

Driving Forces in Outlawing the Practice of Female Genital Mutilation/Cutting in Kenya, Uganda and Guinea-Bissau



The opinions expressed are those of the authors and do not necessarily reflect the policies or views of UNFPA.

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1. Introduction

Female genital mutilation/cutting (FGM/C) is defined by the World Health Organization (WHO) and United Nations agencies as a procedure that involves the “partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons”¹ (BOX 1). It is estimated that up to 140 million girls and women alive today have undergone FGM/C worldwide. In the 29 countries in Africa and the Middle East where the practice is concentrated, it is estimated that at least 120 million girls and women have experienced FGM/C.²

FGM/C is widely recognized as a harmful practice and a human rights violation. It reflects deep-rooted gender inequalities and has devastating short-term and long-term impacts on the health and lives of women and girls.³ It functions as a self-enforcing social convention and acts as a social norm — individuals and families uphold the practice because they believe that their group or society expects them to do so. Otherwise, they suffer social sanctions.⁴ Given present trends, as many as 30 million girls under the age of 15 may still be at risk.⁵

FGM/C PREVALENCE

Data on FGM/C prevalence and attitudes towards its continuation have been collected since the early 1990s through a module of Demographic and Health Surveys (DHS).⁶ Although the exact form and emphasis of the questions asked have evolved over time, the

surveys have generally sought to establish whether a woman has undergone FGM/C and if so, her age at the time of the procedure, the type of procedure and who performed it. Additional questions include the respondent’s attitude towards the practice and whether the respondent’s daughter has undergone it.

The results of the surveys provide a comprehensive picture of the prevalence level, which represents the proportion of women aged 15–49 who have undergone FGM/C in countries where national surveys have been conducted. Starting in 2011, DHS and Multiple Indicator Cluster Surveys (MICS) have collected data on daughters up to 14 years of age.

Figure 1 shows FGM/C prevalence in several countries in Africa. In the north-eastern part of the region, prevalence ranges from 91 per cent in Egypt to 74 per cent in Ethiopia. In western Africa, 89 per cent of women in Mali and 76 per cent in Burkina Faso have undergone the practice of FGM/C. In south-eastern Africa, however, prevalence rates are relatively lower, as represented by Kenya at 27 per cent in 2008–2009.

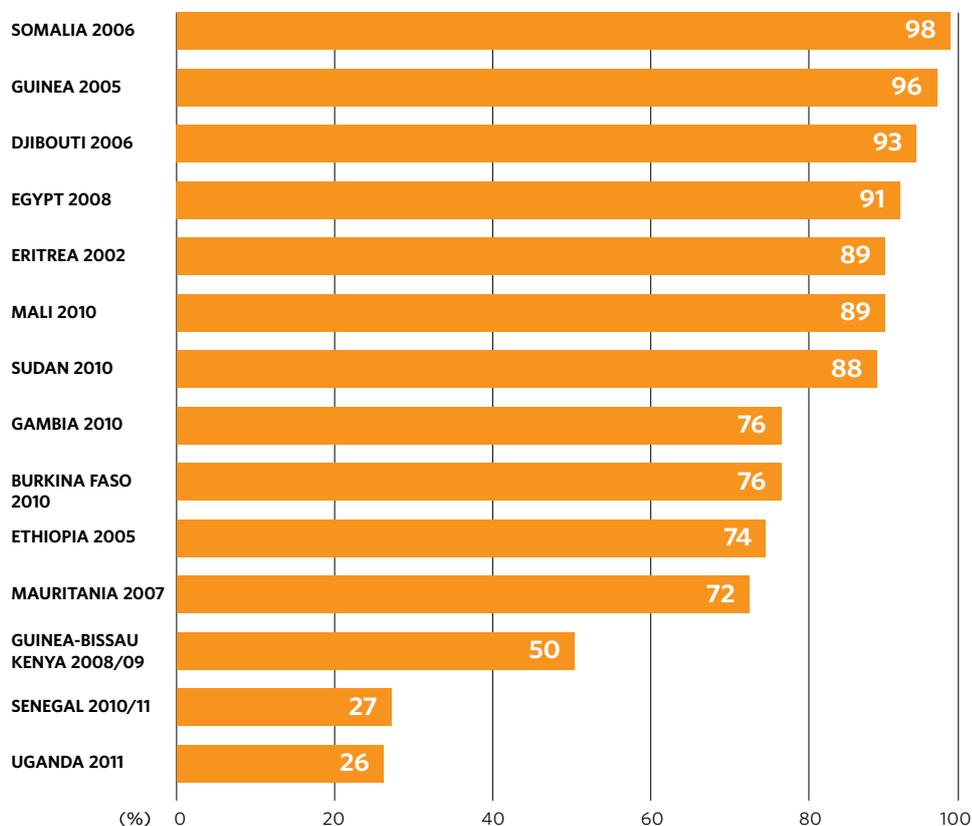
Care is required when interpreting the figures since they represent national averages. The data do not reflect the often marked variations in prevalence in different practising groups in different districts of a given country. For instance, national prevalence data have limited value in countries where a major portion of the population does not practise FGM/C. In those countries, more information is gained by examining prevalence aggregated by region, ethnic group or religion.

BOX 1. FGM/C TERMINOLOGY

‘Female genital mutilation’ and ‘female genital mutilation/cutting’ are the terms most widely used. The word ‘mutilation’ emphasizes the gravity of the act. The word ‘cutting’ reflects the importance of using non-judgmental terminology with practising communities. Both terms emphasize the fact that the practice is a violation of girls’ and women’s human rights.

Source: WHO, *Eliminating female genital mutilation: An interagency statement*, 2008

FIGURE 1. FGM/C PREVALENCE AMONG WOMEN 15-49 YEARS OLD (%)



Sources: DHS, UNICEF FGM/C Global Databases and Sudan Household Health Survey.

INTERNATIONAL LEGAL FRAMEWORKS

The practice of FGM/C is recognized as a violation of the human rights of girls and women, which are codified in several international and regional treaties.⁷ The Universal Declaration of Human Rights has several articles that together form a basis to condemn FGM/C.⁸

Many of the bodies that monitor United Nations human rights treaties address FGM/C in their concluding observations on how States are meeting their treaty obligations. The Committee on the Elimination of Discrimination against Women,⁹ the Committee on the Rights of the Child¹⁰ and the Human Rights Committee have been active in condemning FGM/C and in recommending measures to combat it, including criminalizing the practice.

The African Union has been engaged for many years in efforts to eliminate the practice of FGM/C. In 2003, its Assembly adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol.¹¹ It is an important regional instrument that pledges comprehensive rights to women and an end to FGM/C.

Article 5 of the Maputo Protocol, 'Elimination of Harmful Practices', stipulates that: "States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including... (b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation/

BOX 2. UNITED NATIONS GENERAL ASSEMBLY RESOLUTION:

A/RES/67/146 "Intensifying global efforts for the elimination of female genital mutilations"

To abandon the practice of FGM, the United Nations General Assembly:

Urges States to condemn all harmful practices that affect women and girls, in particular female genital mutilations, whether committed within or outside a medical institution, and to take all necessary measures, including enacting and enforcing legislation to prohibit female genital mutilations and to protect women and girls from this form of violence, and to end impunity (paragraph 4);

Calls upon States to develop policies and regulations to ensure the effective implementation of national legislative frameworks on eliminating discrimination and violence against women and girls, in particular female genital mutilations, and to put in place adequate accountability mechanisms at the national and local levels to monitor adherence to and implementation of these legislative frameworks (paragraph 12);

Urges States to allocate sufficient resources to the implementation of policies and programmes and legislative frameworks aimed at eliminating female genital mutilations (paragraph 14).

Source: United Nations General Assembly, Sixty-seventh session, Agenda item 28 (a). "Intensifying global efforts for the elimination of female genital mutilations," RES/67/146, 20 December 2012.

cutting, scarification, medicalization and para-medicalization of female genital mutilation/cutting and all other practices in order to eradicate them."

In 2011, the African Union called on the United Nations General Assembly to adopt a resolution at its sixty-sixth session to eliminate the practice of FGM worldwide. It called for harmonizing the actions of Member States and providing recommendations and guidelines for developing and strengthening regional and international legal instruments and national legislation.

On 20 December 2012, the United Nations General Assembly adopted by consensus a groundbreaking resolution calling for universal elimination of the practice of FGM (BOX 2). Sponsored by two thirds of the Member States, including the Group of African States,¹²

the text condemns the practice, recognizing it as harmful to women and girls and a serious threat to their health. States were also urged to take "all necessary measures, including enacting and enforcing legislation to prohibit FGM and to protect women and girls from this form of violence, and to end impunity."

2. Legislating The Practice of FGM/C: Divergent Views

Twenty-four African countries have established legal measures against the practice of FGM/C¹³ (BOX 3). Penalties range from a minimum of six months in prison to a maximum of life in prison, and several countries impose monetary fines. Most countries passed national legislation while some, such as Nigeria, established laws at the state level. In Egypt, the Ministry of Health issued a decree outlawing the practice in hospitals.¹⁴ The call for countries to establish formal legal measures to regulate the practice of FGM/C occurred at a time when the international community considered it a human rights violation; protection from such practice was seen as a right to be enforced, granted and implemented by the state.¹⁵

Little research has been undertaken on the role that legislation plays in promoting behaviour change in FGM/C and the type of legislative reform that is effective in different contexts. As a result, questions have been raised on the effectiveness of legislation in ending the practice.¹⁶

There are essentially two divergent views. One maintains that laws will accelerate abandonment of FGM/C, and the other views such regulations as coercive and likely to derail local efforts to end the practice.¹⁶

ADVOCATES AND CRITICS OF FGM/C LEGISLATION

Critics of legislation that outlaws the practice of FGM/C argue that the legal prohibition fails to act as a deterrent and can be ineffective or counterproductive. They believe that legislation can:

- Drive the practice underground, making it more difficult to contain
- Discourage treatment of girls and women who have undergone FGM/C by trained health care providers and institutions, especially in cases of medical complications, due to fear of being denounced
- Lead to underreporting of FGM/C in surveys and studies because respondents are unwilling to report having performed or intending to perform an illegal act

BOX 3. AFRICAN COUNTRIES WITH LEGISLATION AGAINST THE PRACTICE OF FGM/C

<i>Benin</i>	2003
<i>Burkina Faso</i>	1996
<i>Central African Republic</i>	1996, 2006
<i>Chad</i>	2003
<i>Cote d'Ivoire</i>	1998
<i>Djibouti</i>	1994, 2009*
<i>Egypt</i>	2008
<i>Eritrea</i>	2007
<i>Ethiopia</i>	2004
<i>Ghana</i>	1994, 2007*
<i>Guinea</i>	1965, 2000*
<i>Guinea-Bissau</i>	2011
<i>Kenya</i>	2001, 2011*
<i>Mauritania</i>	2005
<i>Niger</i>	2003
<i>Nigeria</i>	1999–2002, some states
<i>Senegal</i>	1999
<i>Somalia</i>	2012
<i>South Africa</i>	2000
<i>Sudan</i>	2008–2009, some states
<i>Togo</i>	1998
<i>Uganda</i>	2010
<i>United Republic of Tanzania</i>	1998
<i>Zambia</i>	2005, 2011*

* Later dates reflect amendments to the original law or new laws

Source: UNFPA FGM/C Database, 2012

- Lead to community opposition to what is viewed as coercive top-down directives.¹⁷
- The broader negative ramifications of enforcing legal sanctions have also raised concern among some scholars. They express worries about the psychological effect on girls who have been cut witnessing the arrest of their parents, as well as the financial impact of imposing fines on poor people and the potential systematic imprisonment of the initiators and practitioners of FGM/C, who are primarily women.¹⁸

Advocates of legislation, on the other hand, contend that laws against the practice of FGM/C:

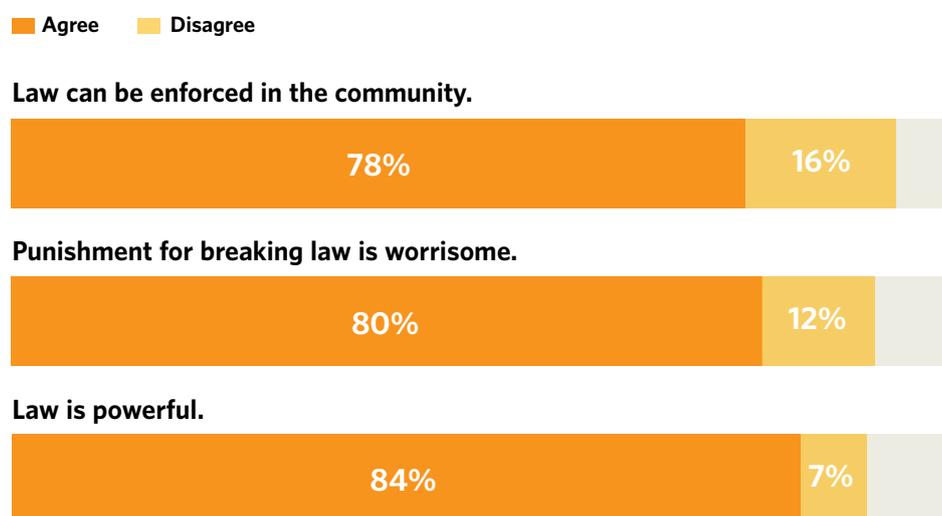
- Provide a supportive environment for local initiatives
- Offer protection for girls and women seeking safeguards
- Discourage excisors and families who fear prosecution
- Help facilitate the work of health care providers engaged in abandonment programmes, including rejection of demands for re-infibulation after childbirth
- Discourage the medicalization of the practice (in which it is performed by health care professionals rather than traditional excisors)
- Reinforce women's right to bodily integrity, as one among women's inalienable human rights.¹⁹

RATIONALE AND EFFECTS OF LEGISLATION

For the proponents of anti-FGM/C legislation, the law is intended to deter supporters of the practice by threatening legal sanctions. For individuals and families already opposed to FGM/C, the law bolsters support and provides leverage to stand up against social pressures to cut their daughters.

In a study conducted in Senegal on the perceived power of the law and people's readiness to change, 84 per cent of respondents agreed with the statement, "The law banning female circumcision is more powerful than we are, so we must change the practice."²⁰ There was also strong agreement with two questions on enforceability of the law (FIGURE 2). The study showed that even if respondents were not aware of specific cases of arrest and prosecution, "rumours and imaginings of enforceability generated fear of prosecution," according to Shell-Duncan, Wander and Moreau.²¹ Hence, these proponents strongly believed that widely publicizing even a few cases of prosecution would dissuade some community members from practising FGM/C.²²

FIGURE 2. VIEWS ON THE POWER AND ENFORCEABILITY OF LAWS PROHIBITING THE PRACTICE OF FGM/C



Source: B. Shell-Duncan, K. Wander and A. Moreau (forthcoming), 'Legislating Change? Responses to criminalizing female genital cutting in rural Senegal', in *Female and Male Genital Surgeries: Critical Intersections/Astonishing Issues*, F. Ahmadi, University of Chicago Press, Chicago, IL.

While belief in the power of the law and threats of punishment can alter behaviour concerning the practice of FGM/C, it has little influence among zealous supporters of the practice, particularly those who view legislation as an imposition and a cultural attack on their norms and values. This implies that in practising communities where support for FGM/C is unanimous, legal regulations will have little effect. However, in communities where the practice is contested or change is under way, legislation can serve as an impetus to strengthen the stance of those in favour of FGM/C abandonment. The “law can be a useful tool for change” contributing to an enabling environment that provides greater leverage to persuade communities to abandon the practice, note Shell-Duncan, Wander and Moreau.²³

The rationale for legislating the practice of FGM/C emanates from acknowledging that “institutional frameworks play an important role in promoting and supporting social change, human rights, good governance and the rule of law,” says UNICEF.²⁴ Ensuring that a legal framework is in place that supports the abandonment of FGM/C is a vital step towards ending the practice.

For legislation to be effective and win the critical public support that facilitates implementation and acceptability of the law, it is imperative to take into account the level of consensus, social acceptance of FGM/C and the reality of the lives of women and girls. As pointed out by Rahman and Toubia, “Stopping the practice by providing women with the information and choices to abandon FGM/C cannot be achieved by the simple act of drafting or interpreting a set of human rights principles or laws, even though such steps are necessary to enhance the process of change. To effect such profound social change, government action should take multiple forms and be part of a long-term process of obtaining social justice for all, particularly women.”²⁵

FGM/C legislation grounded in human rights does not just recognize the rights of children, men and women and the obligations of the State under the international human rights instruments to which it is party; it also “demands full public participation in the drafting, debate and approval of legislation by all those directly or indirectly affected by the legislation,” says UNICEF.²⁶



3. Accelerating Change: The UNFPA-UNICEF Joint Programme on FGM/C

Building on initiatives that have demonstrated success in reducing the prevalence of FGM/C, UNFPA and UNICEF have joined forces to accelerate its abandonment across Africa. In close collaboration with key stakeholders, support is provided to community and national efforts already identified as leading to positive social change. The strategic approach of the UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting fosters coordinated action among countries where FGM/C is prevalent and previous country actions have provided the basis for intensifying activities to promote abandonment.

The Joint Programme was launched in 8 countries in 2008 and expanded to 12 countries in 2009. As of 2013, there are 15 countries supported by the joint programme: Burkina Faso, Djibouti, Egypt, Eritrea, Ethiopia, the Gambia, Guinea, Guinea-Bissau, Kenya, Mali, Mauritania, Senegal, Somalia, Republic of the Sudan and Uganda. The Joint Programme has created a unique partnership among stakeholders in the implementation of a common approach to abandonment of this harmful practice. It includes accelerating and scaling up successful country

strategies for large-scale abandonment and transferring lessons learned to countries seeking to start work.

To strengthen the legal environment, the Joint Programme has supported awareness-raising and advocacy campaigns in a number of countries and has provided lawmakers with the necessary tools to develop legislation. The support provided by the Joint Programme, particularly by UNFPA, in the enactment and enforcement of laws eliminating the practice of FGM/C in Kenya, Uganda and Guinea-Bissau will be discussed in the next section, which focuses on country experiences.



PHOTO CREDIT: Phoenix Design Aid



PHOTO CREDIT: UNFPA Kenya

4. Outlawing The Practice of FGM/C in Kenya, Uganda and Guinea-Bissau

In the span of two years, 2010 and 2011, three countries unequivocally criminalized the practice of FGM through passage of legislation. These countries—Kenya, Uganda and Guinea-Bissau—were supported by UNFPA together with UNICEF through the Joint Programme. While the content of the three countries' laws and their legislative processes have similarities, the main strategy each country employed, in particular the driving force, notably differed.

In Kenya, both female and male legislators, including and especially the chairpersons of key committees, played a critical role in passage of the bill that was eventually enacted into law. In Uganda, the commitment and leadership of highly respected community elders played a pivotal role in passage of the FGM law. In Guinea-Bissau, the passage of legislation resulted from many years of efforts by non-governmental organizations (NGOs) and prolonged and controversial debate in Parliament.

The role UNFPA played and the support it provided at various levels and to key stakeholders in each of the three countries are presented below. Also discussed are the main challenges that countries face after enactment of the anti-FGM law, as well as some lessons learned in the process.

KENYA: PERSUASIVE ADVOCACY BY FEMALE LEGISLATORS

FGM Prevalence

The 2008-2009 Kenya Demographic and Health Survey revealed that FGM prevalence was 27 per cent, a decline from 38 per cent in 1998 and 32 per cent in 2003. The proportion of women cut increases with age, from 15 per cent of women age 15-19 to 49 per cent age 45-49. A higher proportion of rural women (31 per cent) than urban women (17 per cent) have undergone FGM. Communities that practise FGM consider it a sign of ethnic identity that binds them together.

The practice varies tremendously by province and ethnicity. Prevalence is as high as 98 per cent in the North Eastern province and as low as 1 per cent in the

Western province. FGM is far more prevalent among the Somali (98 per cent), the Kisii (96 per cent) and the Maasai (73 per cent) than among other groups. Most women were cut at age 10 and older, mostly by traditional excisors (78 per cent), with the remainder by health professionals (20 per cent), mostly in urban areas.

The practice is widely condemned as harmful because of its great health risks. Four in five women (82 per cent) believe that FGM should be stopped; only 9 per cent believe it should continue. Although FGM has been declining over the years, thousands of girls are still subjected to it every year. Since older girls are becoming more aware and are resisting it, some parents have begun to have their daughters cut at a younger age—around 5 years old, or even as babies.

FGM Policies and National Plan

Kenya's Penal Code outlaws the deliberate infliction of "grievous bodily harm" on any individual. The Children's Act of 2001 prohibits FGM and other harmful practices that "negatively affect" children under 18, providing a penalty of 12 months imprisonment and/or a fine not exceeding 50,000 shillings (about \$600). But the Children's Act has not deterred relatively affluent Kenyans and the Somali diaspora, who bring girls into Kenya to be cut. In some areas people persuade women to undergo FGM because they know the Children's Act does not apply to adults.

Other policies and action plans have also been put in place to address FGM. They include the 2007 National Reproductive Health Policy, with the theme of 'Enhancing Reproductive Health Status for all Kenyans'; the National Plan of Action for the Elimination of Female Genital Mutilation in Kenya (2008-2012) and the Adolescent and Reproductive Health Policy and Plan of Action (2005-2015).

The campaign for abandonment of FGM has been a long one. The main challenge has always been the lack of a comprehensive legal framework as a basis for seeking redress. Furthermore, application of policies has been limited partly because of ambiguous wording and penalties that were considered too lenient. The

need for a comprehensive policy framework specifically addressing FGM led to the formulation of the National Policy for the Abandonment of FGM (2008–2012), approved by the Cabinet in June 2010. The policy was instrumental in formulation of the Prohibition of FGM Bill 2010, which the President signed into law in October 2011. It was drafted by the Kenya Women’s Parliamentary Association (KEWOPA) and is known as the Prohibition of FGM Act 2011.

Passage of the bill resulted from concerted efforts by legislators, especially women legislators who had gone through the FGM ordeal. They had become vocal advocates against the practice and gave powerful and moving testimonies that drew special attention to the issue.

Prohibition of FGM Act 2011

For the first time, FGM is unequivocally criminalized in Kenya under the Prohibition of FGM Act 2011. The legislation is a step forward and a great milestone for the protection and promotion of the rights of Kenyan women and girls. It is seen as a tool to fight a wide range of perpetrators through the judicial system.

The penalties the law outlines are severe. It mandates a sentence of three to seven years or a fine of nearly \$6,000 for anyone practising FGM, including traditional excisors, parents, doctors and nurses—even the person who supplies the premises or the knife. The same penalties also apply to anyone convicted of bringing a girl into Kenya from abroad to be cut; hiring a person to perform FGM; failing to report an incident of FGM; or carrying it out on a Kenyan in another country. In addition, the Act provides for entry by law enforcers into premises where they suspect FGM is being carried out.

Medical practitioners performing the procedure will have their licenses revoked. If a girl dies as a result of a procedure (due to infection, excessive bleeding, etc.), the sentence for anyone directly involved can be life in prison. The Act clearly states that claiming FGM is a cultural or religious custom or practice and that the victim gave consent to be cut will not protect the individual from prosecution for the offence. The law prohibits the use of derogatory or abusive language

to harm a woman/girl for not having undergone FGM or a man for marrying/supporting a girl who has not undergone FGM. The Act also established the anti-FGM Board, which will be supported by the government and draw membership from relevant ministries (Box 4).

The Government recognizes that enforcing the law is critical, as it sends a clear message that the authorities are determined to protect girls who have been cut, support those who wish to renounce the practice and hold perpetrators accountable. At the end of 2011, five individuals had been charged and were awaiting trial under the new law.

UNFPA’s Role and Support

Through the Joint Programme, UNFPA joined forces with UNICEF to accelerate the abandonment of FGM in Kenya. Using evidenced-based research on social norm, defined as what people in some group believe to be normal or appropriate action and held in place by reciprocal expectations of the people within that group, the results demonstrated that villages where the social norm perspective was implemented had a prevalence rate 70 per cent lower than in control villages.²⁷ UNFPA Kenya provided technical and financial assistance to KEWOPA, which lobbied and sought the support of colleagues in Parliament for enactment of the new law. KEWOPA called on the Government to take concrete steps towards abandonment of FGM through legislation, public education, advocacy, media coverage, empowerment of women, reproductive health and other support services.

UNFPA also provided funds to the Ministry of Gender, Children and Social Development to conduct a national study on FGM, which led to creation of the FGM National Secretariat. It played a pivotal role in coordinating the efforts of stakeholders and in ensuring establishment of a national policy on FGM.

Recognizing the importance of building the capacity of those responsible for upholding the new law, UNFPA in 2011–2012 supported the training of nearly 2,000 police and probation officers, over 1,700 community leaders and more than 23,000 community members.

BOX 4. MANDATE OF THE KENYA ANTI-FGM BOARD

The Board will undertake, among others, the following actions:

- Design, supervise and coordinate public awareness programmes against the practice of FGM;
- Advise the Government on matters relating to FGM and implementation of the law;
- Design and formulate a policy on planning, financing and coordinating all the activities relating to FGM;
- Design programmes aimed at eradication of FGM;
- Provide technical and other support to institutions, agencies and other bodies engaged in programmes aimed at eradicating the practice of FGM; and
- Facilitate resource mobilization for the programmes and activities aimed at FGM abandonment.

Source: The Prohibition of Female Genital Mutilation Act, 2011, Part II - The Anti-Female Genital Mutilation Board, Section 5: Functions of the Board, 2011.

The new law supports and reinforces broader efforts for education and dialogue on human rights and health. This in turn helps empower practising communities to abandon FGM through public commitment to halt the practice, among other strategies. UNFPA has supported communities ranging in size from 27,000 to 2.4 million people whose Councils of Leaders have made public declarations signifying their commitment to abandonment of FGM.

Media campaigns are powerful and effective channels to raise awareness and stimulate interest in the new law. With the support of UNFPA and other partners in 2011, 239 press releases and television and radio programmes reached over 1 million Kenyans. They highlighted the salient features of the law in easily understandable language.

Strategies and Interventions

Key strategies included:

- Supporting both female and male legislators, including and especially the chairpersons of key committees
- Seconding of local UNFPA staff to the national

coordinating body, where they provided technical expertise, guidance, capacity-building, coordination and management of FGM abandonment campaigns

- Winning the support of highly respected and influential community leaders, such as councils of elders, religious leaders and medical professionals
- Supporting the media, especially in raising awareness and engaging parliamentarians on the human rights aspects and adverse health consequences of FGM, as well as in informing the public about the law
- Community advocacy focusing on the proposed bill, which enabled legislators to win support from their constituencies
- Supporting the preparation and widespread dissemination of simplified versions of the legislation, which achieved widespread awareness of the content of the law and how it would affect people's lives.

Although the law explicitly prohibiting FGM in Kenya was necessary, it was by no means sufficient. Concerted efforts of diverse stakeholders continue, including awareness raising, education, community dialogue and public indictments of the practice.

“People talk of diseases that come naturally and cause complications and kill, but this one is a bigger disease by our own making, and people just don’t talk about it... So many girls have died out of this, there is no documentation because this is done in secret, but this is killing and that is why I am talking about it.”

— Sophia Abdi Noor, Member of Parliament

Sophia Abdi Noor was barely eight years old when her mother ‘blessed’ her to undergo the rite of passage that would cleanse her and make her acceptable for marriage according to tradition. In April 2011, she told her fellow parliamentarians about the personal ordeal that made her launch a campaign against FGM. She founded Womankind Kenya to spearhead the campaign and started a center for orphaned girls and those vulnerable to FGM.²⁸

UGANDA: THE KEY INFLUENCE OF COMMUNITY ELDERS

FGM/C Prevalence

The 2011 Uganda DHS showed that 1 per cent of the country’s women had undergone FGM/C. The Karamoja region recorded the highest percentage (5 per cent) followed by the Eastern region (2 per cent). FGM/C is practised in around 32 of Uganda’s 112 districts. It is practised among the ethnic groups of the Sabiny, Pokot, Tepeth, Kadam and immigrants such as the Maasai, Nandi and Somali. It is most prevalent among the Pokot (95 per cent) and the Sabiny (about 50 per cent). Around 200,000 Sabiny and 6,000 Pokot live in Uganda, and nearly 260,000 more Pokot live across the border in Kenya, as do a smaller number of Sabiny.

The Pokot cut girls between the ages of 9 and 14, every year from July through September; the Sabiny do so in December during even-numbered years. The

practice also extends to women who are about to be married and sometimes to women who are pregnant with their first child. The nature of the practice ranges from clitoridectomy, which is more common among the Sabiny, to infibulation, mostly among the Pokot. Among these groups tradition stigmatizes uncut females, including barring them from engaging in everyday tasks.

“I am one of the few who were lucky and escaped the practice, but most of my contemporaries went through it because whichever girl in the village attains puberty is initiated into womanhood through circumcision. Those who refuse are tormented, as their in-laws despise them because they are not circumcized.”

— Gertrude Kulan, Former Member of Parliament

Knowledge of FGM/C varies by residence and region, with higher rates of knowledge among urban women (68 per cent) than among their rural counterparts (52 per cent). Women in the Eastern region are much more likely to have heard of it (75 per cent) than those in other regions. This is because the districts of Kapchorwa and Kween, where FGM/C is most common, are part of the Eastern region, where much advocacy has taken place over the years. Overall, 9 per cent of female respondents in the DHS declared that they wanted the practice to continue, while 83 per cent declared that they wanted it to stop.

Community Initiative: The Sabiny Elders

Historically the Sabiny chiefs were staunch defenders of the practice of FGM/C. But in the early 1990s, they formed the Sabiny Elders Association and decided to methodically review their traditional practices. The elders concluded that FGM/C was a destructive tradition. They began a determined effort to support its abandonment, but that did not necessarily mean

they wanted to eliminate all aspects of the FGM/C ceremony. In close partnership with the Reproductive, Educative and Community Health Project (REACH), a UNFPA-supported project, the elders focused on celebrating positive cultural values, including retaining certain aspects of the FGM/C ceremony, like feasting and gift-giving. An annual Cultural Day was instituted to promote healthy traditions and to dispel myths about harmful practices.

In 2004, the Sabinu Elders and REACH worked closely with Law and Advocacy for Women in Uganda (LAW Uganda), which drafted a document outlining the principles supporting FGM/C prohibition. Based on this document, 100 community leaders from 16 sub-counties of Kapchorwa district petitioned local authorities to enact a bylaw prohibiting the practice. A district-level ordinance against the practice of FGM/C was passed in 2008. It was a formidable first step in a process that eventually led the Parliament to pass a national law stipulating elimination of the practice.

In 2009, the Sabinu and Pokot elders, with REACH staff and medical personnel, met with President Yoweri Museveni. He was convinced of the need to legislate against the practice of FGM/C, especially in light of its harmful effects on maternal and neonatal outcomes. This partnership helped to facilitate enactment of the law.

The Law Prohibiting FGM/C

In April 2009, Parliament started the process of enacting The Prohibition of FGM/C Law, which was unanimously passed in December 2009. President Museveni signed it into law in March 2010 and it took effect the following month. In July 2010 the constitutional court further outlawed the practice as unconstitutional. The Government pledged to provide about \$100,000 for the FGM/C abandonment campaign.

Uganda's first national law prohibiting all types of FGM/C provides a prison sentence of up to 10 years for perpetrators of FGM/C. If a girl dies as a result of the procedure, those involved can be imprisoned for life.

Forging a Legislative Partnership

The process leading to passage of the FGM/C legislation in Uganda involved the commitment and leadership of highly respected elders, who are change agents at the grass-roots level. The people listen to these influential elders when they speak in villages about local problems and discuss possible solutions for them. Equally important was mobilization of other key stakeholders, such as members of the various parliamentary committees who were responsible for drafting and revising the proposed bill.

The active and highly visible support of the President facilitated passage of the law. Media campaigns highlighting salient features of the legislation in simple language were essential in raising awareness about the new law. Community dialogue was an effective tool in creating awareness and building community concern and consensus. Working through social networks, such as the church and solidarity groups of women and youth, greatly helped in facilitating collective action.

UNFPA's Role and Support

In close collaboration with UNICEF, UNFPA contributed to enactment of the law against the practice of FGM/C. It provided funds and technical support to the team that drafted the bill, published an advocacy booklet on FGM/C and organized a workshop to sensitize the government committee responsible for the legislation. UNFPA played a key role in organizing dialogues on FGM/C among communities, civil society and government entities. It supported the Ministry of Gender to draft a training of trainers manual to prepare community facilitators to carry out dialogues at the grass-roots level.

The agency also supported a study tour on FGM/C issues for stakeholders and policymakers, as well as a training workshop focusing on norms and the social convention theory for FGM/C abandonment. In 2010, also in partnership with UNICEF, UNFPA supported the Government to create a simplified version of the law, which has been disseminated to 34 'high-risk' sub-counties. It also sponsored 500 local law enforcement officials and key advocates to be trained to enforce the legislation.

Challenges

The long campaign to abandon FGM/C in Uganda is a striking example of how step-by-step action at the community level — supported eventually at the highest levels of government — can bring major changes. However, many challenges remain.

Advocates of the law believe that some people will try to circumvent it. While those who support FGM/C out of ignorance can be educated over time, the bigger challenge is people who continue to support the practice because they resent and fear 'outsiders' they see as trying to alter their culture and customs.

With the legislation in place, observers have noted more parents taking their young daughters to western Kenya to be cut, and more excisors being brought into the country from Kenya. The income that some practitioners earn from the practice, particularly surgeons from border communities, remains a big impediment to eradication.

Strong social bonds within communities make it difficult for those opposing the practice to report perpetrators, especially when parents are responsible for the procedure. Even when cases have been reported, witnesses have not appeared in court to provide evidence that would incriminate the culprits, fearing social sanctions.

The communities most likely to practise FGM/C are located in isolated areas where lack of access to police stations and courts hinders implementation of the law. For example, Bukwo district sees a magistrate only once in two weeks, and the nearest court is based in far-away Kapchorwa. Lack of adequate legal aid services also hampers legal processes and comprehensive implementation of the law.

GUINEA-BISSAU: NGO PERSISTENCE THROUGH SUCCESSES AND SETBACKS

FGM/C Prevalence

Almost half (45 per cent) of Guinea-Bissau's women aged 15–49 have undergone FGM/C, 95 per cent of them from Islamic communities. Around 93 per cent of these women are from the eastern regions of

the country, mainly in Gabu and Bafata. Those who undergo it are divided almost equally between urban residents (42 per cent) and rural residents (39 per cent). It is estimated that around 2,000 girls are subjected to FGM/C annually, and that 250,000 to 500,000 women suffer medical and psychological consequences²⁸ FGM/C is typically performed on girls aged between 4 and 14, but there has been an increasing trend of cutting girls under 1 year old. Yet over half the population believes that FGM/C should be abandoned.

While some Islamic organizations have supported abandonment of FGM/C, religious beliefs have always been a key motivation behind the continuation of the practice. Other reasons for support include the belief that it helps in maintaining virginity, ensuring bride price, protecting family honour, sustaining social integration and protecting hygiene.

Three Decades of Debate on a Sensitive Cultural Issue

Public debate on FGM/C started in the early 1980s. In 2009, a government proposal to outlaw the practice was defeated in Parliament. Practitioners, however, were held criminally responsible if a woman died as a result of the procedure. In the absence of a law against the practice, more and more individuals began entering Guinea-Bissau for the purpose of FGM from neighbouring countries where it is illegal.

NGOs such as Sinim Mira Nassique, which means, 'we think about the future', have become the main driving force in ending FGM/C. Members go from house to house to sensitize communities about the harmful consequences of the practice. Sinim Mira Nassique has introduced fanado modelo, an alternative initiation rite for young girls. After this ritual, which incorporates all the traditional parts of the ceremony except the genital mutilation, the girls leave the scene accepted as pure.

Before the 1998–1999 civil war, a National Committee against Harmful Practices conducted FGM/C awareness campaigns in partnership with NGOs, with support from UNFPA, UNICEF and other international organizations. However, political instability and a lack of funding ended these activities. Guinea-Bissau's legislative body was temporarily dissolved in 2002



PHOTO CREDIT: UNFPA Senegal

following the civil war. Legislative sessions were reinstated, but they were interrupted after a coup d'etat in 2003, starting up again when the new government took office in October 2005. The country's politicians, especially Members of Parliament, have been reluctant to offend voters who consider FGM/C an important element of their culture.

Legislation on FGM/C

The Parliament approved a legislation outlawing the practice of FGM/C in June 2011, after a prolonged debate. It is considered the most controversial law ever passed and was approved by 64 votes, with only 1 against and 3 abstentions. The legislation forbids the practice of FGM/C nationwide and makes it a crime punishable by up to five years' imprisonment. It is seen as an important first step to protect women and girls, especially in a society where FGM/C is a deep-rooted practice in some ethnic communities.

"I nearly hemorrhaged to death following the birth of my first child, who also died as a consequence of the FGM done to me as a girl. This legislation is the first step in realizing the rights of women and children."

— Nhima Cisse, Member of Parliament and Advocate for Women's Rights

The law had been under discussion for three years, with considerable progress and backsliding. Twice it was removed from the parliamentary agenda. The bill finally approved by the Council of Ministers in May 2011 and then passed by Parliament included a definition of FGM/C that did not correspond to the WHO definition (which was adopted by the United Nations in the 2008 Interagency Statement for the Elimination of FGM/C). The bill also had some inconsistencies with the country's Penal Code and other serious flaws,

such as focusing solely on criminalizing the practice and including a possible loophole that may allow for medicalization of the practice. With support from UNFPA and other United Nations agencies and partners, the Specialized Commission on Women and Children and the legal advisors of Parliament updated the text of the law in compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). It included an article on prevention and on sensitizing the population on the adverse consequences of the practice.

UNFPA's Role and Support

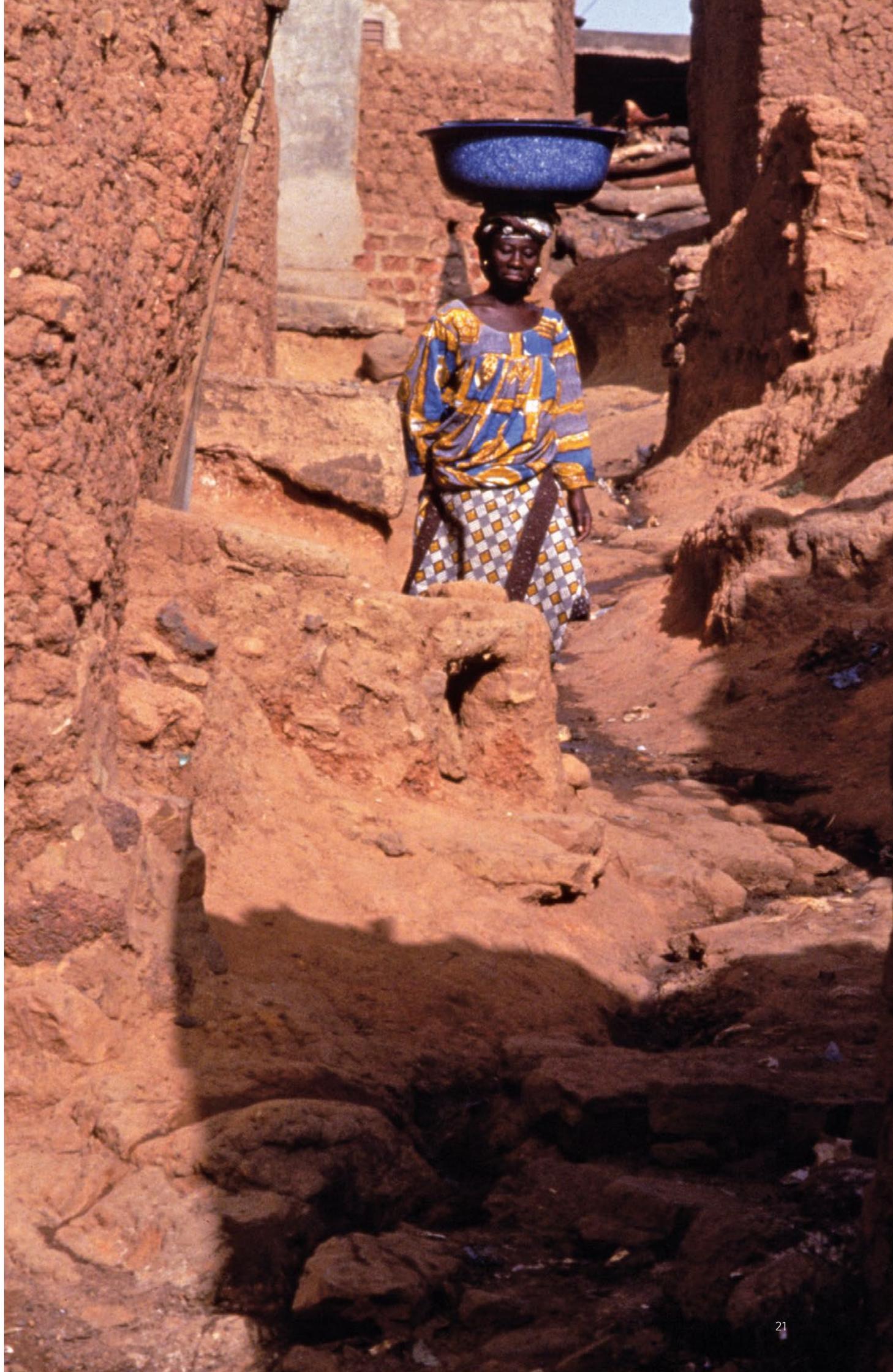
Together with other United Nations agencies and partners, UNFPA has been providing support to the National Committee against Harmful Practices and the Parliament's Specialized Commission on Women and Children. UNFPA has provided technical advice through comments on the draft law and on lobbying strategies at national and community levels.

The support and strategic approach of various stakeholders, including UNFPA, proved effective in a political climate that evolved over time. When a draft bill against FGM/C was debated in Parliament in 2008, most of the Members of Parliament walked out in protest.²⁹

UNFPA has been supporting the Institute for Women and Children in its efforts to encourage abandonment of FGM/C. UNFPA has also aided the National Committee for the Abandonment of Harmful Practices to carry out awareness campaigns focusing on targeted groups, including imams, excisors, grandmothers and men in high-prevalence areas such as Tombali (55 per cent), Quinara (54 per cent) and Bissau (33 per cent). UNFPA sponsored a comprehensive study of knowledge, attitudes and practices on sexual and reproductive health, FGM/C, sexually transmitted infections and HIV, which contributed to a better understanding of the consequences of FGM/C.

Lessons Learned and Challenges

- The legislation to prohibit the practice of FGM/C in Guinea-Bissau, which resulted from a long and tedious process, ultimately rested with the women, men and leaders in the community who were determined to effect and sustain change.
- A strategy based on human rights and wide dissemination of information about the health aspects of FGM/C, including the irreversible lifelong health risks faced by women and girls, was a powerful tool for achieving results in the long run.
- The active involvement of respected religious leaders (the imams) and a partnership between the imams and the Institut de la Femme et de l'Enfant Comité National pour l'Abandon des Pratiques Néfastes were essential in outlawing the practice.
- To ensure a tangible impact and lasting community ownership required an awareness campaign on the adverse consequences of FGM/C conducted by peers, including imams educating other imams.
- In a country with an extremely fragile justice system, much work will be required to ensure that the law is effectively implemented, necessary revisions are adopted and passage of the law translates into gains for girls and women. This includes ensuring that the Ministry of Justice and Ministry of Interior (Police) receive support to implement the law.



5. The Way Forward

In practicing communities, FGM/C is a deeply entrenched social norm. It is often motivated by a complex mix of interlinked socio-cultural factors, including peer pressure, the desire for social acceptance and the need to secure daughters' marriage prospects and preserve family status. In some communities, the practice is an important ritual marking a girl's coming of age and initiation to womanhood. These are powerful motivators for maintaining the status quo.

The practice of FGM/C is recognized as a violation of the human rights of girls and women, which are codified in several international and regional treaties. Since the 1990s, a growing number of African countries have established legal measures prohibiting the practice of FGM/C. In 2010 and 2011, Kenya, Uganda and Guinea-Bissau joined 21 other countries that had already passed legislation criminalizing the practice.

Questions have been raised, however, about the effectiveness of laws in ending the practice, particularly in light of the lack of research on the role of legislation in promoting behaviour change in FGM/C. Critics of laws argue that legal prohibition is counterproductive and coercive, while proponents of laws believe that legislation will accelerate abandonment of the practice. Proponents assert that legislation, particularly criminal measures, is a highly symbolic and necessary step that serves both to dissuade and to educate. Experience, however, has shown that merely developing criminal laws has proven to have little effect, and that a holistic and human rights-based approach is much more effective.

FGM/C cannot be tackled solely through laws. Ending the practice requires a multifaceted approach. A legislative framework is important in providing an enabling environment for change, but it should be accompanied by other reform strategies that encourage positive change in communities.

As noted early on, studies have shown that when the practice of FGM/C is contested and the process of abandonment is under way, legal sanctions encourage people who are leaning towards abandoning the practice. However, the weight of the law has little effect in deterring the practice in communities that strongly support it. For laws prohibiting the practice to be

effective, they should be seen as an expression of popular will.

“Criminalization and regulation are only effective once a substantial body of public opinion has been raised against the practice.”

— Nahid Toubia, Associate Professor, Columbia University School of Public Health Vice-Chair, Advisory Committee of the Women's Rights Watch Project, Human Rights Watch

A human rights-based approach to legislating the practice of FGM/C underscores the importance of participation by those directly or indirectly affected by the law. It also takes into account the reality of the lives of women and children. By enabling people to recognize and claim their rights, a human rights approach promotes a transformative process that renders laws more effective.

THE ROLE OF POLICYMAKERS

Strong political commitment is crucial to end the practice of FGM/C. Policymakers, particularly elected representatives, have an important and catalytic role to play in accelerating abandonment of FGM/C³⁰ and UNFPA has supported this role (BOX 5).

In the countries reported on here, the role of parliamentarians did not end after they had drawn up the legislative framework. They maintained their focus until the law was passed and regulations were in place. Policymakers need to put FGM/C at the top of the political agenda and should work with national and local stakeholders. More specifically, given their unique position in the Government, policymakers should:³¹

- Continue to oversee compliance with international and regional obligations³² protecting the rights of women and children and ensuring that they are incorporated into national legislation and widely disseminated to the people and the judiciary

BOX 5. UNFPA PARTNERSHIP WITH PARLIAMENTARIANS

UNFPA has over 40 years of experience in working with parliamentarians.

UNFPA works in partnership with parliamentarians to:

- Support their active involvement in formulating, implementing, monitoring and evaluating strategies, policies, plans and programmes that address issues relating to population and sustainable development, sexual and reproductive health, and gender and human rights
- Introduce legislative reforms aimed at implementing national policies and strategies
- Help establish and/or support activities of parliamentary groups to advocate for and promote legislative decisions and mobilize resources in all countries and regions as well as globally to achieve the goals of the International Conference on Population and Development (ICPD)
- Facilitate their exchange of information, lessons learned and best practices between countries and across regions

Source: <http://www.unfpa.org/parliamentarians>

- Work with other stakeholders to ensure that women, in particular, are informed of the new law and are assisted to lodge complaints and claim damages
- Ensure that the Government drafts a national action plan for ending violence against women, with special attention on abandonment of FGM/C; that the plan is formulated in consultation with all relevant actors; and that the roles and responsibilities of stakeholders in implementing the new law are clearly spelled out
- Ensure there is adequate budget for implementation of the implementation action plan
- Monitor implementation of anti-FGM/C legislation through parliamentary questions (both written and oral) to concerned ministers
- Conduct a continuing dialogue with civil society, particularly with community-based organizations and women's groups, regarding implementation of the law
- Exchange experiences and good practices on the cross-border practice of FGM/C and coordinate initiatives with other parliamentarians through regional and international parliamentary networks.

“When we get back to our workstations, we should be able to enact laws and adopt parliamentary resolutions that are deterrent in nature; establish parliamentary committees or associations dedicated to the cause of the suffering women; commission parliamentary committees to investigate cases of violence against women; outlaw repugnant social acts like FGM/C; avail sufficient resources to support such committees and associations; share parliamentary knowledge among ourselves to gain from best practices.”

— Abdirahin H. Abdi, Speaker of the East African Legislative Assembly

FURTHER RESEARCH

More research is needed to fully understand responses to FGM/C legislation in different social contexts. The few studies performed to date have taken place in settings where the dominant ethnic group does not practise FGM/C and interventions against the practice have stirred debates.³³ Studies focusing on community response in high-prevalence areas where the majority of people favour continuation of the practice would be useful, especially for the stakeholders working in those communities.

Enforcement of the law against FGM/C continues to be a major challenge. Studies identifying the factors that impede full implementation would be helpful, particularly for law enforcement officials.

Countries have devised different strategies to disseminate the text of the law to various interest groups. Operational research that would look into the effect of strategies and responses of various groups, including adverse unanticipated effects, would be instructive, specifically for the implementing institution and its partners.

Due to the multiplicity of responses required to end the practice of FGM/C, several governmental institutions are often involved in implementing the law. It would be helpful to examine the coordination mechanisms established by different countries and their effectiveness, including the specific roles and responsibilities of the various actors and the challenges they face.

Several African countries have national action plans addressing FGM/C. A study assessing and comparing the goals, objectives, strategies and components of these plans across countries, including indicators for accelerating the abandonment of FGM/C, would be useful, especially for countries that are reviewing and revising their action plans.

Countries recognize that a comprehensive monitoring system is needed to track implementation of the law. In many countries, monitoring has either been undertaken independently or as part of a broader child protection monitoring system. The results and evidence generated from the monitoring process are vital to inform revision of policies and programmes. Research examining the monitoring mechanisms adopted by different countries, highlighting what works and the difficulties encountered, would be helpful, especially for countries that are establishing or strengthening their monitoring systems to implement the legislation.

ENDNOTES

- 1** WHO, 'Eliminating Female Genital Mutilation: An interagency statement', 2008.
- 2** UNFPA and UNICEF, 'Fewer girls threatened by female genital mutilation; UNFPA and UNICEF call for accelerated efforts as the practice begins to decline', joint press release, 6 February 2013.
- 3** FGM/C has a negative impact on maternal and neonatal outcomes. Women who have undergone the practice run a significantly greater risk of requiring caesarean section and episiotomy, and they suffer more post-partum compared with women who have not been cut. Death rates among babies during and immediately after birth are higher for those born to mothers who have undergone FGM/C. (Source: WHO, 'An update on WHO's work on female genital mutilation: Progress report', 2011).
- 4** UNICEF, 'Legislative reform to support the abandonment of female genital mutilation/ cutting', August 2010.
- 5** UNFPA and UNICEF, 'Fewer girls threatened by female genital mutilation; UNFPA and UNICEF call for accelerated efforts as the practice begins to decline', joint press release, 6 February 2013.
- 6** In some countries, the UNICEF MICS is carried out in addition to or in lieu of a DHS. Structured similarly to DHS, MICS provides reliable household information in situations where there are no other sources of data.
- 7** The legal regime is complemented by a series of political consensus documents, such as those resulting from various United Nations world conferences and summits, which reaffirm human rights and call upon governments to strive for their full respect, protection and fulfilment (WHO). These include, among others, the United Nations World Conference on Human Rights (Vienna, 1993), International Conference on Population and Development (Cairo, 1994) and Fourth World Conference on Women (Beijing, 1995) and their follow-up events.
- 8** The five articles include: article 2 on discrimination; article 3 concerning the right to security of person; article 5 on cruel, inhuman and degrading treatment; article 12 on privacy; and article 25 on the right to a minimum standard of living, including adequate health care and protection of motherhood and childhood. (Source: AWEPA, Guidelines for Parliamentarians: Female Genital Mutilation/Cutting, May 2012)
- 9** Article 2 of CEDAW demands from the States Parties: "To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." This is spelled out in General Recommendation number 14 of the Committee on the Elimination of Discrimination against Women.
- 10** The CRC stipulates in article 24 that: "States Parties shall take all effective and appropriate measures with the view to abolishing traditional practices prejudicial to the health of children."
- 11** Of the 53 member countries in the African Union, the Heads of State of 46 countries signed the Maputo Protocol. As of July 2010, 28 of those countries had ratified and deposited the Protocol.
- 12** The Group of African States at the United Nations played an important role that paved the way for adoption of the resolution by the 67th General Assembly on 20 December 2012. At the Session of the UN Commission on the Status of Women (CSW) in March 2012, the Group recommended that the issue of FGM/C be formally considered by the General Assembly under the agenda item "Advancement of Women". In July 2012, the ECOSOC adopted the CSW recommendation and requested that the issue of FGM/C be added to the agenda of the 67th General Assembly. On 26 November 2012, the Social, Humanitarian and Cultural Affairs Committee (commonly referred to as the Third Committee) of the United Nations General Assembly adopted the draft resolution 'Intensifying global efforts for the elimination of female genital mutilations', clearing the way for its formal adoption.
- 13** In 2008, the Egyptian Parliament declared the practice unlawful and punishable under the Penal Code. Source: Program for Appropriate Technology in Health (PATH), 'Female genital mutilation in Africa: An analysis of current abandonment approaches', December 2005.
- 14** Shell-Duncan, B., K. Wander and A. Moreau (forthcoming), 'Legislating Change? Responses to criminalizing female genital cutting in rural Senegal', *Female and Male Genital Surgeries: Critical intersections/astonishing issues*, F. Ahmadu, University of Chicago Press, Chicago.
- 15** UNICEF, op. cit.
- 16** Shell-Duncan, Wander and Moreau, op. cit.
- 17** PATH, 'Female Genital Mutilation in Africa: An analysis of current abandonment approaches', December 2005.
- 18** Shell-Duncan, B. and Y. Hernlund, 'Female "Circumcision" in Africa: Dimensions of the practice and debates', in *Female "Circumcision" in Africa: Culture, controversy and change*, eds. B. Shell-Duncan and Y. Hernlund, 2000.
- 19** Shell-Duncan, Wander and Moreau, op. cit.
- 20** According to Duncan, et.al., interviews with some former excisors revealed that they had stopped practising FGM/C following passage of the law. Source: Shell-Duncan, Wander and Moreau, op. cit.
- 21** Shell-Duncan, Wander and Moreau, op. cit.
- 22** Shell-Duncan, Wander and Moreau, op. cit.
- 23** Shell-Duncan, Wander and Moreau, op. cit. and UNICEF, 'Legislative Reform to Support the Abandonment of Female Genital Mutilation/ Cutting', August 2010.
- 24** UNICEF, op. cit.
- 25** UNICEF, op.cit.
- 26** UNICEF, op. cit.
- 27** Gerry Mackie, Francesca Moneti, Elaine Denny and Holly Shakya, 'What Are Social Norms? How Are They Measured?', Working Paper, UNICEF/UCSD Center on Global JusticeProject Cooperation Agreement, 2012.
- 28** Source: Sunday Nation, April 17, 2011, 'Memories of my circumcision have haunted me to date,' www.fgmnetwork.org/gonews.php
- 28** UNICEF, op. cit.
- 29** United Nations Women, 'Guinea-Bissau Parliament Adopts Law against FGM', <http://unwomenwestafrica.blog.com/2011/06/14/guinea-bissau-parliament-adopts-law-against-fgm/>.
- 30** AWEPA (Pan African Parliament Women's Caucus), 'Guidelines for Parliamentarians - Abandoning Female Genital Mutilation/Cutting', 2012.
- 31** AWEPA, op. cit.
- 32** These include CEDAW (1979), the CRC (1989), the African Charter on Human and Peoples' Rights (1981) and the African Charter on the Rights and Welfare of the Child (1990).
- 33** Shell-Duncan, Wander and Moreau, op. cit.



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