



From: [Redacted]
Subject: Fwd: FGM Legal Guidance fro circulation
Date: 23 August 2019 at 12:25
To: [Redacted]

Kind regards

Harriet Wistrich
Director
Centre for Women's Justice

www.centreforwomensjustice.org.uk

Registered Charity number: 1169213

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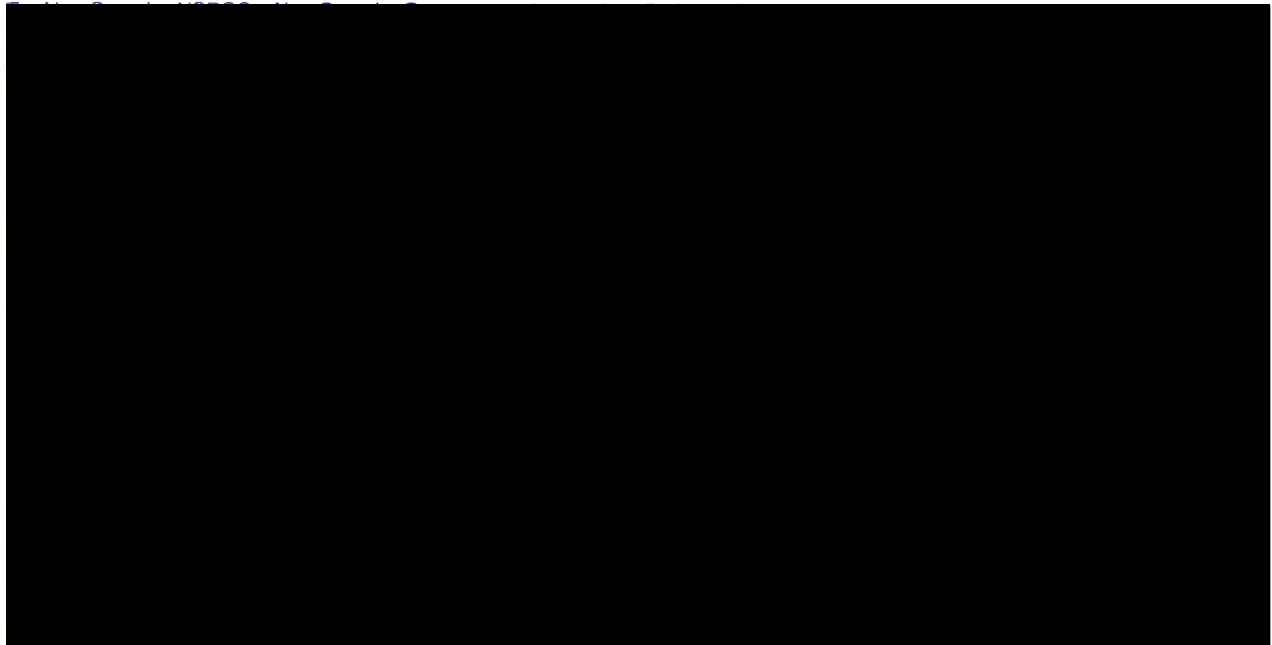
From: Liz Kelly <[Redacted]>
Subject: Fwd: FW: FGM Legal Guidance fro circulation
Date: 23 August 2019 at 11:45:13 BST
To: Harriet Wistrich <[Redacted]>

Early example of being invited to comment on policy.

Liz

----- Forwarded message -----

From: Violence Against Women Strategy Manager <VAW.StrategyManager@cps.gsi.gov.uk>
Date: Tue, 19 Apr 2011 at 09:44
Subject: FW: FGM Legal Guidance fro circulation





Dear all

I attach the draft **Female Genital Mutilation Guidance for Prosecutors**, prepared by Manjula Nayee in CPS Strategy and Policy Directorate for your comments.

Please could you send your responses by 17 May to [redacted] and copy us in vaw.strategymanager@cps.gsi.gov.uk.

Many thanks

Jude

Jude Watson

Jude Watson (Mon pm - Wed) & Rebecca Egan (Wed - Fri am) (jobshare)

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<http://solacewomensaid.org/wp-content/uploads/2014/06/SWA-Finding-Costs-of-Freedom-Report.pdf>

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Briefing documents on violence and mental health

<http://www.londonmet.ac.uk/faculties/faculty-of-social-sciences-and-humanities/research/child-and-woman-abuse-studies-unit/projects/rev-a-project/>

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Female Genital Mutilation Legal Guidance

Published: DD MM 2011

Content

This guidance explains what Female Genital Mutilation (FGM) is, the different types of FGM, what challenges you may face in bringing a case to court particularly when a victim is likely to retract her evidence due to social and cultural pressure. The guidance also contains background and dynamics of FGM which is essential to understand when prosecuting such cases.

Headlines

- The elements of the offence: a quick glance at the main sections.
- There are four types of FGM.
- It is advisable to refer cases to VAW Coordinators.
- There are a number of difficulties in prosecuting FGM cases as victims are reluctant to report and where reported often face family and cultural pressure to withdraw.
- It is essential to have early consultation with the police as they are likely to indicate a victim's willingness to testify.
- It is important to understand the background and dynamics of FGM practice.

CPS policy lead

Manjula Nayee, majula.nayee@cps.gsi.gov.uk; 020 3357 0872

Female Genital Mutilation Legal Guidance

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Definition of Female Genital Mutilation (FGM)

Female Genital Mutilation (FGM) - sometimes is referred to as female circumcision or female genital cutting - is a collective term for a range of procedures which involve partial or total removal of the external female genitalia for non-medical reasons.

The names 'FGM' or 'cut' are increasingly used at the community level, although they are still not always understood by individuals in practicing communities, largely because they are English terms.

The Somali term for FGM is 'Gudnin' and the Sudanese the word for FGM is 'Tahur'.

Female genital mutilation is classified into four major types and is described under the Female Genital Mutilation Act 2003.

The Law

Prohibition of Female Circumcision Act 1985

FGM has been a specific criminal offence in the UK since 1985. However there is evidence which suggest that some communities within the UK as well as abroad, continue to accept or even condone the practice. In particular, the fact that people could circumvent the 1985 Act by taking young girls abroad to carry out FGM had been seen for some time as a loophole in the law.

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It is this loophole that the Female Genital Mutilation Act 2003 Act intended to help close.

The Female Genital Mutilation Act 2003

The Act was brought into force on March 2004 by the Female Genital Mutilation Act 2003 (Commencement) Order 2004. The provisions of the Act only apply to offences committed on or after the date of commencement. For offences committed before 3 March 2004 the Prohibition of Female Circumcision will continue to apply. The Female Genital Mutilation Act 2003 (the 2003 Act) repeals and re-enacts the Prohibition of Female Circumcision Act 1985. It reaffirms that it is illegal for FGM to be performed in the UK and, for the first time, it is also an offence for UK nationals or permanent UK residents to carry out, or aid, abet, counsel or procure the carrying out of FGM abroad on a UK national or permanent UK resident, even in countries where the practice is legal.

Elements of the Offence

Section 1: Offence of female genital mutilation

It is a criminal offence to:

- excise, infibulate, or otherwise mutilate the whole or any part of a girl or woman's labia majora, labia minora or clitoris;

Although the Act refers to "girls", it also applies to women

Defence

No offence is committed by an approved person, such as a doctor or midwife, who performs a medical procedure necessary for a woman or girl's physical or mental health. The exception only applies if the procedure is carried out:

- in the UK by a registered medical practitioner or registered midwife or a person training to be one: or
- outside the UK by overseas equivalents of such persons.

Section 1 makes it an offence for a person to perform an FGM operation on a girl (subsection (1)). Subsection (2) provides a saving for necessary surgical operations and operations carried out in connection with childbirth. However, the saving applies only if the operation is carried out: in the UK by a registered medical practitioner or registered midwife or a person training to be one (subsection (3)); or outside the UK by overseas equivalents of such persons (subsection (4)). Operations necessary for physical health are likely to be rare but could, for example, include the removal of relevant cancerous areas. Operations necessary for mental health could include, for example, cosmetic surgery resulting from the distress caused by a perception of abnormality or gender reassignment surgery. However, subsection (5) provides that in assessing a girl's mental health no account is taken of any belief that the operation

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is needed as a matter of custom or ritual. So an FGM operation could not legally occur on the ground that a girl's mental health would suffer if she did not conform to the prevailing custom of her community.

There is no fixed procedure for determining whether a person carrying out an FGM operation outside the UK is an overseas equivalent of a medical practitioner etc for the purpose of subsection (4). If a prosecution is brought, this will be a matter for the courts (in the UK) to determine on the facts of the case.

Section 2: Offence of assisting a girl to mutilate her own genitalia

It is not an offence for a girl to carry out an FGM operation on herself. However 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 own labia majora, labia minora or clitoris

Section 3: Offence to assist 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 United Kingdom 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, and

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

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

By virtue of subsection (2), this offence only applies where the victim of the FGM operation is a UK national or permanent UK resident. So the person who, for example, arranges by telephone from his home in England for his UK national daughter to have an FGM operation carried out abroad by a foreign national (who does not live permanently in the UK) is guilty of an offence.

The exception for necessary surgical operations that applies for the purposes of section 1 of the Act also applies to section 3.

Section 4: Extension of sections 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.

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

- (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.

The effect of the extension of section 1 is that it will be an offence for a UK national or permanent UK resident to carry out an FGM operation outside the UK. By virtue of section 8 of the Accessories and Abettors Act 1861, it will also be an offence for a person in the UK (or a UK national or permanent UK resident outside the UK) to aid, abet etc a UK national or permanent UK resident to carry out an FGM operation outside the UK. For example, if a person in the UK advises his UK national brother over the telephone how to carry out an FGM operation abroad, he would commit an offence.

The effect of the extension of section 2 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc a person of any nationality to carry out an FGM operation on herself wherever it is carried out.

The effect of the extension of section 3 is that it will be an offence for a UK national or permanent UK resident outside the UK to aid, abet etc a foreign national (who is not a permanent UK resident) to carry out an FGM operation outside the UK on a UK national or permanent UK resident. For example, a permanent UK resident who takes his permanent UK resident daughter to the doctor's surgery in another country so that an FGM operation can be carried out will commit an offence.

Penalties for offences

Section 5: A person guilty of an offence under this Act is liable:

- (a) on conviction on indictment, to imprisonment for a 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).

Section 6: Definition

- (1) Girl includes woman.
- (2) A United Kingdom national is an individual who is:
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 is a British subject, or
 - (c) a British protected person within the meaning of that Act.

(3) A permanent United Kingdom resident is an individual who is settled in the United Kingdom (within the meaning of the Immigration Act 1971).

Referral to Violence Against Women Coordinators

Cases involving FGM where possible should be referred to VAW Coordinators given their experience and knowledge in dealing with victims support.

Difficulties in prosecuting FGM cases

Reluctant Victim

FGM cases are difficult to prosecute for a number of reasons but primarily because of difficulties in obtaining evidence where a complaint is made.

Prosecutors should bear in mind the following:

- Is the victim likely to give evidence? Victims are often reluctant to make a statement or if they do often retract because of family and cultural pressure
- Ensure that early consultation with the police takes place as it is vital particularly in indicating the willingness of a victim to testify at the trial.
- What form of evidence is available from the victim? If an ABE Video is available, additional information from the interview process will enable a risk assessment to be conducted as to the risk to any other siblings.
- What other evidence is available? Consider if other family members, close friends, general practitioner and school authorities can assist.
- Ensure special measures applications are made in time.
- Bear in mind that FGM differs from other forms of child abuse in two important respects:
 - a) parents who have done this to their children genuinely believe that it is in the child's best interest to conform with their prevailing custom. They believe it makes the child socially acceptable and do not intend it as an act of abuse; and
 - b) there is no element of repetition- it is a one –off act of abuse (although younger female siblings of any child found to have been mutilated may be at risk).

Disclosure from Social Services / Local Authority

Prosecutors should be aware that given the victims age, a local authority or social services are likely to have material or information which might be relevant to the prosecution case. In such cases, if the material or information might reasonably be considered capable of undermining the prosecution case or of assisting the defence, prosecutors are asked to take steps they regard as appropriate to obtain it. Good

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practice is to request the material and if it fails, apply to the Court. For further guidance see "A Protocol between the CPS Police and Local Authorities in the exchange of information in the investigation and prosecution of child abuse cases" and "ACPO Guidelines on investigating child abuse and safeguarding children 2005".

Consider other charges

The FGM Act makes it clear that it is an offence for anyone (regardless of their nationality and residence status) to perform FGM in the UK or to assist a girl to perform FGM on herself in the UK. Provided that the mutilation takes place in the UK, the nationality or residence status of the victim is irrelevant.

However there may be circumstances when it may be difficult to apply the Act. Prosecutors should remember that in cases where it is not possible to apply the Act, they should consider the full ambit of charging. Assault, conspiracy and child cruelty are just some examples of charges that can arise in these circumstances.

Prosecutors should be aware, when dealing with a case of FGM, that the victim may not just be a victim of FGM. The victim may also have been subjected to rape and other sexual offences, or may have been subject to a forced marriage. The victim may be under 18, and may also be a victim of ill treatment.

FGM and Violence Against Women

The CPS Violence against Women Strategy provides an overarching framework for crimes that have been identified as primarily being committed by men, against women, within a context of power and control.

FGM is recognised internationally as a clear form of violence against women and girls. It reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children. The practice also violates a person's rights to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death.

FGM prosecutions should therefore be addressed within an overall framework of violence against women and an overall human rights framework. Where appropriate, prosecutors should make links with other topics such as domestic violence, rape and sexual offences, honour crimes, forced marriage, child abuse, crimes against the older person, pornography, human trafficking, and prostitution.

Prosecutors should recognise the diversity of victims. Victims' experiences of FGM are undoubtedly affected by identities distinct from gender, like their ethnicity, age, sexuality, disability, immigration status, and religion or belief. Each victim's individual experiences of violence will be different, and some victims may encounter additional barriers to accessing justice. For example, a young woman forced into agreeing to these procedures may find it difficult to report domestic violence because she fears

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she will not be taken seriously as a result of her age. The safety and needs of each victim should be assessed on an individual basis.

Multi- Agency Practice Guidelines on FGM

These are guidelines which are aimed to assist frontline professionals (including NHS staff and other health professionals, police officers, children's social care workers, and teachers and other educational professionals. who have responsibilities to safeguard children and protect adults from the abuses associated with female genital mutilation (FGM). Prosecutors are encouraged to look at these guidelines and can be accessed from the following link:

<http://www.fco.gov.uk/resources/en/pdf/travel-living-abroad/when-things-go-wrong/multi-agency-fgm-guidelines.pdf>.

Annex A: Contact details for national support agencies and sources of information

Metropolitan Police
Child Abuse Investigation Command/Project Azure
Telephone: 0207 161 2888
[Metropolitan Police - Project Azure](#)

London Safeguarding Children Board
59½ Southwark Street
London SE1 0AL
Telephone: 020 7934 9683
[London Safeguarding Children Board - FGM resource pack](#)

Birmingham Against FGM
Email: cypfcomms@birmingham.gov.uk
Telephone: 0121 3038200

Child Protection Helpline
Telephone: 0808 800 5000 (advice for adults worried about a child)

Foundation for Women's Health Research & Development (FORWARD)
[FORWARD website](#)
Telephone: 020 8960 4000

London Black Women's Health and Family Support
[BWHAFS website](#)

National Society for the Prevention of Cruelty to Children (NSPCC)
[NSPCC website](#)
Telephone: 0808 800 5000

Childline
(24 hr free helpline for children)
[Childline website](#)
Tel: 0800 1111

FGM National Clinical Group
[FGM NCG website](#)

Foreign and Commonwealth Office
Telephone: 0207 008 1500
fgm@fco.gov.uk

Annex B:

Background and dynamics

Female genital mutilation (FGM) involves procedures, which include the partial or total removal of the external female genital organs for cultural or other non-therapeutic reasons. The practice is medically unnecessary, extremely painful and has serious health consequences, both at the time when the mutilation is carried out, and in later life. It can also be psychologically damaging.

Age and procedure

The procedure is typically performed on girls aged between 5 and 8 but in some cases, FGM is performed on newborn infants or on young women prior to marriage or pregnancy. Many of the victims are therefore young and vulnerable. A number of girls die as a direct result of the procedure, from blood loss or infection. In the longer term, women who have undergone some form of FGM are twice as likely to die in childbirth, and four times more likely to give birth to a stillborn child.

FGM is usually carried out by the older women in a practicing community, for whom it way of gaining prestige and can be a lucrative source of income in some communities.

The arrangements for the procedure usually include the child being held down on the floor by several women and the procedure carried out without medical expertise, attention to hygiene and anaesthesia. The instruments used include unsterilised household knives, razor blades, broken glass and sharpened stones. In addition the child is subjected to the procedure unexpectedly.

High Risk

There are no health benefits to a victim who undergoes a FGM procedure, and it harms girls and women in a number of ways. The different types of FGM as described above involves removing and damaging healthy and normal female genital tissue, and interferes with the natural functions of girls' and women's bodies.

Immediate complications can include severe pain, shock, haemorrhage (bleeding), tetanus or sepsis (bacterial infection), urine retention, open sores in the genital region and injury to nearby genital tissue. Further the long term effects can include:

- recurrent bladder and urinary tract infections;
- cysts;
- infertility;
- an increased risk of childbirth complications and newborn deaths;
- the need for later surgeries. For example, the FGM procedure that seals or narrows a vaginal opening (type 3 above) needs to be cut open later to allow for sexual intercourse and childbirth. Sometimes it is

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stitched again several times, including after childbirth, hence the woman goes through repeated opening and closing procedures. Under FGM Act it is an offence for any medical professional [or anyone, for that matter] to reinfibulate or “closes” a woman after she has been defibulated during labour for childbirth.

Cultural, religious and social causes

The reasons why FGM occur are diverse and are often bewildering to outsiders and certainly conflict with modern western medical practises and knowledge. The justifications for the practise are often cited as custom or tradition and FGM is often seen as an initiation into adulthood.

Particularly in patriarchal communities, FGM is considered essential for marriage and without marriage a women’s honour and even survival maybe be compromised. FGM is used as a means of controlling and de-sexualising women and repressing sexual desire. Those who practise these procedures believe will reduce the chances of promiscuity in marriage on the part of the women.

There are no cultural or traditional reasons why the practice should be accepted. It is not a religious practice and the leaders of all major religions have condemned the practice as unnecessary and harmful. However, any action which is being contemplated must be proportionate and sensitive to the cultural norms and pressures on parents and children. Action should be taken in close collaboration with other members of the Local Safeguarding Boards.

FGM is much more common than most people realise, both worldwide and in the UK. Most of the women and girls affected live in Africa, although some live in the Middle East and Asia. However, those who have undergone, or are at risk of undergoing, FGM are increasingly found in Western Europe and other developed countries, primarily among immigrant and refugee communities.

It is estimated that 100 to 140 million girls and women worldwide are currently living with the consequences of FGM. A recent study² based on 2001 census data suggested that: over 20,000 girls under the age of 15 could be at high risk of FGM in England and Wales each year nearly 66,000 women in England and Wales are living with the consequences of FGM. It is possible that, due to population growth and immigration from practising countries since 2001, FGM is significantly more prevalent than these figures suggest.

There is likely to be an uneven distribution of cases of FGM around the country, with more occurring in those areas of the UK with larger communities from the practising countries found by the same study to be London, Cardiff, Manchester, Sheffield, Northampton, Birmingham, Oxford, Crawley, Reading, Slough and Milton Keynes.

FGM is not necessarily confined to the above areas and may be prevalent in areas with higher proportions of overseas students whose families may accompany them on educational or spousal visas.

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The age at which FGM is carried out can take place at any time between birth and the labour of the first child. This depends on the community or individual family. There is compelling evidence from WHO that the age is falling and the practise is becoming less tightly linked to puberty rights and initiation into adulthood.