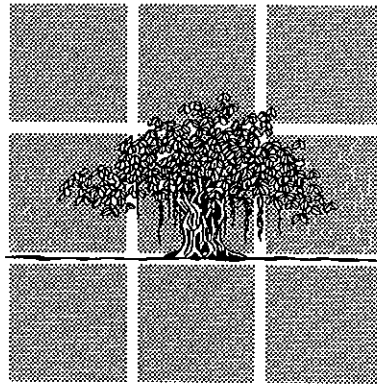


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FEMALE GENITAL
MUTILATION:
Legislative issues in the
Northern Territory

Research Paper No. 9
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FEMALE GENITAL MUTILATION:
Legislative issues in the
Northern Territory

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2. INTRODUCTION:

Female genital mutilation (FGM) is illegal in all Australian States and Territories. Social and legal experts have been attempting to stop this illegal activity in Australia and elsewhere but have been hampered by the cultural heritage that is attached to this practice. A commonly used statistic is that over 80 million females have suffered from FGM worldwide. Women in Australia and the Northern Territory should be perceived as part of this figure.

Steve Hatton (Attorney-General) presented two Amendment Bills to deal with FGM entitled the Criminal Code Amendment Bill (Serial 107) and the Community Welfare Bill (Serial 108) read a first time (together) to the Legislative Assembly on October 12, 1995.

This paper will examine the issues involved in FGM and the impact of many organisations attempts to stop this practice. Current Australian legislation is also included.

3. FEMALE GENITAL MUTILATION: LEGISLATIVE ISSUES IN THE NORTHERN TERRITORY

(a) Definitions

The 1994 Queensland Law Council report on FGM defines the three main types of FGM as:

- * **Circumcision** which involves the scraping or nicking of the clitoris or the excision of the hood of the clitoris. (Also known as *sunna*)
- * **Excision or Clitoridectomy** of the clitoral hood, removal of the glans or the whole clitoris or the removal of all or part of the labia minora.
- * **Infibulation or Pharaonic** which consists of the excision of parts or the full clitoris, labia minora following with the two sides of the vulva being sewn together allowing a small opening for the passage of urine and menstrual blood.

The commission made it clear that the term female circumcision was their preferred term since FGM although widely used in courts, academia and the United Nations (UN) is a value judgement which inhibits the “recognition of the cultural basis for the practice”.¹

(b) International

FGM was raised as a specific issue in 1981 at the UN Centre for Human Rights, when Efua Dorkeno addressed a working group on slavery. Dedicated individuals and

¹ Ibid. p.7-8.

organisations continued to raise awareness and in 1991 the first seminar on harmful traditional practices took place in Africa and Asia under the auspices of the Centre for Human Rights.²

Alice Walker & Pratibha Parmar's book *Warrior Marks: Female Genital Mutilation and the sexual blinding of women* (1993) brought wide scale feminist dialogue into the continuing international debate. During the 1980s Efua Dorkenoo immigrated to the UK from Ghana and began an international crusade against FGM. Dorkenoo claims that many African women reject the notion of circumcision as mutilation and describe it as an act of love for their children who will be able to be good brides. International legislation has been passed in a number of countries including the United Kingdom and America, but the cultural problems persist. Dorkenoo believes that "mobilization on a grass roots level will lead to change...I have high hopes for the next generation of African mothers...".³

(c) Australia

It is impossible to collect hard data on the number of females who have had FGM performed on them in Australia. Studies have included women who were prepared to talk about their experiences and reasons for the continuation of the practice. But there is not as yet a documented case of criminal prosecution for FGM in Australia.⁴

² Armsrong, Sue. "Female Circumcision: Fighting a cruel tradition", *New Scientist*. Vol.129, No.1754, 2.2.1991. p.25.

³ Kogbara, Donu. "One Woman's Campaign Against Genital Mutilation", *Ms*. Vol.4, No.1. July/August 1993. p.19.

⁴ Queensland (Qld) Law Reform Commission. *Female Genital Mutilation. Report No.47*. Brisbane: Queensland Law Reform Commission. 1994. p.27.

Patricia Garcia, a program co-ordinator for Austcare claims that FGM does occur in Australia.⁵ Abdul Jalil, the Imam of Perth's Riverdale mosque in 1992 admitted that FGM is performed in Western Australia (W.A.) usually by older women from the Christmas and Coco Islands. Jalil estimates that the majority of Islamic women in W.A. have been had some form of FGM.⁶ Reasons include:

- * Controlling female sexuality & ensuring virginity for marriage.
- * Religious, traditional and cultural basis. (FGM does not form part of Islamic law but some communities believe that it does)
- * Members of some communities believe that a female is dirty or ugly unless FGM is performed. (not unlike male circumcision)
- * Economic survival for those who perform FGM or who are later used for medical intervention in event of childbirth, divorce or prolonged absence from husbands. (Some women have infibulation performed on them if their husbands are away for long periods to prevent infidelity)⁷

There are many issues relating to the psychological effects of FGM during the procedure and a lifetime of medical and emotional scars associated with the practice.

⁸ Consequences of FGM include:

⁵ Pitt, Helen. "Customs and Excise", *The Bulletin*. August 25, 1992. p.36.

⁶ Ibid. p.37.

⁷ Op. Cit. Qld Law Reform Commission, 1994. p.18-21.

⁸ Op. Cit. Qld Law Reform Commission, 1994. p.22-26.

* Health complications in the short term such as pain, haemorrhaging, septicaemia, infections and possible death.

* Health complications in the long term such as chronic infections, pain passing urine, scar formation, sterility, blockage of menstrual blood, very painful periods and painful sexual intercourse.

* Complications at childbirth include cutting the scar and greatly increased risk of haemorrhage and infection.

Extreme yet documented examples of the consequences of some forms of FGM include the custom of new husbands being presented with a knife to take with them on their wedding night.⁹ Men obviously play a significant role in the continuation of FGM. In interviews with a African doctor 10 out of 15 men said that they preferred uncircumcised women as they liked to share sexual pleasure. The other five believed that women without FGM were unclean and oversexed, one stating that women were not intended to enjoy sexual intercourse.¹⁰

(d) Legislation

FGM received unprecedented media coverage in Australia during 1994. In June the Family Law Council presented a report to the Federal Attorney General, Michael Lavarch, recommending that an education program be implemented followed by legislative reform. The report contained evidence that FGM was being performed in Australia and cited examples of Egyptian women in Melbourne, Malaysian women in Western Australia and numerous cases documented through medical treatment in

⁹ Op.Cit. Armstrong, Sue. 1991. p.23.

¹⁰ Ibid. p.24.

other States and Territories. (see readings) A meeting of the country's Attorney-Generals resulted in each State and Territory agreeing to take responsibility for their own communities. Since then New South Wales and Queensland have passed Amendment Bills in respect to FGM. (see readings)

In September 1994 the Queensland Law Reform Commission released Report No.47 on Female Genital Mutilation as part of a wider reference involving the rights of children and intellectually disabled adults relating to consent to medical procedures. The Commission recommended:

- * Appropriate education programs and support
- * Prohibition of FGM in a separate division of the Queensland *Criminal Code*
- * Maximum five years imprisonment
- * Revision of the definition of "in need of care and protection" in the *Children's Services Act 1965*
- * Child protection guidelines to include investigation of "at risk" families
(see readings for full recommendations) ¹¹

The Commission claimed that the practice of FMG is most likely to be performed by an older woman or relative although some communities allow men to perform the procedure. The procedure is rarely done under anaesthetics and often the instruments used are made of stone or glass. Central to change is promoting education of women within these communities in regard to the health and social consequences of their actions. Because the procedure is usually performed by older women within a family

¹¹ Op. Cit. Queensland Law Reform Commission. 1994. P.4-6.

younger women know they must conform to be accepted. The cycle continues. Sally Castella-McGregor of the SA Children's Interests Bureau states:

It is interesting to note that the most zealous supporters of female circumcision are women bound by traditional custom -some of whom, according to one Sudanese study, are motivated by spite: 'I suffered, so should you'.¹²

(e) Education

About 100 women and 30 men participated in an inaugural education program to promote change in the cultural values associated with FGM with specific ethnic groups in Melbourne in 1994. Those involved felt that legislation was the wrong approach and that to punish women who had suffered so much already was not the answer. They recognised that changing cultural practices and attitudes is no simple task. Nicki Marshall, helped establish the program and concluded that these women are the "victims and guardians of the practice."¹³

(f) The Northern Territory

The Introduction of the Criminal Code Amendment Bill (Serial 107) and the Community Welfare Amendment Bill (Serial 108) by Steve Hatton (Attorney General) is "to make the practice of female genital mutilation a specific criminal offence."¹⁴ As the procedure is already illegal, the Criminal Code Amendment has

¹² Op.Cit. Pitt, Helen. 1992. p.37.

¹³ Hill, Robin. "Cut to the Chase", *The Bulletin*. November 8, 1994. p. 49.

¹⁴ Hatton, Steve. (Attorney General) Northern Territory Legislative Assembly Hansard. 12.10.95. p.55.

been introduced to reinforce that it is an offence for anyone to perform, aid, counsel or procure another for the purpose of FMG in the Territory. This will include action against those who perform FMG outside the Territory, including overseas, as long as the female is ordinarily a resident of the Territory. Under the proposed Amendments anyone found guilty of performing or procuring FMG is liable to be imprisoned for up to 14 years.

The Community Welfare Bill amends the definition of 'maltreatment' to include new offences relating to FGM. The Amendments allow for cases such as necessary surgery due to illness or childbirth and the right for an individual to procure gender reassignment.

4. CONCLUSION:

FGM is a controversial and emotive subject. Whether government agencies should pursue legislation against FGM on moral grounds is a key issue in the debate. Education and legislation are only part of the long process involved in altering the cultural practices of millions of people. Australia is a country rich in cultural diversity and this consequently produces issues such as FGM. The medical, psychological and cultural issues involved with FGM will not be solved quickly or easily but it is imperative that it is not ignored or placed in the 'too hard basket' and that it continues to be publicly debated.

5. LEGISLATION :

Family Law Council.

“Female Genital Mutilation : A report to the Attorney-General prepared by the Family Law Council, June 1994. Summary of Recommendations”, *Female Genital Mutilation*. Brisbane: Queensland Law Reform Commission, 1994. P.89-92.

New South Wales. Parliament.

Crimes (Female Genital Mutilation) Amendment Bill 1994.

New South Wales. Parliament.

Crimes (Female Genital Mutilation) Amendment Bill 1994. May 4, 1994. P.1859-60. May 10, 1994. P.2145-51. September 15, 1994. P.3129-31. September 22, 1994. P.3638-40. (Hansard, 4th Session, 15th Parliament, 1994)

Queensland. Parliament.

Female Genital Mutilation Prohibition Amendment 1994.

5. LEGISLATION & READINGS:

Family Law Council.

"Female Genital Mutilation : A report to the Attorney-General prepared by the Family Law Council, June 1994. Summary of Recommendations", *Female Genital Mutilation*. Brisbane: Queensland Law Reform Commission, 1994. P.89-92.

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Queensland. Parliament.

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Craig, Terry & Kinson, Rose

"Women Affected by Old Custom Require Sensitive Support", *Post Migration*. No.94, January 1994. P.6-11.

Harding, Richard

"Cruel Cuts", *The Bulletin*. Vol.116, No.5910. March 8, 1994. P.38.

Hill, Robin

"Cut to the Chase", *The Bulletin*. Vol.116, No.5945. November 8, 1994. P.48-49.

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Female Genital Mutilation. Report No.47. Brisbane: Queensland Law Reform Commission, 1994. P.64-74.