Spain**

### **Amendment of art. 149 of the Spanish Penal Code of 1995**

Article 149 of Penal Code of 1995 has been amended and is in force since October the 1<sup>st</sup>, 2003 adding a second paragraph:

«Any person performing whatever form of genital mutilation, shall be punished with a sentence of imprisonment of between six and twelve years. Where the victim is a minor or is incompetent, the judge may see to dictate a sentence of particular disqualification for the exercise of custody, guardianship, tutorship by will,

protection or care of minors between four to ten years, in the interest of the minor or incompetent individual.»<sup>7</sup>

#### **4. Sweden**

##### **Act Prohibiting Female Genital Mutilation**

[Lag (1982:316) med förbud mot könsstympning av kvinnor]

Section 1: Operations on the external female genital organs which are designed to mutilate them or produce other permanent changes in them (genital mutilation) must not take place, regardless of whether consent to this operation has or has not been given.

Section 2: Anyone contravening Section 1 will be sent to prison for a maximum of four years.

If the crime has resulted in danger to life or serious illness or has in some other way involved particularly reckless behaviour, it is to be regarded as serious. The punishment for a serious crime is prison for a minimum of two and a maximum of ten years. Attempts, preparations, conspiracy and failure to report crimes are treated as criminal liability in accordance with section 23 of the Penal Code.

[Quoted from Rahman & Toubia (2000:219).]

Section 3: A person who violates this law is liable to prosecution in a Swedish court, even if Section 2 or 3 of Chapter 2 of the Penal Code is not applicable.

##### **Social Services Act**

[SoL, *Socialtjänstlagen*]

Chapter 1. The objectives of social services

Section 2: When measures affect children, the requirements of consideration for the best interest of the child shall be specially observed. A child is any person aged less than 18 years.

Chapter 2. Municipal responsibilities

Section 2: The municipality is ultimately responsible for ensuring that persons staying within its boundaries receive the support and assistance they need.

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<sup>7</sup> The change is introduced by a *Law on specific measures relating to the security of citizens, domestic violence and the social integration of foreigners* (LEY ORGÁNICA 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros; BOE 29-9-2003, n. 234): «El que causara a otro una mutilación genital en cualquiera de sus manifestaciones será castigado con la pena de prisión de seis a 12 años. Si la víctima fuera menor o incapaz, será aplicable la pena de inhabilitación especial para el ejercicio de la patria potestad, tutela, curatela, guarda o acogimiento por tiempo de cuatro a 10 años, si el juez lo estima adecuado al interés del menor o incapaz.»

This responsibility does not imply any restriction of the responsibilities incumbent on other mandators.

### Chapter 3. Tasks of the municipal social welfare committee

Section 1: The tasks of the municipal social welfare committee include the following:

– ...

– assuming responsibility for the provision of care and service, information, counselling, support and care, financial assistance and other assistance for families and individuals in need of the same.

Section 5: [...] When a measure affects a child, the child's attitude shall be clarified as far as possible.

Allowance shall be made for the child's wishes, with regard to its age and maturity.

### Chapter 5. Special provisions for various groups

#### *Children and young persons*

Section 1: The social welfare committee shall

– endeavour to ensure that children and young persons grow up in secure and good conditions,

– promote, in close co-operation with families, the comprehensive personal development and favourable physical and social development of children and young persons,

– be especially observant of the development of children and young persons who have shown signs of developing in an unfavourable direction,

– ...

– ensure, in close co-operation with families, that children and young persons in danger of developing in an undesirable direction receive the protection and support which they need and, where justified by consideration of the young person's best interests, care and upbringing away from home [...].

[Selection of sections by the Swedish Board of Health and Welfare 2002:44; translation by the Ministry of health and social affairs 2003a].

### Chapter 14. Reporting of abuses

Section 1: Any person receiving information of a matter which can imply a need for the social welfare committee to intervene for the protection of a child should notify the committee accordingly.

## **Care of Young Persons (Special Provisions) Act**

[LVU, Lag (1990:52) med särskilda bestämmelser om vård av unga]

Section 6: The social welfare committee may decide to immediately take someone under the age of 20 years into custody, if:

1. it is likely that the young person needs care under the auspices of this law, and

2. awaiting a court decision concerning care poses a danger to the young person's health or development, or because the investigation may be made seriously more difficult or further measures may be obstructed.

### **Secrecy Act**

[*Sekretesslag 1980:100*]

Professionals in the social welfare sector and in the health sector are bound to observe secrecy in their work. Secrecy applies if disclosure of the information will presumably cause significant harm to the person to whom the information relates or to a person close to him.

### **Act regarding Special Representative for a Child**

[*Lag (1999:997) om särskild företrädare för barn*]

Section 1: When there is reason to believe that a crime, the punishment for which can lead to a prison sentence, has been committed against someone who is younger than 18 years of age, a special representative for the child shall be appointed if

1. a custodian is suspected of having committed the crime, or
2. it may be feared that a custodian, because of his or her relationship to the person suspected of having committed the crime, will not safeguard the rights of the child.

## ***5. United Kingdom***

### **Female genital mutilation Bill 2003**

A Bill to:

Restate and amend the law relating to female genital mutilation and for connected purposes.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lord Spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

#### **1 Offence of female genital mutilation**

(1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.

(2) But no offence is committed by an approved person who performs a surgical operation on a girl which is necessary for her physical or mental health or

a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.

(3) The following are approved persons-

(a) In relation to an operation falling within subsection (2)(a), a registered medical practitioner,

(b) In relation to an operation falling within subsection (2) (b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(4) There is also no offence committed by a person who-

(a) Performs a surgical operation falling within subsection (2)(a) or (b) Outside the United Kingdom, and

(b) In relation to such an operation exercises functions corresponding to those of an approved person.

(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as matter of custom or ritual.

## **2 Offence of assisting a girl to mutilate her own genitalia**

A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her labia majora, labia minora or clitoris.

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

(1) A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom national or permanent UK resident to do a relevant act of female genital mutilation outside the United Kingdom.

(2) An act is a relevant act of female genital mutilation if-

(a) it is done in relation to a United Kingdom national or permanent United Kingdom resident,

(b) it would, if done by such a person, constitute an offence under section 1

(3) But no offence is committed if the relevant act of female genital mutilation-

(a) is a surgical operation falling within section 1(2)(a) or (b), and

(b) is performed by a person who, in relation to such an operation, is an approved person or excises functions corresponding to those of an approved person.

## **4 Extension of section 1 to 3 to extra-territorial acts**

(1) Sections 1 to 3 extend to any act done outside the United Kingdom by a United Kingdom national or permanent United Kingdom resident

(2) If an offence under this Act is committed outside the UK-

(a) proceedings may be taken, and

(b) the offence may for incidental purposes be treated as having been committed, in any place in England and Wales or Northern Ireland.

## **5 Penalties for offences**

A person guilty of an offence under this Act is liable-

- (a) on conviction on indictment, to imprisonment for term not exceeding 14 years or a fine (or both),
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

## **6 Definitions**

- (1) Girl includes woman
- (2) A UK national is an individual who is-
  - (a) a British citizen, a British overseas territories citizen, a British National (overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (3) A permanent UK resident is an individual who is settled in the UK (within the meaning of the immigration Act 1971(c.77)).
- (4) The section has effect for the purposes of this Act.

## **7 Consequential provision**

The PFCA 1985 (c.38) ceases to have effect.

- (2) In paragraph 1(b) of the schedule to the Visiting Forces Act 1952(c.67) (offences against the person in respect of which a member of visiting force may in certain circumstances not be tried by UK court), for paragraph (xi) the is substituted- "(xi) the female genital mutilation Act 2003;".

## **8 Short title, commencement, extent and general saving**

- (1) This act maybe cited as the FGM Act 2003.
- (2) This Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) An order under subsection (2) may include transitional or saving provisions.
- (4) This Act does not extend to Scotland.
- (5) Nothing in this Act affects any criminal liability arising apart from this Act.

## **Annex IV. Demonstrative cases in France, Spain, Sweden and UK**

### ***1. France***

#### **Paris, 1999: Case of Hawa Greou, Djeneba Koita, and 25 other parents**

The day of her 18<sup>th</sup> birthday, M Koita leaves the home of her parents for good. Since her excision at the age of 8 she decided she would turn her back to those who decided to submit her to such *butchery*. This is what M, a young woman of 24 will explain to the Court in February 1999, facing her mother in the dock with Hawa Greou the perpetrator, and 25 other parents.

When M left her home in August 1993 she wrote a letter to the Juvenile Judge to ask for protection for her siblings who were ill-treated by her parents. Also she said she feared that two of her sisters may be submitted to a forced marriage, as she herself had to fight to avoid it happening to her. She also mentioned that she had been excised in 1983 along with three of her sisters. To the Judge she disclosed the name of the perpetrator, Hawa Greou, a friend of her parents. Hawa Greou had already been involved in an excision case and was awaiting her trial scheduled in September 1994.

Since excision was at stake a criminal case was opened and the Investigating Judge immediately ordered the police to watch closely the whereabouts of Hawa Greou and to tap her phone. Photographs of Hawa Greou were taken, and the phone conversations showed that families called her in view of the excision of their daughters: *“better do it during the vacations, when the whites are away”*... Hawa Greou was arrested in May 1994 and put to jail until the trial in February 1999.

Her electronic address book was seized, and then began long investigations in all “Ile de France” regions. The police questioned some 70 families, and had their daughters examined in hospital. Some families denied their daughters were excised though they were.

Some families said they were fully aware of the ban, and that they had been well informed by the doctors: they had since abandoned the practice and the younger daughters were spared.

Many referred to the trials and the reports on T.V. and in the newspapers.

Among those families were the kin of Hawa Greou and the phone conversations revealed that they were not surprised she had been arrested: “*She has been told ten years ago to stop the practice. Serves her right!*” (They referred to the other excision cases in which she was involved). At the police station Hawa Greou denied the charges, then she admitted being a traditional excisor belonging to the cast of ironsmiths.

In court she denied many of the excisions, but said she had performed so many excisions she could not remember all of them. Among the parents some said they felt compelled to respect their tradition, some said it was a religious requirement (one father was an imam) and one father clearly indicated that the practice was necessary in order to *cool* women’s sexual drive.

M and two of her sisters (one sided with her mother) faced their mother and told the Court in details how awful and painful their excision was, how they had been betrayed by their mother who lied to them to bring them to come to the flat where they were pinned down by women and harshly cut, their mother watching to make sure it was properly done.

Hawa Greou was sentenced to 8 years of stiff imprisonment (the prosecutor had only asked for 7 years) and M mother to 2 years of stiff imprisonment. The other parents received suspended prison penalties: 5 years for twenty-two of them and 3 years for three of them. The court granted compensation to the 48 victims: 13.000 Euros each.

The trial was given a very large press, radio and T.V. coverage, and was heard of all over Europe and Africa.

### **Comment**

Though this case is unique because for the first time it has been triggered by one of the victims herself (in most of the cases the doctors inform the authorities as excision is usually performed on babies on infants) it is interesting to note the thorough investigations of the police in 1994 and 1995 ending by the prosecution of numerous families.

The investigations also show that because of the information given to the families (some described the posters in the PMI Centres) including the legal ban, many had abandoned the practise. Some families clearly indicated they had no wish to harm their daughters and had from the beginning decided to put tradition aside.

Before the Assize Court, for the first time, the tutor ad hoc asked for compensation for the children she represented. Each child was granted 13.000 Euros by the Court.

A month after this trial, there was another trial before the Bobigny Assize Court involving the two wives of a polygamous husband. At this trial, one of the women who had been convicted along with Hawa Greou and Djeneba Koita, was present among the public. During a private conversation at the recess this woman confessed that she, like the other mothers who had shared her fate, had been very angry at first, because they were tried as criminals. But she added that after listening carefully to the debate in Court she had understood the harm done to the children. She claimed she would never do it again and that she would from now on try to convince her fellow villagers in Senegal to abandon the practise.

## ***2. Spain***

**Year 2001: Voluntary jurisdiction record (*expediente de jurisdicción voluntaria*) numer 314/01. Court of First Instance and Preliminary Investigations, numer 6 of Girona.**

Complaint lodged before the Mossos d'Esquadra (Autonomic Police) of Girona due to comments made at work in the presence of colleagues by a Mauritanian about his desire of travelling at the end of July 2001 to his country of origin in order to have genital mutilation performed on his daughter.

The Department of Public Prosecution required the adoption of urgent preventive measures and to open a voluntary jurisdiction record, because facts in that moment were not considered as offences: prohibition of leaving the country of the child and removal of passport; declaration of the parents of the child, medical examination of the child by forensic doctor in order to determine her state of health and physical integrity and periodical presence of the child; that the parents of the child are informed and warned of the transcendence and importance of the facts.

The Judge believed that the facts could not be considered an offence. He adopted the following measures: prohibition of leaving the country, with possibility of passport removal, inform and warning to the parents of the civil and penal consequences, and examination of the child by a forensic doctor.

The parents appeared in court, the child was examined and was found without any injury, and the court issued a warning to the parents about the civil and penal consequences were stated, and the leaving of the child from national territory was

allowed, previous communication, and a new appearance in court and forensic examination was appointed five months later.

**Complainant:** job colleagues

**Country of origin:** Mauritania

**Situation:** Adoption of preventive measures. Mutilation was not practiced.

**Source:** Original Documents. Annual Report of the Department of Public Prosecution of the Provincial Court of Gerona, 2001, pp. 69-72

### ***3. Sweden***

#### **Göteborg 1999.**

January. A 5-month-old baby girl is hospitalised due to an infection. An experienced nurse discovers that the genitals of the girl have been circumcised. Her inference is supported by two experienced colleagues [she states later, during the police investigation]. She is convinced that this has been discovered earlier – as the changes of the genitals were so “striking” – so she restricts her actions to writing a note in the medical case record.

17 February. One and a half months later a chief physician discovers the note in the case record. He writes a report to the social welfare office of the district where the girl’s family lives. The social welfare office reports the case to the district police office (26 February).

5 May. A detective inspector makes the decision to act in this case.

17 May. Police, social authorities, and a physician make a house call. The parents are informed that they are under suspicion of plotting regarding severe genital mutilation. The girl (at the time, ten months old) is taken to a clinic for genital examination. The other children of the family are taken into custody. The parents are taken separately to police headquarters where they are further informed about the serious charges. Both parents deny these insistently and indignantly, and cannot understand why anyone could think they would harm their own child in this way. Later the same day, the (two) physicians declare the girl’s genitals to be completely normal. Neither of them could find signs of any kind of violence or of an operation.

#### **Comment**

The case described above touches upon several of the obstructing and favouring factors for an implementation of the FGM legislation in a Swedish context.

A problem in some of the suspected cases in Sweden has been how to establish **if** FGM has been performed (if the case is not about infibulation). In the case described above, an experienced nurse was mistaken, and, according to the police investigation, two colleagues of hers came to the same conclusion when looking at the baby girl's genitals. Some months later, two physicians found no signs of any kind of FGM.

In another suspected case of FGM (Göteborg, 1995-2000), the two specialist physicians involved could not tell for sure if an eight-year-old girl had gone through FGM or not, despite a thorough examination. Due to miscommunication between the police and the social authorities, the case was closed when the statute of limitations for the suspected crime had run out. The lack of final conclusions resulted in that the case neither could be taken to court; nor could the parents free themselves of suspicion.

However, the case described above shows several favouring factors concerning the implementation of the FGM legislation in Sweden:

- There is a widespread knowledge about FGM (the nurse is attentive when seeing this African baby girl);
- There is a consensus on the nature of the crime, where professionals hold a child victim perspective (the chief physician, the police, and the social authorities agree upon their duty to act and enforce the law in this case);
- There is cooperation between the authorities in cases of suspected FGM (the health care sector, the police and the social authorities cooperate when acting in this case).

The case involving this baby girl is “typical” of Sweden, even though the cases (police investigations) when compared show a high degree of variety. Fifteen suspected cases of FGM have reached the police in Sweden. Some cases concerned rumours and unfounded suspicions, which could be removed very quickly from the cause list at the police. In some cases of more serious suspicion, it could be established that no FGM had been performed. In a few cases, as those mentioned above, there was no way to establish **if** FGM had been performed. Further, in some cases, there was no doubt that the girls concerned had gone through FGM (it was admitted by parents), the issue was **when** the operations had taken place. Before 1999, it was not illegal to have FGM performed abroad on a girl resident in Sweden, as long as it was not an act considered to be criminal in the country where the operation took place. In 1999, the principle of double incrimination was removed, resulting in today's possibility to prosecute for FGM at Swedish courts, irrespective of where the criminal act has taken place. In the cases investigated by the Swedish police, the families of the girls have claimed that the girls have gone through FGM before 1999 (and even

before they arrived in Sweden). The police have not been able to present counterevidence to these statements.

The “typicality” of the case described about the baby girl is that it gives a good picture of the situation in Sweden: generally professionals and officials in the field have a high level of alertness when it comes to FGM. Already in the beginning of the 1990s, the Swedish government launched the first campaign to sensitise professionals and to mould opinion among concerned immigrant groups (The Göteborg Project, run by the Swedish Board of Health and Welfare). Other steps aimed at finding cases and changing attitudes in immigrant groups have followed this campaign. For professionals in the health care sector, the police, the social authorities and in the school sector, there are guidelines for how to deal with suspected cases; either it concerns suspicions of performed FGM or fear of future performances of FGM. The general view among officials and professionals, and also among the general public, is that FGM is a hideous crime that should be punished. Representatives of the government also take this stand repeatedly in public. In spite of this attention, relatively few suspected cases have reached the authorities, and no case has been taken to court.

It is often assumed (by e.g. politicians and journalists) that there is a high prevalence of FGM in African groups in Sweden. However, the material gathered in this study supports the view that the occurrence of FGM in Sweden is low or non-existent. This is further supported by reports from Denmark, with a similar public attention to the FGM issue and history of campaigns – but no case taken to court. It is difficult to conclude what has ultimately caused this situation. The lack of confirmed cases in Sweden and Denmark may be due to intense campaigns, legislation and fear of punishment, and cultural change due to internal debates in the immigrant groups.

#### ***4. United Kingdom***

Following a training day in the city concerned, a health visitor (HV) visited a young mother from a practising community who had a child of less than 5 years (for a routine developmental check). The young mother (F) lived with her younger relative (aged 13) as her mother was out of the UK. During the visit, this younger relative (Z) mentioned to the HV that she was going home to visit her mother during the holidays. The HV asked if her mother had mentioned FGM to her, and the young girl said that the topic had been raised the previous year.

The HV was concerned and referred the matter to Social Services. Social Services allocated a social worker (SW) to go and talk to the young mother about the concerns

expressed. The SW made a home visit and raised the fear that Z might be subjected to FGM when she went home, and asked if F would agree to give her their passports until the discussions were complete as the travel date was very soon. F agreed to that and arrangements were made for further home visits to continue the discussions.

F contacted an advocacy organisation and informed them of what had happened as well as several members of her extended family. The advocate, who was not from a practising community, did not seem know enough about FGM and was very critical of the actions of the SW.

At this point FORWARD was contacted to give advice and guidance in respect of Social Services intervention. F attended a meeting with several members of her extended family, her solicitor, a teacher in a supplementary school and her advocate. The SW, her manager and another social services manager represented the Social Services Department. FORWARD attended in an independent advisory capacity.

The meeting was quite fraught as there were several issues that were of concern to F and her representatives. Firstly, that the HV had acted outside her role – as she was there to see the baby, she had no business talking to her younger sister about issues like FGM, that the SW had ‘taken’ the passports and that because of the actions of Social Services, Z might not be able to go and see her mother.

FORWARD took the position of using the meeting to explain why the concerns of the HV were valid, why Social Services had a responsibility under child protection legislation to investigate any concerns.

F assured the meeting that the mother had changed her views on FGM, that Z was now too old to undergo FGM as the age for having it done was younger and that the mother no longer lived in the home country and times were different from when her older sisters had had FGM done. F promised that when Z returned she was willing for the SW to see her, interview her alone and even have a medical examination if that would reassure the SW.

Based on the assurances the Social Services Department (SSD) [with FORWARD’s agreement] agreed that it would be safe to allow the Z to go and visit her mother. Z and the supplementary school teacher (who was also going on holiday) were provided with information on the law and the health and human rights dimension of FGM to take with them on the journey for the mother.

Outcome: Z never returned from the 'holiday'! FORWARD cannot but assume that despite all the assurances the young girl was subjected to FGM and therefore is unable to return to the UK.