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**LEGISLATION TO ADDRESS THE ISSUE OF
FEMALE GENITAL MUTILATION (FGM)**

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Introduction

Female genital mutilation includes all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. According to WHO and UNICEF estimate, every year two million girls are subjected to Female Genital Mutilation (FGM), impairing their health, violating their basic human rights and the integrity of their bodies. More than 130 million women are estimated to have undergone FGM worldwide, with tradition and cultural identity serving as justifications. Most of the affected girls and women live in 28 African states, but some Middle Eastern and Asian countries practice forms of FGM as well. Owing to migration the practice has also spread to countries in Europe and North America, Canada, Australia and New Zealand.

FGM has been recognized as a clear violation of the human rights of women and girls and is a form of discrimination, as stated in conventions and declarations. A selection of international and regional treaties and consensus documents providing protection against FGM and other harmful traditional practices are:

- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- African Charter on Human and Peoples' Rights (1981)
- Convention on the Rights of the Child (1989)
- African Charter on the Rights and Welfare of the Child (1990)
- UN General Assembly, Declaration on the Elimination of Violence against Women (1993)
- World Conference on Human Rights, Vienna Declaration and Plan of Action (1993)
- Programme of Action of the International Conference on Population and Development, Cairo (1994)
- Beijing Declaration and Platform for Action (1995)
- UN General Assembly resolution A/RES/52/99 on Traditional or Customary Practices affecting the Health of Women and Girls (1998)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)
- Solemn Declaration on Gender Equality in Africa (2004)
- World Health Assembly resolution WHA61.16 on Female Genital Mutilation (2008).

At the national level 16 African countries have passed legislation on the topic of FGM. However, many countries lack the implementation of the law. The following part gives a summary of the legislations passed against FGM in the affected countries, as well as the prevalence of FGM.

Benin

FGM prevalence

Benin has a population of 8.7 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years in Benin is 16.8 % in 2001. FGM is practiced in the Northern part in Atasora, Borgou, Zou, Alibori, Southern part in Oueme with types I, II and IV (elongation of clitoris) being widespread.

Legislation

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Law passed in 3rd March 2003 banning all forms of FGM: Law no. 2003-03 on the Repression of the Practice of FGM in the Republic of Benin:

Article 2 prohibits all forms of FGM

Article 4 imposes a prison term from 6 months to 3 years and a fine 100,000 to 2,000,000 francs

Article 5 imposes a higher penalty for those who perform FGM on minors (persons below 18 yrs) by imposing a term of 3 yrs –5yrs imprisonment and a maximum fine of 3 million francs.

Article 6 states that where the victim dies, the culprit will serve 5 to 20 years of hard labour and a fine of 3million to 6 million francs (Approx. \$12000)

Article 7 states that accomplices will be punished as the actual circumciser

Article 8 states that multiple offenders will be given the maximum penalty without any mitigation

Article 9 states that persons who refuse to report the occurrence of FGM will receive the same penalty for 'refusing to report the crime'. Persons are supposed to report any occurrence of FGM to the Public Prosecutors office and failure to do so amount to a fine of 50,000-100,000 francs.

Article 10 obliges the medical staff to assist the FGM victim/survivor and they must inform the public authorities.

Lessons learned: The only proof of a mild effectiveness of the law is that an exciser was jailed for 6 months in 2003.

Burkina Faso

FGM prevalence

Burkina Faso with 13.6 million people and according to UNICEF's Multiple Indicator cluster survey (MICS) the estimated prevalence of FGM in girls and women of 15 to 49 years in Burkina Faso is 72.5 % in 2006. The practice is common all over the country's 45 provinces with types II and III predominating.

Legislation

Law no. 43/96/ADP was enacted on 13th November 1996:

Article 380 any person who violates or attempts to violate the physical integrity of the female genital organ either in total or ablation, excision, infibulation, desensitization or by any other means will be imprisoned for 6 months to three years and a fine of 150,000-900,000 francs or by either punishment. If FGM results in death, the punishment shall be imprisonment for 5-10 years

Article 381 imposes the maximum punishment for persons in the medical and paramedical field

Article 382 a person having knowledge of the acts outlined in article 380 and who fails to report to the proper authorities will be fined 50,000 to 100,000 francs

Lessons Learned: The law is highly effective in Burkina Faso due primarily to the commitment of the government and the personal involvement of the First Lady Mrs. Chantal Compaore who is also IAC Goodwill Ambassador. The IAC National Committees CNLP and

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Voix de Femme mobilize communities and sensitize them on the provisions of the law, train the police, gendarmes and legal bodies to arrest and prosecute offenders. A hotline has been established to enable people report violators or those with intent to break the law. So far there have been 60 convictions of both excisers and accomplices.

Cameroon

FGM prevalence

Cameroon has a population of 17.3 million with an estimated prevalence of FGM 1.4% according to the 2004 Demographic and Health Survey (DHS). FGM is found in the Far North province, some parts of Adamaoua Province, and South West Province with types I, II, and III commonly practiced.

Legislation

There is no FGM law in Cameroon. A draft law has been pending for over 10 years, waiting to be debated in parliament.

Central African Republic

FGM prevalence

Central African Republic has a population of 4.3 million and according to the Multiple Indicator cluster survey (MICS), prevalence of FGM was 25.7% in 2005. FGM is localised in few communities and Types I and II quite common.

Legislation

The country had since 1996 promulgated a law against FGM. Penalty is one month to two years.

Lessons learnt: Lawyers have criticised this law as being too lenient. To date there has been no enforcement of the legislation.

Chad

FGM prevalence

Chad has a population of 10 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years is 44.9 % in 2004. Type II is common all over the country while Type III is practiced in Eastern part of the country.

Legislation

Law no 6/PR/2002 on the promotion of reproductive health has provisions prohibiting FGM. In this law, FGM is regarded as a form of violence against women and is prohibited. It has however, no provisions for sanctions, thus the national legislation is not complete yet. Also, FGM is not defined in this law and thus makes it subject to opinions of the perpetrators as well as law enforcement agents.

Sanctions for performing FGM can be found in the Penal Code, where *articles 252 - 254* can be applicable to FGM.

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Article 252 states that any person who “intentionally strikes or wounds or commits any other act of violence or assault upon the person of another, shall be punished by imprisonment from 6 days to 1 year and a fine ranging from 500 – 500’000 CFA”.

Article 253 is more specific and therefore better applicable in the case of FGM, stating: “The perpetrator shall be punished by imprisonment from 5 to 10 years and with a fine of 10’000 – 500’000 CFA when there is mutilation, amputation or privation of the use of a members, blindness, loss of an eye, or other infirmities or if the strikes or wounds, intentionally inflicted, result in unintended death...”.

Article 254 provides that “ when the strikes or wounds are carried out against a child under the age of 13, the penalty shall be doubled”, with the prison sentence not exceeding 20 years and the fine not exceeding 1’000’000 CFA. (Approx. \$2000)

Lessons learnt: No known case of arrest or prosecution.

Côte d’Ivoire

FGM prevalence

Cote d’Ivoire has a population of 19.7 million and according to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years is 36 % in 2006. It is practiced in the western, central and northern parts of the country where FGM Types I, II and III are common.

Legislation

In light of the health risks of FGM for women and girls, in May 1998, the National Assembly adopted Act No. 98-757 prohibiting certain forms of violence against women, including FGM. This law defines genital mutilation as a "violation on the integrity of the female genital organ by total or partial ablation, infibulation, desensitization, or by any other procedure." (*Article 1*)

Article 2 provides the sentences, stating: "Any person who performs a genital mutilation shall be punished by imprisonment of one to five years and a fine of 360,000 (US\$573) to 2,000,000 CFA francs" (US\$3,183)."

Attempts to perform genital mutilation are also subject to punishment. If the victim dies as a result of the mutilation, the sentence is increased from 5 to 20 years imprisonment. If the guilty person belongs to the medical or paramedical profession, the sentence is doubled, and, in addition, he or she is prohibited from practicing his or her profession for a maximum of five years. Parents who request the procedure, or who know it is imminent and have not informed the authorities, are subject to imprisonment of one year to five years and a fine of 360,000 (US\$573) to 2,000,000 CFA francs (US\$3,183). The same penalties apply to the spouses, relatives, and parents of the perpetrator of the act.

Lessons Learnt: Four excisers were jailed in 2000. Since that time, no more arrests.

Democratic Republic of Congo

FGM prevalence

Congo has a population of 3.7 million. According to USAID the estimated prevalence of FGM is 3 %. FGM is practiced in the northern part with type II dominating.

Legislation

The country has no law against FGM

Djibouti

FGM prevalence

Djibouti's population is 650,000 and according to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years is 93.1 % in 2006. FGM is practiced by all the ethnic groups across the country where type I, II and III are practiced but type III is more prevalent and religious reasons are advanced for all FGM types.

Legislation

Djibouti amended its Penal Code in 1995, including an article prohibiting and criminalizing FGM. Article 333 states that "acts of violence that have lead to a genital mutilation are punishable by 5 years of imprisonment and a fine of 1'000'000 CFA (US\$2'000)". Although this is a step in the right direction, the article does not define genital mutilation and does not address health workers in particular or the punishment in case the genital mutilation results in death.

Lessons Learnt: Following criticisms of the amended 1995 Penal Code, Article 333 was reviewed by the Parliament to enable Civil Society Organizations report and initiate prosecution of violators. Parliamentarians took special interest as a result of the series of training workshops on FGM organized for them in 2007 by IAC National Committee (UNFD). There is no arrest to date but IAC National Committee has trained legal bodies on application of the law and empowered communities with legal literacy.

Egypt

FGM prevalence

The population of Egypt is 75.4 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years is 95.8 % in 2005. FGM is common throughout the country with types 1, II and III. Type III is common in the southern part of country, which borders the Sudan.

Legislation

The penal code criminalizes all forms of violence against women, particularly FGM. In 1998 a final judgment was passed upholding the Minister of Health decree of 1996, (Order No 261) that banned FGM, whether performed in hospitals or in a public or private environment. It allows exceptions in the case of medical need and only if approved by a senior specialist. It states that performance of this operation will be considered a violation of the law.

In June 2007, a complete ban on FGM was promulgated following the death of 12 years old girl in Upper Egypt. The medical doctor who performed the FGM was arrested.

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Lessons learnt: Death from FGM has strengthened government arm to deal with offenders. In April 2008, another medical practitioner had his license revoked when he was reported of attempting to carry out FGM of some young girls in Beni Soeuf District.

Eritrea

FGM prevalence

Eritrea population is 7.8 million. According to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years is 88.7 % in 2002. In the highlands FGM Type I is the most prevalent form, whereas the more severe forms occur in the lowlands.

Legislation

In 2007 the Eritrean government stated to have outlawed FGM by 31 March. However, IAC has not received more detailed information on legislation or implementation of FGM law.

Ethiopia

FGM prevalence

Ethiopia has a population of 74.8 million. According to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years is 74.3% in 2005. But based on the Follow up National Survey on Harmful Traditional Practices in Ethiopia conducted in 2007 by EGLDAM/ IAC Ethiopia, the national prevalence of FGM is 56%. In the regions of Somali, Afar and Dire Dawa, in Oromo and Harari more than 80 % of girls and women are affected. Most frequent are FGM Type I and II with type III being common among Somali and Afar ethnic groups. The “Gesellschaft für Technische Zusammenarbeit” (GTZ) estimates that 6 % of Ethiopian women affected by FGM have been infibulated.

Legislation

In 2005 the Parliament endorsed the revised penal code of Ethiopia. Articles 568 and 569 of the revised code have provisions on circumcision and infibulation respectively. In Article 568 penalty for circumcision ranges from 3 months imprisonment to 3 years and a fine of no less than Birr 500 to 10000 or both imprisonment and fine.

Article 569 which focuses on infibulation states; “Anyone if engaged in stitching the genital part of a woman shall be punished by rigorous prison term of 3 to 5 years. If the practice causes physical or health injury notwithstanding the severe punishment provided in the Penal Code, the penalty will be rigorous prison term of 5 to 10 years.”

Lessons Learnt: IAC National Committee (EGLDAM), in cooperation with Ethiopian Women Lawyers Association (EWLA) trains legal bodies on application of the law and mobilizes communities on the provisions of the law. Potential victims have reported to EWLA for legal protection.

Gambia

FGM prevalence

The Gambia’s Population is 1.5 million and according to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 78.3% in

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2005-2006. FGM is widely practiced all over the country and all FGM types are carried out at infancy, childhood or at adolescence. FGM is done as an initiation rite, to maintain a girl's chastity, in obedience to religion and in keeping with tradition.

Legislation

There is no specific law against FGM in the Gambia.

Ghana

FGM prevalence

Ghana with a population of 22.6 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 3.8% in 2005. FGM carried out in the Upper East, Northern, Upper West, and Northern Volta Regions. Type I, II and III are found.

Legislation

The Constitution of Ghana provides for protection of women and girls against FGM. *Article 26.2* states that "all customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited".

The Constitution also contains a statement of its government policy through *article 39.2*: "...traditional practices which are injurious to the health and well-being of the person are abolished..."

The Criminal Code was amended in 1994, including FGM as a second-degree felony. *Article 69A* provides that:

- 1) Whoever excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris or another person, commits an offence and shall be guilty of a second-degree felony and liable on conviction to imprisonment or not less than 3 years.
- 2) For the purposes of this section, "excise" means to remove the prepuce, the clitoris and all or part of the labia minora; "infibulate" includes excision and the additional removal of the labia majora.

Additionally, the Criminal Code Amendment Act 1998 (Act. 554), an Act to amend the 1960 Criminal Code, increases age of criminal and sexual responsibility, includes specific offence of indecent assault and revises provisions regarding sexual offences.

Shortcomings and gaps that hinder the law's effectiveness were identified and a bill was drafted to further amend Section 69A of the 1994 Criminal Code. In 2007, Parliament amended the criminal code to include the offence of FGM. The law attracts a penalty of five to ten years imprisonment for FGM offenders.

The 2007 amended Article 69A states: "Whoever carries out female genital mutilation and excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person commits an offence, and is liable on summary conviction to imprisonment for a term of not less than five years and not more than ten years.

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Whoever participates in or is concerned with a ritual or customary activity that subjects a person to female genital mutilation commits an offence and is liable on summary conviction to imprisonment for a term of not less than five years and not more than ten years.”

Lessons Leant: The FGM law is very effective. So far, the courts have successfully prosecuted and sentenced some practitioners. The first exciser to be jailed was Akologo, a male exciser who has since served five years in prison. Vigilante groups go round communities to report violators of the law to the police. Communities are highly aware of the FGM law. IAC-trained ex-excisers watch out for anyone who is still in the trade and report to IAC National Committee (GAWW).



Ghana: Wa District, some ex-excisers who campaign against FGM

Guinea (Conakry)

FGM prevalence

Guinea has a population of 9.8 million. According to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 95.6% in 2005. It is common across the country; Upper, Middle, Lower Guinea and the Forest regions. All Types of FGM are common for initiation rites into adulthood. Type 3 is found mainly in Moyenne Guinea, Guinea Frostier and Conakry. Type 3 (infibulation) accounts for slightly more than 10% of all circumcisions.

The disturbing trend has been the medicalization of FGM, which is responsible for about 22% of FGM cases.

Legislation

In 2000, The National Assembly of Guinea deliberated law 2000/010/AN on reproductive health. *Article 13* of this law provides that anyone who inflicts genital mutilation upon another person shall be subject to punishment according to the Penal Law.

The Penal Law provides *article 265* that specifically addresses genital mutilation: “Castration is the ablation or the mutilation of the genital organs of either a man or a woman. Any person guilty of this crime shall be sentenced to the punishment of hard labor for life. If death results within 40 days after the crime, the perpetrator will be sentenced to death”.

Lessons Learnt: No information about the implementation of the FGM law.

Guinea Bissau

FGM prevalence

The population of Guinea Bissau is 1.4 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 44.5 % in 2005. It is common in Foula, Mandinka and urban Bissau areas with types I and II prevalent and is carried out mainly as initiation rites, for religious reasons and as part of tradition.

Legislation

There is no FGM law in Guinea Bissau.

Kenya

FGM prevalence

Kenya has a population of 34.7 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 32.2% in 2003. However, in stronghold areas, FGM prevalence ranges from 75% to 98 %. Types I, II and III are common in the country and the reasons for the practice is religion, social acceptance and as a rite of passage from girlhood to adulthood.

Legislation

Although Kenya has a law addressing FGM performed on children, it is not complete as it excludes women over the age of 18 years. Passed by Parliament in 2001, the Children's Act outlaws various forms of violation against children, including FGM, for females 18 and younger. Perpetrators are punished with twelve month imprisonment and/or a fine not exceeding fifty thousand shillings (US\$700).

Lessons learnt: Because the Children's Act protects only those 18 years and below, Kenya Parliament is currently reviewing the law to include protection of women above 18 years. There have been several prosecutions of excisers and many girls who are running away from FGM seek refuge at IAC- SETAT set-up rescue center in Kapenguria.

Liberia

FGM prevalence

The population of Liberia is 3.4 million. According to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 58% in 2007. FGM is concentrated in the western part of Liberia close to Sierra Leone and Guinea Conakry and is not practiced in South and East of Liberia. Type II is the most common procedure of secret societies in the Sande bush by excisers called Zoes.

Legislation

To date, there is no law specifically addressing FGM.

Mali

FGM prevalence

Mali's population is 13.9 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 91.6% in 2001. FGM is practiced almost all over the country, but particularly the Southern half bordering Burkina Faso as well as the parts bordering Cote d'Ivoire, Guinea Conakry and Senegal. Type I and II are common; Type III is mostly practiced in the South.

Legislation

Mali does not yet have specific legislation addressing FGM.

Lessons Learnt: A Ministerial Decree against medicalization of FGM forbids doctors and other health personnel from circumcising girls. Yet medical personnel have not stopped FGM.

Mauritania

FGM prevalence

The population of Mauritania is 3.2 million. According to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 72% in 2007. FGM is practiced all over the country with Types I, II, and IV predominating. Type IV involves the use of gum Arabic to shrink the clitoris.

Legislation

There is no information on specific legislation for FGM.

Lessons Learnt: A government decree bans medicalization of FGM but it has not been adhered to.

Niger

FGM prevalence

Niger has a population of 14.4 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 2.2% in 2006. FGM is common in areas along the River Niger in the Differ Region where the common procedures are Type I, II, and type IV referred to as "dangouria" involving the removal of hymen of newborn babies.

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Legislation

On June 13, 2003, the Republic of Niger adopted Law No. 2003-025 amending the Penal Code of 1961. Among the new offences recognized by the amended Penal Code is the crime of FGM, defined as “any assault on the female genital organ by total or partial removal of any of its parts, excision, infibulations, desensitization or any other means” (*article 232.1*).

Any person, who carried out or tempted to carry out the practice, will be punishable for a sentence of 6 months to 3 years imprisonment and a fine of 20'000-200'000 CFA (US\$40-400). If the FGM results in death, the perpetrator will be sentenced to 10-20 years imprisonment. The punishments for the perpetrator are the same for a person assisting the FGM (*article 232.2*).

Article 232.3 provides that if the perpetrator is a member of a medical profession, the maximum sentence will be carried out and the license to practice will be withdrawn for a maximum of 5 years.

Lessons Learnt: it seems the law is only on paper. It is not implemented.

Nigeria

FGM prevalence

Nigeria has a population 134.5 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 19% in 2003. Type I and II are practiced in the southern parts, Type III in the North Eastern tip of the country among the Shua Arabs. Type IV is common in the North. It can be carried out at birth, early childhood, adolescent, during pregnancy and even after childbirth.

Legislation

There is no Federal legislation against FGM but some States have enacted laws. The first to ban FGM was Edo State in 1999, which stipulates that a convicted person shall be subject to a fine of 1000 Naira (US\$10) or to imprisonment of not less than six months or both. Other States which have adopted FGM legislation are Abia, Bayelsa, Cross River, Delta, Ogun, Osun and Rivers State, mostly in 2000. Therefore, provisions for FGM can be found in the Penal Code, covering the Northern States of Nigeria, and the Criminal Code, covering the Southern States.

Lessons Learnt: Some bold excisers make mockery of the laws and dare any law-enforcement agent to arrest them.

Senegal

FGM prevalence

Senegal, with a population of 11.9 million, has an estimated prevalence of FGM in girls and women of 15 to 49 years to be 28.2% according to the 2005 Demographic and Health Survey (DHS). Type I, II, and IV are prevalent and type IV involves shrinking clitoris with Arabic gum.

Legislation

The Penal Code was amended in January 1999, adding an article that criminalizes FGM. Article 299 states: “Whosoever violates or attempts to violate the integrity of the genital organs of a female person by total or partial ablation of one or several of the organ's parts, by infibulation, by desensitization or by any other means will be punished with imprisonment of 6 months to 5 years”.

“The maximum penalty will be imposed when these sexual mutilations are performed or abetted by a member of the medical or paramedical corps. When they result in death, the penalty shall be hard labour for life. Any person who, through gifts, promises, influences, threats, intimidation, abuse of authority or of power, provokes these sexual mutilations or gives instructions for their commission shall be punished with the same penalties”.

Lessons Learnt: Approaches to FGM elimination in Senegal have been more of community action rather than emphasis on law. Whole communities have abandoned FGM without threat of legislation. The law in Senegal may never need to be implemented.

Sierra Leone

FGM prevalence

Sierra Leone has a population of 5.7 million and according to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 94% in 2005. FGM is practiced all over the country and all ethnic groups are involved, except the Creole Christians. It is shrouded in secrecy and is conducted in the Bondo bush by the Bondo society. Types I and II are commonly done by Soweis (excisers) who also wield considerable political power during elections.

Legislation

There is no federal law against FGM.

Lessons Learnt: Traditional excisers (Soweis) visibly promote FGM using various methods. (a) Street rallies, (b) Threats to government authorities, NGOs, the Police, (c) Abduction of female journalists who write anti-FGM stories.

However public condemnation of FGM is gradually gaining momentum.

Somalia

FGM prevalence

Somalia has a population of 8.9 Million but following the war, which broke out in 1991, the country disintegrated into 3 parts; Somalia with Mogadishu as capital, Somaliland with Hargeisha as capital and Puntland. According to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 98% in 2006. FGM is common across the country and is entrenched in Somali culture and custom. Type I has the prevalence of 9%, while Type III has 91% prevalence.

Legislation

There is no law against FGM in Somalia. Although the former government's policy on this practice was for its complete eradication, this policy was never translated into law before the war broke out in 1991.

Sudan

FGM prevalence

Sudan has a population of 41.2 million. According to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 90% in Northern Sudan 2000. The Survey indicates that FGM prevalence varies largely across regional and ethnic lines. Levels of prevalence are significantly lower in Darfur (65%). More recently, in 2006, the Ministry of Health Survey on the Sudanese family indicated that the prevalence has lowered to 69.4 percent. Types I, II and III are found predominantly in the Northern and North Eastern parts of the country, while women and girls in North Western regions are mainly subjected to Type III. A shift from Type III to Type I is becoming visible. The practice is further complicated by medicalization in an attempt to reduce the immediate health risk associated with Type II and III.

Legislation

Sudan was the first African country to legislate against FGM in 1946. The Penal Code prohibited Infibulation but allowed the removal of the "free, projecting part of the clitoris". The punishment was 5 years imprisonment and/or a fine if someone performed infibulation upon a female person. However, although Sudan publicly denounces FGM, the Penal Code of 1991 contained no provisions prohibiting FGM.

In 2003, Sudan adopted a new Penal Code under 'the Laws of the New Sudan'. Section 284A of this Penal Code, provides for penalties in the case of FGM, but it is not very detailed. It provides: "Whoever makes or causes female circumcision to be done commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years or with fine, or with both". The term "female circumcision" is not defined, nor is the amount of the fine.

However, in early 2009 The Sudanese cabinet dropped article (13) of the Children's Act 2009 that prohibited all forms of FGM.

Lessons Learnt: Although a law prohibiting "Infibulation" in the Penal Code is currently under preparation, the decision to allow FGM Type I leaves room for abuse.

Tanzania

FGM prevalence

Tanzania has a population of about 40 million. According to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 14.6% in 2004. FGM is practiced in nine Regions and in 20 ethnic groups out of 130. Types II and III are found and done during childhood to early adolescence as rites of passage from childhood to adulthood. The procedure is usually accompanied by much fanfare and feasting.

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Legislation

In 1998, Tanzania amended the Penal Code with a specific article prohibiting FGM. Article 169A “Cruelty to children” provides:

“1) Any person who, having the custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person or causes female genital mutilation or procures that person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of, sight or hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.

(2) Any person who commits the offence of cruelty to children is liable on conviction to imprisonment for a term of not less than 5 years and not exceeding 15 years or to a fine not exceeding 300’000 shillings (US\$230) or to both the fine and imprisonment, and shall be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person.”

Lessons Learnt: As in the case of Kenya, Tanzania Children’s Act protects only children up to the age of 18 years. The FGM law is moderately implemented. Fifty-two (52) cases of FGM law violation have been reported, filed and prosecuted. At least 10 cases were convicted.

Togo

FGM prevalence

Togo has a population of 6.3 million. According to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 5.8% in 2005. FGM is reported to be common in Golf, Kara and Central Regions and Type II is the prevalent form.

Legislation

In 1998, Togo adopted law no. 98-016 prohibiting FGM.

Article 1 forbids all forms of FGM, followed by *article 2* that gives a definition of FGM and excludes operations on genital organs performed for medical reasons.

Article 3 states that all persons who perform, participate or promote FGM whether in the traditional or modern set up will be punished for ‘intentionally causing physical harm’.

Article 4 provides punishment for the offence set forth in *article 3*, between 2 months to 5 years imprisonment or a fine of 100,000-1,000,000 CFA (US\$200-2’000) or one or both imprisonment and fine. Multiple offenders will receive a double penalty.

Article 5 provides that where the FGM results in death of the victim, the punishment will be between 5 – 10 years imprisonment.

Article 6 provides punishment for person who fails to notify the public authorities of occurrence FGM or attempted FGM; such person shall be imprisoned for a period of 1 month to 1 year or receive a fine of between 20,000-500,000 francs (US\$40-100). These provisions

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do not count for relatives to the fourth degree (by blood or by marriage) of the perpetrator or accomplice.

Article 7 requires both public and private hospitals to assist victims of FGM by giving all the help necessary.

Lessons Learnt: Only one exciser has been arrested in 2000. There is no information on the conclusion of the case.

Uganda

FGM prevalence

The population of Uganda is 27.7 million. According to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 0.6% in 2006. Very high prevalence has been reported in the rural district of Kapchorwa in the Eastern part of Uganda. Types I, II, and III (without stitching) are the common FGM procedures.

Legislation

There is no law against the practice of FGM in Uganda. In 1996, however, a court intervened to prevent the performance of this procedure under Section 8 of the Children Statute, enacted in 1996, that makes it unlawful to subject a child to social or customary practices that are harmful to the child's health. Section 8 states: "It shall be unlawful to subject a child to social or customary practices that are harmful to the child's health."

Lessons Learnt: IAC Uganda is busy working with the Kapchorwa Local Government to pass an Ordinance abolishing FGM in the district and at the same lobbying the Parliament to pass a national law.

In May 2009 members of Parliament unanimously agreed to ban FGM. They also want the Bill to compel government to provide funds for the purpose of achieving the total elimination of FGM in Uganda.

Reflections/General Lessons Learnt

Despite the fact that several Harmful Traditional Practices (HTPs) violate clearly the basic human rights of women and girls in Africa damaging their health and general well being, protective measures on the part of governments have been latent in adoption and implementation.

The fact that only 16 governments legislated against FGM demonstrates the lack of political will on the part of the majority to deal with the problem and give it focus. The reason could be political as well as cultural.

On the cultural side the majority of officials are men who still embrace internalized value system of the African society. Change of attitudes and rejection of practices that are harmful take time on their part. The issues of gender equality and gender justice have gained recognition and ground at the international and regional levels. However when it comes to domestication of related instruments there appears to be apathy and hesitation due to the cultural sensitivity to some of the issues related to women and girls.

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Political expediency and interest are also major reasons that account for the lack of serious legal measures to eliminate HTPs. Issues that affect women are not given priorities as compared to others. Women have accepted such behaviours of governments with apathy. A third reason advanced is the lack of resources to implement planned programmes with strong gender machineries. Unfulfilled pledges on the part of donors as well as poverty account for the diminished and limited actions.

On the encouraging side there are recent developments in Africa. An African Union Gender Policy has been adopted in 2009 with the objective of accelerating the implementation of the Maputo Protocol, the conventions and declaration as well as the specific goal of the MDG3 on gender equality.

The initiative and decision to declare an African Women's Decade 2010 – 2020 with the objective of moving forward the agenda of gender equality with concrete plans, strategies, and means of monitoring is another positive move on the part of governments in terms of fulfilling their commitments.

Conclusion

The work of non-governmental organizations such as the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) has demonstrated with evidence that changing attitudes and behaviour, rejecting old negative practices are achievable goals given the human potential to change and adopt.

However, the actions of non-governmental organization alone will not be sufficient to reach zero tolerance to FGM and other HTPs.

The Inter-African Committee has been dealing with the issue of HTPs since 1984. Its work reaches the grass root community, national, regional institutions as well as international organizations. Based on its experience it has long realized that joint actions backed by serious government commitment are prerequisites for total and accelerated eradication of HTPs. In 2003 at the International Conference on Zero Tolerance to FGM a Common Agenda for Action to Reach Zero Tolerance to FGM and other HTPs was adopted.

This agenda identifies the different actual and potential actors in the area. It specifies programmes and actions to be taken by stakeholders. Governments are called upon to be the principle actors and stakeholders to free women from HTPs that violate their basic rights. This Common Agenda is an important document to be considered.