

**CRY FREEDOM**  
**– SHOULD FEMALE GENITAL MUTILATION BE**  
**CONSIDERED A CRIMINAL OFFENCE?**

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In many regions of the world, in vast geographical and cultural stretches, there are certain traditions and customs which are commonly practiced. In some tribes, customs and practices are similar, while in others they may differ greatly. While one act may be seen as orthodox in one country, the same act could be deeply condemned in another. Often, there may also be universal perception of what acts are intolerable in terms of decorum of civil society, and such acts would subsequently be punishable and reprimands would be provided to perpetrators. Due to globalization and constantly changing attitudes and value systems, international influences and perhaps even changes in education schemes; the world is becoming increasingly critical of what traditions and practices should be adhered to. One example of such a tradition is Female Genital Mutilation (also referred to as Female circumcision). This topic has been an issue of much scrutiny in today's society, and the matter must be addressed with much sensitivity and respect as people's long established roots are at stake. Female Genital Mutilation (hereinafter referred to as 'FGM') is a phenomenon that crosses international borders through global immigration. An estimated 135 million of the world's girls and women have undergone genital mutilation and 2 million girls a year (approximately 6000 a day) are at risk of FGM.<sup>1</sup> This essay aims at critically assessing whether FGM should be considered a criminal offence, while drawing

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<sup>1</sup> Zara Spencer, 'The Criminalisation of Female Genital Mutilation in Queensland' (2002) 9 MUEJLI 1 <[http://www.murdoch.edu.au/elaw/issues/v9n3/spencer93\\_text.html](http://www.murdoch.edu.au/elaw/issues/v9n3/spencer93_text.html)> accessed 16 November 2007.

comparisons with other jurisdictions in a legal methodology; and in the same breath exploring FGM in the light of Women's Rights and the Human Rights Act 1998.

### What is a Crime?

In order to assess whether FGM should be criminalised, it is important to be able to define what criminalisation is. Criminalisation is the passing of legislation that makes an activity illegal. Alternatively criminalisation could be defined as the process by which behaviours and individuals are transformed into crime and criminals. Bearing the definition of criminalisation in mind, it is of the essence to look at what FGM is and what its immediate and long term consequences are on its victims, in order to assess its harm principle and immoral backing<sup>2</sup> and therefore whether such a practise should be 'criminalised'.

### What is Female Genital Mutilation (FGM)?

FGM comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons.<sup>3</sup>

There are different types of FGM known to be practised today. They include: Type I (commonly referred to as clitoridectomy) where there is excision of the prepuce, with or without excision of part or the entire clitoris; Type II (commonly referred to as excision) where excision of the clitoris with partial or total excision of the labia minora occurs; Type III - (commonly referred to as infibulation) where there is an excision of part or all of the external genitalia (clitoris, labia minora and labia majora), and stitching or narrowing of the vaginal

<sup>2</sup> Both the harm principle and immorality are often used to assess whether certain acts should be deemed criminal.

<sup>3</sup> Zara Spencer, 'The Criminalisation of Female Genital Mutilation in Queensland' (2002) 9 MUEJL 1 <[http://www.murdoch.edu.au/elaw/issues/v9n3/spencer93\\_text.html](http://www.murdoch.edu.au/elaw/issues/v9n3/spencer93_text.html)> accessed 16 November 2007.

opening, leaving a very small opening, about the size of a matchstick, to allow for the flow of urine and menstrual blood.<sup>4</sup> Type IV - pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue; scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts).<sup>5</sup> Mutilation also occurs when there is an introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it.<sup>6</sup>

### Impact of the Issue

The purpose of law is to provide fairness and equality for citizens of a state. In addition to this, the law is present to ensure that standards of morality, etiquette and ethics are maintained to thus ensure the safety, comfort, rights and security of an individual. In analysing whether FGM should be criminalised, it is critical to note the various implications of the practice in order to assess the harm principle, and analyse whether the behaviour is immoral. Both the harm principle and the collective beliefs of the people of FGM being an 'immoral' act are essential to determine whether such a practise should be criminalised.

There are numerous effects of the various types of FGM. Some of the immediate complications include severe pain, shock, haemorrhage, urine retention, ulceration of the genital region and injury to adjacent tissue. Haemorrhage and infection can cause death. More recently, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations.<sup>7</sup>

<sup>4</sup> Also known as pharaonic circumcision.

<sup>5</sup> World Health Organisation, 'Female genital mutilation' (June 2000) <<http://www.who.int/mediacentre/factsheets/fs241/en/>> accessed 16 December 2007.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

In addition to the immediate effects aforesaid, some of the long-term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse) and sexual dysfunction and difficulties with childbirth. Psychosexual and psychological health is also among the effects.<sup>8</sup> In the longer term, women may suffer feelings of incompleteness, anxiety and depression.<sup>9</sup> In Type III,<sup>10</sup> the urine and menstrual blood can only leave the body drop by drop and the build-up inside the abdomen and fluid retention often cause infections and inflammation that can lead to infertility. The effects of FGM could also lead to chronic incontinence. Failure to reopen the genital area at the time of birth can lead to death or brain damage to the baby, and death of the mother.<sup>11</sup>

FGM also can result in neurogenic shock as a result of pain and trauma, and septicaemia. It is a traumatic experience. Many girls enter a state of shock induced by the severe pain, psychological trauma and exhaustion from screaming.<sup>12</sup> Other harmful effects include hepatitis and other blood-borne diseases; reproductive tract infection; pelvic inflammatory diseases; painful menstruation; chronic urinary tract

<sup>8</sup> Genital mutilation may leave a lasting mark on the life and mind of the woman who has undergone it.

<sup>9</sup> World Health Organisation 'Female genital mutilation' (June 2000) <<http://www.who.int/mediacentre/factsheets/fs241/en/>> accessed 16 December 2007.

<sup>10</sup> 'Type 3 is common in Djibouti, Somalia, Sudan and parts of Egypt, Ethiopia, Kenya, Mali, Mauritania, Niger, Nigeria, and Senegal. Type 3, also known as pharaonic circumcision, is extremely severe and involves binding a woman's legs for approximately 40 days to allow for the formation of scar tissue. Many of these communities use adhesive substances such as sugar, eggs, and even animal waste on the wound to enable it to heal.

Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs, 'In-depth: Razor's Edge - The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/InDepthMain.aspx?InDepthId=15&ReportId=62462>> accessed 15 December 2007.

<sup>11</sup> Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs 'In-depth: Razor's Edge - The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/InDepthMain.aspx?InDepthId=15&ReportId=62462>> accessed 15 December 2007.

<sup>12</sup> UNICEF, 'Child Protection from Violence, Exploitation and Abuse: Female Genital Mutilation/Cutting' <[http://www.unicef.org/protection/index\\_genitalmutilation.html](http://www.unicef.org/protection/index_genitalmutilation.html)> accessed 16 December 2007.

obstruction/ bladder stones.<sup>13</sup> From the implications of the practise mentioned, it is clear to note the harm principle of FGM and it is therefore clear that some laws need to be in place in order to ensure no woman endures any such consequences from these acts.

#### Do Acts of Female Genital Mutilation breach the Human Rights Act 1998?

FGM is one of the most persistent, pervasive and silently endured human rights violations.<sup>14</sup> From the effects noted above, it is clear to see that FGM breaches the right to be free from all forms of discrimination against women, it is in breach of the right to life and physical integrity including freedom from violence, the right to health, and is also in breach of the rights of a child. Traditionally, FGM is performed by local practitioners, most of whom are women. In some countries, efforts have been made to 'medicalize' the procedure by having medical staff perform it, in or outside of hospitals. This does not, however, make it less a violation of human rights.<sup>15</sup> Indeed, the practise of FGM does breach the Human Rights Act 1998; however it is still widely practised despite the existence of this legislation.

#### Should Countries practicing FGM adopt a Code such as the Human Rights Act 1998 (United Kingdom)?

It is extremely difficult in providing a sufficient definition for the 'rights of a man.' This is because the concept of 'human rights' varies amongst societies, geographical regions and differing circumstances, and there is no global concept

<sup>13</sup> UNICEF, 'Child Protection from Violence, Exploitation and Abuse: Female Genital Mutilation/Cutting' <[http://www.unicef.org/protection/index\\_genitalmutilation.html](http://www.unicef.org/protection/index_genitalmutilation.html)> accessed 16 December 2007.

<sup>14</sup> UNICEF, 'Media Backgrounder: Female Genital Mutilation/Cutting (FGM/C) in Egypt' <[http://www.unicef.org/egypt/media\\_4115.html](http://www.unicef.org/egypt/media_4115.html)> accessed 16 December 2007.

<sup>15</sup> UNICEF, 'Female Genital Mutilation/Cutting' <<http://www.unicef.org/protection/files/FGM.pdf>> accessed 16 December 2007.

which includes all the different cultures and societies. There are many international treaties and conventions that condemn harmful practices.<sup>16</sup> However, despite the numerous international efforts to eradicate these practices, it is deeply embedded in tradition and is practised nevertheless. Even in the United Kingdom, despite the conflict with the Human Rights Act 1998, (hereinafter referred to as 'HRA 1998') FGM is still practised by immigrants. Although it is questionable how effective an Act such as the HRA 1998 may be in terms of inhibiting FGM, the other benefits of the Act in terms of rights that it provides to individuals would be priceless. The mere introduction of a 'Human Rights Act' is not likely to drown century old traditions, religious beliefs, and ideologies. Nevertheless it is believed that the adoption of such an Act would be useful in the preliminary steps to raise awareness on how the practise of FGM may be a violation to the universal concepts of 'Rights' of a human being.

#### **Do Acts of Female Genital Mutilation Breach laws on Women's Rights?**

FGM is a fundamental violation of the rights of women. It is discriminatory and violates the rights to equal opportunities, health, freedom from violence, injury, abuse, torture, inhuman and degrading treatment, protection from harmful traditional practices, and also violates the rights of females to make decisions concerning reproduction.<sup>17</sup> Additionally, when girls undergo FGM, their ability to

<sup>16</sup> They include the Convention on the Rights of the Child (1989), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the African Charter on the Rights and Welfare of the Child (1990). A specific focus on female genital mutilation is found in UN General Assembly Resolution 56/128 on Traditional or Customary Practices Affecting the Health of Women and Girls (2001) and in the Protocol on the Rights of Women in Africa, the Maputo Protocol (2003). UNICEF, 'Female Genital Mutilation/Cutting' <<http://www.unicef.org/protection/files/FGM.pdf>> accessed 16 December 2007.

<sup>17</sup> 'Child Protection from Violence, Exploitation and Abuse: Female Genital Mutilation / Cutting' <[http://www.unicef.org/protection/index\\_genitalmutilation.html](http://www.unicef.org/protection/index_genitalmutilation.html)> accessed 16 December 2007.

experience sexual satisfaction is grossly undermined when they grow older.<sup>18</sup> This violates a woman's right to personal enjoyment. These rights are protected in international law; however the extent to which they actually protect the women's rights is debatable in the light of FGM. This is a clear illustration of how traditional values are much more revered than laws within FGM practising communities.

#### **What would be the Repercussions if it was deemed a Crime?**

At first glance, it is easy to assume that if FGM were criminalised, it would reduce the practice of the tradition drastically as the fear of prosecution would act as a deterrent. However, this has not been the case so far and it is unlikely to be so in the near future. Long established beliefs and traditions are on the line, and the mere introduction of criminal legislation would not stop the tradition being practised underground.

The critiques of FGM practices may also have other negative consequences. The Maasais of Kenya responded to aggressive anti-FGM campaigns by cutting girls as young as four, rather than teenage girls.<sup>19</sup> If the practise is not criminalised, then there is the argument that the practise could be one of a safer medical standard, if doctors and surgeons are able to conduct the ceremony of FGM, this will lead to lesser cases of potential deaths that would occur, due to the expertise and skill of the medical practitioner.<sup>20</sup> Section 273.3 of the Canadian Criminal Code protects children who are ordinarily resident in Canada from being removed from the country and subjected to FGM. In the United States and Canada, the very small percentage who wish to continue the practise often find it impossible to find a

<sup>18</sup> Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs, 'Indepth: Razor's Edge - The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/IndepthMain.aspx?IndepthId=15&ReportId=62462>> 15/12/07.

<sup>19</sup> *Ibid.*

<sup>20</sup> Much like the argument of abortions, being that abortion was legal then women who wish to abort their babies may do so in the hospital rather than alleyways where the likelihood of further complications is very high.

doctor who will cooperate. The operation may then be done illegally in the home by poorly trained persons, under less than sterile conditions.<sup>21</sup> It is in these conditions that the procedure may lead to serious consequences. The advantage of FGM not being criminalised is that the practise can be operated at a substantially safer standard. If it were criminalised then underground operations could be life-threatening and/or certain groups may react in an unexpected or irascible manner which could be more adverse.

#### Comparisons of Legislations in Different Jurisdictions, pertaining to Female Genital Mutilation (FGM)

French criminal law, under Article 312 of the Penal Code, punishes those guilty of violence against children and mutilation, even though there is no specific law against FGM.<sup>22</sup> Many other European countries too address FGM through their existing criminal laws concerning intentional or negligent assault, or the unlicensed practice of medicine.<sup>23</sup> Within Australia only West Australia has failed to expressly legislate against the practice of FGM, considering its existing Criminal Code to be adequate.<sup>24</sup>

In the United States however, the federal government and 17 states have criminalized the practice. The Federal Prohibition of Female Genital Mutilation Act of 1995 provides for prison sentences of up to 5 years for anyone who 'circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or

<sup>21</sup> Ontario Consultants on Religious Tolerance Robinson, 'Female Genital Mutilation in North America & Europe' (10 March 2007) <[http://www.religioustolerance.org/fem\\_cira.htm](http://www.religioustolerance.org/fem_cira.htm)> accessed 16 December 2007.

<sup>22</sup> Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs, 'Indepth: Razor's Edge - The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/IndepthMain.aspx?IndepthId=15&ReportId=62462>> accessed 15 December 2007.

<sup>23</sup> Zara Spencer, 'The Criminalisation of Female Genital Mutilation in Queensland' (2002) 9 MUEJL 1 <[http://www.murdoch.edu.au/elaw/issues/v923/spencer93\\_text.htm](http://www.murdoch.edu.au/elaw/issues/v923/spencer93_text.htm)> accessed 16 December 2007.

<sup>24</sup> *Ibid.*

clitoris of another person who has not attained the age of 18.' Another Bill passed in 1996, also offers asylum to any woman forced to undergo FGM or any woman fleeing from fear of forced circumcision.<sup>25</sup>

The United Kingdom on the other hand had FGM made illegal by the Prohibition of Female Circumcision Act of 1985 which was later amended in 2003. However, some minority ethnic communities have evaded the law by arranging for girls to have the operation overseas. According to United Kingdom law, parents who take their daughters overseas to undergo FGM will face up to 14 years imprisonment.<sup>26</sup>

In Africa, thirteen countries have responded to the problem of FGM by implementing legislation against it.<sup>27</sup> There have been reports of prosecutions or arrests in cases involving FGM in various African countries, including Burkina Faso, Egypt, Ghana, Kenya, Senegal and Sierra Leone. Twelve industrialized countries that receive immigrants from countries where FGM is practiced have passed laws criminalizing the practise.<sup>28</sup>

The Convention against Torture, a United Nations agreement, was ratified on June 26, 1987, for the distinct purpose of protecting human rights. Over 142

<sup>25</sup> Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs, 'Indepth: Razor's Edge - The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/IndepthMain.aspx?IndepthId=15&ReportId=62462>> accessed 15 December 2007.

<sup>26</sup> 'Female Circumcision Act in Force' (London 3 March 2004) <<http://news.bbc.co.uk/1/hi/uk/3528095.stm>> accessed 16 December 2007.

<sup>27</sup> Benin (2003, the date legislation was implemented), Burkina Faso (1996), Central African Republic (1966), Chad (2003), Cote d'Ivoire (1998), Djibouti (1994), Egypt (Ministerial Decree, 1996), Ethiopia (2004), Ghana (1994), Guinea (1965), Kenya (2001), Niger (2003), Senegal (1999), Tanzania (1998), Togo (1998), Nigeria (multiple states, 1999-2002).

<sup>28</sup> These countries include Australia, Belgium, Canada, Cyprus, Denmark, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom, and United States.

countries have thus *factually* signed this agreement.<sup>29</sup> The irony of this is that many of the signatories are the very countries listed above as major perpetrators of FGM.<sup>30</sup> At this juncture, it is essential to question whether such agreements although signed and ratified, have any effect on the levels of FGM practised. FGM is outlawed by international law, and the United Nations treaties;<sup>31</sup> yet it is still widely practiced.

The various forms of FGM can be considered criminal within the existing laws without specific focus on FGM. Attention must be paid to the fact that many girls do not wish to undergo the excruciatingly painful operation, that is, there is no consent given by the girls. However, courts of law do not generally have the chance to consider these questions as there are few cases that end up in the courts. There may be good reasons for the lack of prosecutions, amongst them the fact that in a united family the events are unlikely to become known, that perpetrators disappear, and also the fear that if women and/or girls are prevented from being circumcised in the United Kingdom under reasonably hygienic conditions, they may be taken to their home country for surgery to take place there, in worse conditions.<sup>32</sup> In communities practising FGM there is literally no place for a woman who has not undergone the procedure. Such societies have sanctions, which are brought to bear on the woman and her family, ensuring that the woman's relatives enforce compliance. To make matters worse other circumcised women and girls may no

<sup>29</sup> United Nations Convention Against Torture (1987): For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent of acquiescence or a public official or other person acting in an official capacity.

<sup>30</sup> Signatories: Benin, Cameroon, Chad, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Gambia, Ghana, Guinea, Guinea-Bissau, Indonesia, Kenya, Liberia, Niger, Nigeria, Senegal, Sierra Leone, Togo, Uganda, and Yemen. Office of the United Nations High Commissioner for Human Rights, 'Status of the Ratification of the Convention Against Torture' <http://www2.ohchr.org/english/law/cat-ratify.htm> accessed 15 December 2007.

<sup>31</sup> And in some jurisdictions in criminal law too.

<sup>32</sup> Lesley Vickers, 'Briefings: Female Genital Mutilation' [2001] IFLJ 155.

longer associate with her. She may be called derogatory names, and may often be denied the status and access to positions and roles that 'adult' women in her community may occupy. Ultimately, an uncircumcised woman is considered to be a child.<sup>33</sup> What would be more painful to the victim - a physically enduring surgery or a lifetime of being shunned by her society for breaking with tradition? Is it correct to say that something is truly criminal only when the collective community deems it so? Thus, would legislation be punitive or simply ineffective?

United States representatives to the World Bank and similar financial institutions are required to oppose loans to countries where FGM is prevalent and in which there are no anti-FGM educational programs. This may be a way to force countries to adopt anti-FGM education campaigns as most of the countries<sup>34</sup> depend on financial aid and loans from the United States and major financial institutions. It can be seen by this, that not only can non-governmental organisations, international law making bodies and national legislature subdue the practise of FGM, but also financial institutions can play a primary role in abolishing the practise.

#### Difficulties in Conciliation between Moral and Religious Beliefs with the Law

It is one thing to pass a law, but secular disapproval means nothing to individuals who find moral and religious justification for what they do.<sup>35</sup> The premise of cultural relativist theory is that as all cultures are different, a person outside a particular culture cannot judge it. Consequently legislative action and other 'judgemental' interventions are inappropriate.<sup>36</sup>

<sup>33</sup> Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs, 'Indepth: Razor's Edge - The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/IndepthMain.aspx?IndepthId=15&ReportId=62462>> accessed 15 December 2007.

<sup>34</sup> Being in a less economically developed situation.

<sup>35</sup> Robin M. Maher, 'The Modern Day Struggle to Eradicate the Torturous Rite of Passage' Human Rights Magazine, Female Genital Mutilation Fall 1996.

<sup>36</sup> Zara Spencer, 'The Criminalisation of Female Genital Mutilation in Queensland' (2002) 9 MUEJL 1 <[http://www.murdoch.edu.au/elaw/issues/v923/spencer93\\_text.htm](http://www.murdoch.edu.au/elaw/issues/v923/spencer93_text.htm)> accessed 16 December 2007.

As mentioned earlier, the introduction of legislation prohibiting FGM may just force the practise underground which would lead to counter-productive outcomes which is more life-threatening. Women may not opt to seek medical attention later in life as they fear their parents may be prosecuted. The procedure may be life threatening if performed by an untrained individual; if there is a mishap, then parents will inevitably be reluctant to take the child to hospital out of fear of being criminally charged. Potential penalties may only cause some minorities to decide against having their daughter(s) mutilated.<sup>37</sup>

#### Conclusion and Solutions to the Problems Arising

From the discussion above, it can be seen that the introduction of legislation may have no effect, have very little effect, or have a counter-productive effect to the practise of FGM. FGM is a practise that violates the basic human rights of women and girls and seriously compromises their health. Nevertheless, among communities that practise FGM, it is highly valued as a tradition, making eradication difficult.<sup>38</sup>

Much more than criminalisation is needed to eradicate the dangerous and painful practise of FGM.<sup>39</sup> Education can slowly reveal to communities, the adverse effects, facts and statistics of FGM. For example, ironically, after being mutilated some women continually seek experiences with new sexual partners due to sexual dissatisfaction, whilst others pretend to still be virgins by getting stitched-up tightly again. Women are indoctrinated to believe that the practise results in increased sexual pleasure for men, however an interview with 300 polygamous men revealed

<sup>37</sup> Megan Costello, 'Two in U.S Accused of Genital Mutilation' <<http://www.womensnews.org/story/genital-mutilation/040219/two-in-us-accused-genital-mutilation>> accessed 23 December 2007.

<sup>38</sup> Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs, 'Indepth: Razor's Edge – The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/IndepthMain.aspx?IndepthId=15&ReportId=62462>> accessed 15 December 2007.

<sup>39</sup> While making efforts on maintaining its traditional significance.

89% preferred women who had not been mutilated.<sup>40</sup> Such empirical data may be highlighted to the community which will in effect slowly change the ideologies pertaining to FGM.

Reproductive and sexual health information and education, including information on the harmful effects of FGM, should be incorporated, where appropriate, into school curricula and other community education programs.<sup>41</sup> It is important however that local organisations or personnel address issues to the community as they are more able to communicate with ease with the people. If foreign bodies were to do so, the communities may feel that these foreign bodies are blindly judging their traditions.

However, despite its importance, education alone cannot serve to eliminate FGM. Education aims at changing attitudes by raising awareness, however not all people's attitudes can be changed by way of education. It is pertinent to mention that although some educational programs focus on the detrimental consequences that the practise of FGM has on health, some members of the affected communities refuse to accept that all types of FGM are dangerous.<sup>42</sup>

Support for FGM may be rapidly reversed and abandoned if attitudes and customs are collectively addressed by the practising communities. Involvement of religious or moral leaders who can explain that there is no religious justification for

<sup>40</sup> Zara Spencer, 'The Criminalisation of Female Genital Mutilation in Queensland' (2002) 9 MUEJL 1 <[http://www.murdoch.edu.au/elaw/issues/v923/spencer93\\_text.htm](http://www.murdoch.edu.au/elaw/issues/v923/spencer93_text.htm)> accessed 16 December 2007.

<sup>41</sup> The National Council For Childhood And Motherhood, 'Legal Tools For The Prevention of Female Genital Mutilation, Cairo Declaration for the Elimination of FGM' (23 June 2003) <[http://www.reproductiverights.org/pdf/pdf\\_fgm\\_cairo2003\\_eng.pdf](http://www.reproductiverights.org/pdf/pdf_fgm_cairo2003_eng.pdf)> accessed 25 December 2007.

<sup>42</sup> Zara Spencer, 'The Criminalisation of Female Genital Mutilation in Queensland' (2002) 9 MUEJL 1 <[http://www.murdoch.edu.au/elaw/issues/v923/spencer93\\_text.htm](http://www.murdoch.edu.au/elaw/issues/v923/spencer93_text.htm)> accessed 16 December 2007.

the practise can help in accelerating the abandonment of FGM<sup>43</sup> (For example, the Al-Azhar Supreme Council for Islamic Research<sup>44</sup> issued a statement explaining that FGM has no basis in the core Islamic Sharia<sup>45</sup> or any of its partial provisions<sup>46</sup>).

In conclusion it may be said that opinion counts, criminalization does not merely mean passing a criminal legislation against a particular practise; criminalization means that the attitudes and values of the people need to be collectively changed so that they feel that their act is truly criminal. A long-term, multi-strategy approach shaping attitudes and perceptions about women's status and human rights should lead in the long-run to the real criminalization of FGM.<sup>47</sup>

FGM has been conducted for over 4000 years in various parts of the world.<sup>48</sup> There is a commonly held view that immorality and harmfulness are necessary but not sufficient conditions of criminal liability.<sup>49</sup> A statutory provision declaring the valued tradition as criminal is not going to stop this age old practise altogether.

<sup>43</sup> UNICEF, Child Protection from Violence, Exploitation and Abuse: Female Genital Mutilation/Cutting' <[http://www.unicef.org/protection/index\\_genitalmutilation.html](http://www.unicef.org/protection/index_genitalmutilation.html)> accessed 16 December 2007.

<sup>44</sup> The highest religious authority in Egypt.

<sup>45</sup> The code of law derived from the Koran and from the teachings and example of Mohammed.

<sup>46</sup> UNICEF 'Media Backgrounder: Female Genital Mutilation/Cutting (FGM/C) in Egypt' <[http://www.unicef.org/egypt/media\\_4115.html](http://www.unicef.org/egypt/media_4115.html)> accessed 16 December 2007.

<sup>47</sup> The National Council For Childhood And Motherhood, 'Legal Tools For The Prevention of Female Genital Mutilation, Cairo Declaration for the Elimination of FGM' (23 June 2003) <[http://www.reproductiverights.org/pdf/pdf\\_fgm\\_cairo2003\\_eng.pdf](http://www.reproductiverights.org/pdf/pdf_fgm_cairo2003_eng.pdf)> accessed 25 December 2007.

<sup>48</sup> Humanitarian News and Analysis, UN Office for the Coordination of Humanitarian Affairs, 'Indepth: Razor's Edge - The Controversy of Female Genital Mutilation' (March 2005) <<http://www.irinnews.org/IndepthMain.aspx?IndepthId=15&ReportId=62462>> accessed 15 December 2007.

<sup>49</sup> Clarkson CMV and Keating HM, *Criminal Law: Text and Materials* (2<sup>nd</sup> edn Sweet & Maxwell, London 1990) 25.

As this essay has explored, the practise of FGM seems to be inelastic, that is, non-responsive<sup>50</sup> to developments in legislation. New laws are introduced and altered according to the values and needs of the people of the time. For example, in *R v R*<sup>51</sup> the law on marital rape after hundreds of years was finally considered criminal as the values of the people began to change. The irony in FGM is that the people do not deem this practise immoral, but just good tradition.

*The question we are left to ponder upon is; what effect would strict laws prohibiting the practise have if the ideologies and mindsets of the people have been fixed into believing that FGM is not criminal?*

<sup>50</sup> Or very little response is shown.

<sup>51</sup> [1991] 2 All ER 257.