

Female Genital Mutilation Law and Practice

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Foreword by

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Bristol BS1 3AG

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 1 78473 333 9

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by Hobbs the Printers Limited, Totton, Hampshire SO40 3WX

For Amartya

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‘Words should not seek to please, to hide the wounds in our bodies, or the shameful moments in our lives. They may hurt, give us pain, but they can also provoke us to question what we have accepted for thousands of years.’¹

Nawal El Saadawi

¹ Nawal El Saadawi, *Walking Through Fire: A Life of Nawal El Saadawi* (Zed Books Ltd, London & New York, 15 April 2009).

FOREWORD

The practice of female genital mutilation (FGM) remains widespread across the globe – especially in parts of North Africa – but a substantial number of mutilations are reported to have been undertaken in this jurisdiction. Accordingly, the risk to girls and young women living in this jurisdiction is not limited to being taken abroad to be subjected to FGM but includes the risk of having the mutilation performed in this country. The adverse physical, emotional and psychological consequences of FGM are invariably severe and life-long.

Many health and social care professionals, politicians and lawyers have worked tirelessly to bring to wider public attention the extent of the practice of FGM and its brutal effects. They have sought effective protection to be provided to the potential victims of this cruel practice. The campaign culminated in the passing of legislation to introduce FGM Protection Orders (FGMPOs) with a statutory regime designed to prevent FGM and afford protection to vulnerable girls and young women.

One of the leading campaigners is Zimran Samuel, the author of this excellent tome. He is one of the country's foremost legal experts on the practice and prevention of FGM. This book is the culmination of his dedicated work in this field.

The Metropolitan Police have taken a proactive stance in commencing proceedings and seeking FGMPOs in appropriate cases. Their lead is being followed by many police forces and local authorities across the country. It is vital in order to prevent FGM that health and social care professionals, local authorities and law enforcement agencies have a clear understanding of the socio-cultural reasons for the practice of FGM, the factors which may indicate a girl or young woman is at a real risk of being forced to undergo FGM and of the effective legal steps which can and must be taken to prevent the same.

This book provides a comprehensive and readily accessible guide to all of these matters and, most especially, to the legal procedures to be followed to secure protective court orders. It contains a very helpful list of: (a) medical centres and practitioners who are experts in this field to give forensic clinical opinions, and (b) organisations who have the experience and expertise to undertake educative and preventative work with girls, young women and their families.

I am delighted and honoured to be asked to write the Foreword to this book. Those who are concerned with girls and young women who are feared to be at

risk of being subjected to FGM will undoubtedly find this book to be an invaluable resource tool. I highly commend it to you.

The Honourable Mr Justice Keehan
January 2017

PREFACE

This work was written in close consultation with survivors of female genital mutilation and frontline practitioners from across the spectrum of disciplines. It is intended to summarise the current legal provisions surrounding FGM in England, Wales and Northern Ireland.

Once clouded behind arguments of cultural relativism, FGM is now widely recognised both domestically and internationally as child abuse and a serious human rights abuse. However, it remains a practice shrouded in secrecy and one which all too often has escaped the reaches of our child protection system.

There has also been criticism that the law itself has been ineffective and inadequate in tackling FGM. Despite the existence over 30 years of a criminal law, there remains no successful prosecution of an offence of FGM. Whilst the Family Court and the High Court have creatively utilised other measures to address FGM, there has historically been no targeted provision to protect those at risk.

In what has been termed by campaigners and survivors as a quiet revolution, recent years have seen a proactive drive towards greater public awareness of the issue and a better frontline understanding of the complexities of FGM.¹

This has now been accompanied by revised legislation and statutory guidance with the introduction of the Serious Crime Act 2015, offering strong reasons for optimism for both the criminal and civil jurisdictions.

Set within a human rights framework, this book aims to summarise the key legal developments and debates across international law, family law, immigration and criminal law.

It is hoped that it will be of use to judges, advocates, social workers, teachers, midwives, and other professionals as part of the on-going efforts to combat the scourge of FGM and violence against women and young girls.

The law is stated as at 6 March 2017.

Zimran Samuel

¹ Karen McVeigh, 'FGM court orders: a quiet revolution in child protection', *The Guardian*, Thursday 31 December 2015.

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OPENING COMMENT: COUNTERING THE CATASTROPHE

I feel enormously privileged to have been invited by Zimran Samuel to contribute to the prefatory remarks of this crucial book. However, it would be a serious omission if I did not record at the very outset that Zimran has worked tirelessly over the last few years to protect young women and girls from the scourge that is FGM.

By his campaigning, policy work and expert advocacy in court, painstakingly fighting for the rights of young women and girls to enjoy what the rest of us take for granted – the right to bodily integrity – he has significantly reduced the sum of human suffering within affected communities in the United Kingdom. Therefore his work and his book, have to be situated within that broader struggle for the vindication of the rights of the vulnerable.

But why is there this fight? What is behind the controversy and contestation? To get at this, let us consider three questions: what, why, how.

- What is FGM?
- Why does it happen?
- How can we fight it?

What

The question ‘What is FGM?’ is conceptually equivalent to asking what is crime, what is child abuse, what is gender violence, what is a human rights violation, what is the social control of women? The distinguishing feature of FGM is that it is all those things.

The World Health Organisation has identified four ‘types’ of FGM, different grades and degrees of genital mutilation. But typologies fail to capture the human cost. So what kind of human thing is it?

It is a commonplace to say that the scale of social harm inflicted by FGM is horrifying. Literally. It creates a cold sense of horror. The UN has ‘upgraded’ its estimate of the amount of women worldwide who are living with the legacy of

FGM. It is now estimated to be 200 million. What does that mean? Here is one attempt: imagine the entire population of Germany is female and has been genitally mutilated, then add the entire population of France, then add the entire United Kingdom. That many.

Every year 3 million more girls are mutilated. That is the population of Birmingham plus Leeds plus Liverpool plus Manchester plus Bristol. FGM has been around for a long time. An inconceivably long time. Its origins may indeed be Pharaonic. Therefore, it easily predates Islam. It predates Christianity. It is not restricted to any particular social or religious group. It is practised by Muslims, Christians, Jewish people and animists. It is not prescribed or officially ordained by any religion. It is not, contrary to certain myths and misinformation, authorised by the Koran. It has historically affected a broad swathe of countries from Iran and Kurdistan, through Egypt and the Horn of Africa, across the Sahara to the Atlantic Ocean, and then down towards the Equator in certain, but by no means all, Sub-Saharan African countries. There are other centres of concern such as Indonesia. It is a living thing. It is diffuse; it's spreading. It is complex, changing, adapting – mutating.

With the mass population movements of modern times, these historic practising communities have dispersed across the world, so that FGM is now found on every continent without exception. It is a global phenomenon. Yet as national and international initiatives seek to counter it, so it changes and mutates. It is becoming more 'medicalised' in certain countries such as Egypt. The age at which it is inflicted changes: lowering among some groups, so very young children or babies cannot speak about what has been done to them; being raised elsewhere, so girls in their teens are beyond the scope of routine childhood medical examinations.

There is a vivid sense in which there is no such thing as FGM. There are FGMs.

As French social theorist Pierre Bourdieu says of racial discrimination: there is no such thing as 'racism' but racisms. Bourdieu's idea is particularly apposite here, as what has come to be called FGM is in actuality a series of subtly different but seriously harmful social practices directed against young women and girls. The result is that wherever there are girls and young women and communities with links to the broad band of historically practising countries, there is the risk of a child or an adolescent, without any choice, with no control, against her will, possibly without anaesthetic, having her genitalia mutilated. And for what? That is the question. To what end? Why?

Why

To ask the why question is even more problematic than asking what. After all: why do people do what they do?

Whole university departments and research institutes are devoted to this elusive quest; whole libraries are filled, conferences and compendia are prepared, and

still the mystery remains. We remain shut out from the inner sanctum, the repository of the deeper truth. Let me propose some keys to unlocking the door. Three of them.

First, do not just ask who arranges or authorises or performs the ‘cutting’, but ask whom it is for. It is certainly the case that FGM is often arranged by the female members of the social group. In many communities, where it has not been medicalised, the cutting is performed by a female cutter. But there is a tripartite structure to FGM: it is arranged and performed by older women, on younger females, for – and this is at the heart of it – men. Unless we understand that third and final limb, we will not understand FGM. We will come in a moment to why it is of benefit to men.

Secondly, do not just look at surface effects but seek deeper causes. Many human behavioural sciences distinguish between proximate and distal causes. People will say that FGM is performed because of community, clan or kinship pressure. Yes. But why that pressure? From where does it come? We need to disentangle the visible contours of the practice from what underpins the social norm. There is a need to control the sexuality of females. But why?

Thirdly, then, scrutinise the reasons for the reasons. What does FGM target? What does it do? If it is sexual control, such control is achieved by a very distinctive method: the mutilation of female genitalia. Evolutionary biology and both social and evolutionary psychology tell us that one of the prime uncertainties in the relations between the sexes is what is called ‘paternal uncertainty’. The father can rarely be sure that the offspring is his. In the modern world, equipped with sophisticated DNA testing, this habitual cloud of confusion can be alleviated. But in the geographical regions and historic epochs in which this harmful social practice developed, this was not an option. One obvious way to suppress the risk that the child you are bringing up contains the genes of another (possibly rival) male, is to reduce the risk that the mother of the child is having sex with other men.

In mediaeval Europe, a range of technologies developed including the chastity belt and the remorseless supervision and surveillance of young women. FGM can be conceived as another such technology: crude, punishing and painful. In one appalling sense, this brutalist logic works. Certainly, many of the survivors I have spoken to while working on this subject for a number of years will tell you that what they associate sex with is pain. In human behaviour, as Jeremy Bentham observed, nature has placed humankind under two sovereign masters: pleasure and pain. It is no coincidence that invariably targeted in FGM, even in the miscalled ‘mildest’ forms, is the clitoris, a seat of sexual pleasure for women. Thus following mutilation, sex is not pleasurable, but functional. Sex is removed from the sphere of pleasure and sequestered within another zone: pregnancy and pain. This may be somewhere near the unsparing originating logic. It is unacceptable and anachronistic. It must be defeated. But how?

How

There is a deep paradox in that the efficacy of the law tends to be overestimated by lawyers and underestimated by non-lawyers. Nevertheless, it is to be commended that the stance of this book, and the approach of many of the lawyers mentioned in it, is that the law is a tool for both social change and social justice, if we want it to be. In respect of FGM, do we?

What can we do about FGM with the law? That is the problem, the paradox, the puzzle. You will read within these pages that there has been a lamentable history of prosecuting FGM in the United Kingdom. I have no doubt that a greater awareness of the problem has developed in just the last two or three years than in the previous two or three decades. In part that is because of some of the courageous, in fact heroic, survivors of FGM, including those to whom the book is dedicated.

As part of the Bar Human Rights Committee's work on the Parliamentary Inquiry, Zimran Samuel worked with me to impress on parliamentarians that an overly punitive approach could be counterproductive. Prosecutions are important, to victims, as a public acknowledgement of the uncompromising stance of the nation towards this harmful social practice. They unquestionably have symbolic value. But prosecutions are not enough. You cannot prosecute FGM into extinction. Therefore, as with UN initiatives throughout Sub-Saharan Africa, the great emphasis should be on 'collective abandonment'. That is, collaborative work with all sections of civil society to assist affected communities to move away from the deep grooves of tradition. You cannot eradicate such deeply ingrained social practices instantly. But you can remove them. You can change social norms. Social norms are constantly changing around us. The challenge presented by FGM is to achieve this deliberately and swiftly.

The clock is ticking. Every year 3 million more young women and girls will be mutilated. There are already 200 million. How many million more before we achieve what must be achieved?

The law can help. Books like this can help. It aims its fire at the twin targets of justice in a courtroom and social justice for young women and girls beyond. It equips lawyers and judges with the legal tools to intervene to protect at-risk young women and girls; it arms affected communities, frontline professionals and (no less importantly) concerned citizens, with indispensable information to vindicate the right of all young women and girls to bodily integrity.

FGM remains one of the greatest human rights catastrophes in the world. But unlike hurricanes and earthquakes and tsunamis, we can do something about it. We can counter the catastrophic. We must.

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November 2016