

ICRH Publications N° 9

**Belgian legislation regarding female
genital mutilation and the implementation
of the law in Belgium**

**Ghent - Belgium
April 2004**

Els Leye and Jessika Deblonde

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This report is the result of the project "Evaluating the impact of existing legislation in Europe with regard to female genital mutilation"
(January 2003 - June 2004)

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LIST OF ABBREVIATIONS

| | |
|---------|---|
| CAMS | Commission pour l'Abolition des Mutilations Sexuelles |
| EC | European Commission |
| EU | European Union |
| FGM | Female genital mutilation |
| FORWARD | Foundation for Women's Health, Research and Development |
| ICRH | International Centre for Reproductive Health |
| NGO | Non governmental Organisation |
| NIS | National Institute for Statistics |
| PFCA | Prohibition of Female Circumcision Act |
| WHO | World Health Organisation |

1. FOREWORD

The World Health Organisation (WHO) defines female genital mutilation (FGM) as all procedures involving partial or complete removal of the external female genitalia or other injury to the female genital organs, whether for cultural or any other nontherapeutic reasons. These procedures are classified into four types ranging from the pricking, piercing, stretching or incision of the clitoris and / or labia, to the excision of part or all of the external genitalia and the stitching / narrowing of the vaginal opening (infibulation)¹.

It is estimated that infibulation accounts for approximately 15% of all cutting procedures being performed on as many as 90% of women in Somalia, Djibouti and Northern Sudan. FGM types I, II and IV comprise the remaining 85%².

FGM affects between 100 - 140 million women and girls worldwide and it is estimated that at least 2 million girls a year are at risk of mutilation¹. Even though practised primarily in 28 African countries from the Horn of Africa, to parts of central, eastern and western Africa, international migration has extended the practice outside the African continent; it is now an issue of European concern³.

Within the countries of origin, the campaign against this practice is one against a 'harmful traditional practice', which is not only deeply rooted within that society but also familiar to it. In Western countries, the practice is addressed as a violation of women's rights and under no circumstances to be justified out of respect for cultural traditions or initiation ceremonies.

A coherent strategy throughout Europe concerning legislative measures and a better knowledge of their implementation, will strengthen the fight against FGM. In this context, it is paramount to assess the enabling factors and difficulties inherent to the implementation of the legislation.

This publication is the result of a research into the legal provisions related to FGM in 15 European Member States⁴, and of the difficulties of implementing these laws in 5 countries: Belgium, France, Spain, Sweden and the United Kingdom. These countries were selected because of the interesting comparison of countries with

¹ WHO. Female Genital Mutilation / A student manual. Geneva: WHO, 2001

² Kirberger E, Randolph K, Toubia N. Intersections between health and human rights: the case of female genital mutilation. New York: Rainbow, 1995.

³ Ng F. Female genital mutilation; its implications for reproductive health. An overview. The British Journal of Family Planning 2000;26:47-51, in: Powell RA, Leye E, Jayakody A, Mwangi-Powell FN, Morison L. Female genital mutilation, asylum seekers and refugees: the need for an integrated European Union agenda. Health Policy, in press.

⁴ In April 2004, the 15 EU Member States were: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Portugal, Spain, Sweden, the Netherlands, and the United Kingdom.

specific legal provisions against FGM (Belgium, Sweden and the UK), and countries where FGM is forbidden under the general penal code (Spain and France). During the course of the project, changes in the legal provisions occurred in the UK (the Prohibition of Female Circumcision Act (PFCA) 1985 was changed to the FGM Act 2003 on March 3, 2004) and in Spain (a specific law provision was introduced on October 1, 2003).

The study was financed by the European Commission's Daphne Programme, and ran from January 1, 2003 to June 30, 2004.

The International Centre for Reproductive Health (Ghent University, Belgium) carried out the project in partnership with:

- University of Valencia, Centre of Studies on Citizenship, Migration and Minorities (Javier De Lucas (Director), José García Añón (Coordinator))
- Foundation for Women's Health, Research and Development - FORWARD UK, (Adwoa Kwateng-kluitse)
- Lund University, Department of Sociology, Sweden (Sara Johnsdotter)
- Commission pour l'Abolition des Mutilations Sexuelles - CAMS, France (Linda Weil-Curiel)
- Centre for Human Rights, Ghent University, Belgium (Eva Brems).

We kindly acknowledge Gert Vermeulen (Institute for International Research on Criminal Policy, Ghent University) and Patricia Jaspis (examining magistrate in Brussels) for their valuable contribution to the research project.

The 5 partner countries in this project carried out research in their respective countries, and compiled a national report on their country's legislation and its implementation regarding FGM. Copies of these national reports can be requested at the following e-mail addresses and/or websites:

- Belgium: Els Leye: **els.leye@ugent.be** (ICRH website: **www.icrh.org**)
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- Spain: José García Añón: **Jose.Garcia@uv.es** (Centre of Studies on Citizenship, Migration and Minorities at the University of Valencia, Faculty of Law website: **www.uv.es/immigracio**)
- Sweden: Sara Johnsdotter: **sara.johnsdotter@soc.lu.se** (website: **www.simko.se**)
- UK: Adwoa Kwateng-kluitse: **forward@forwarduk.org.uk** (FORWARD website: **www.forwarduk.org.uk**).

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2. INTRODUCTION

Legal provisions pertaining to FGM are found in a variety of sources, including criminal laws and child protection laws. In Europe, some countries developed specific legislation on FGM; in other countries, FGM is prosecutable under the general penal code and/or child protection laws. European Union institutions (such as the European Parliament and the Council of Europe) have developed resolutions that - amongst others - urge Member States to develop specific legislation. Activists and NGOs sometimes have opposing opinions regarding legislation: while some are lobbying national governments to develop specific legislation, others are convinced that existing criminal laws are sufficient to prosecute FGM.

However, in those countries that already have a specific law with regard to FGM, no cases have ever reached the court, which raises questions about the efficacy of specific law provisions to prosecute FGM when it has been performed.

In general, before an action can be brought to court, there are some basic steps that have to be followed:

- The offence must be considered as punishable by the law
- The offence must have occurred
- A case must be reported
- An investigation must be initiated and evidence found.

With regard to FGM, a number of factors influence this process, which we have tried to assess in an in-depth analysis of laws and law enforcement in the following countries of the European Union (EU): Belgium, France, Spain, Sweden and the UK. More specifically, the study focused on the following 5 issues, and the factors that are obstructing the implementation of laws:

- Presence of criminal law provisions with regard to FGM;
- Presence of FGM practising communities in these countries;
- Reporting of cases
- Investigations with regard to these reported cases
- Court cases (if any).

A comprehensive report including results from the fieldwork in all five countries, in addition to the results of the analysis of FGM relevant legislation in all EU Member States has been published by ICRH in June 2004.

This Belgian report concerns the fieldwork and subsequent results from Belgium only. Chapter 3 discusses in detail the methodology of the fieldwork. Chapter 4 describes the FGM practicing communities in Belgium, while chapter 5 focuses on the laws in Belgium with regard to FGM. Chapter 6 describes the referral system in Belgium in case there is a suspicion of FGM performed, or in case there is a fear of future performance of FGM. Chapter 7 discusses the implementation of legislation in Belgium. Before coming to conclusions in chapter 9, chapter 8 identifies factors that both obstruct and favour the implementation of legislation.

3. RESEARCH METHODOLOGY

The objectives of the study were to analyse the implementation of FGM legislation in Belgium and to assess possible hampering and/or encouraging factors for such an implementation.

The implementation analysis in this investigation is focused on national legislation, more specifically on criminal laws and child protection laws, in order to have an overview of both criminal approaches to FGM as well as preventive procedures. Criminal laws describe acts deemed unlawful by the state, carrying penalties such as imprisonment and fines. Child protection laws include protective procedures and preventive measures, sometimes without a legal intervention of a judge. Thus, the criminal approach is concerned with punishing parents, guardians or other performers of FGM while child protection laws envisage the child's interest as a possible victim of FGM.

In order to identify and analyse the hampering factors to implement FGM legislation, the following research questions emerged:

1. Is legislation applicable on FGM being implemented in Belgium?
2. What are the hampering factors for the implementation of legislation applicable to FGM in Belgium?

The underlying assumptions to these questions are 1) that FGM is still being performed in Africa and consequently also among immigrants and refugees from countries where the practice is prevalent and 2) that in Belgium, the legislation on FGM is not applied.

To assess whether or not legislation in Belgium is being implemented, fieldwork has been performed, based upon a two-folded strategy – an analysis of documents and a case study of Brussels, which is explained in detail in the following paragraph.

3.1. Document analysis

The document analysis should be based upon an analysis of classified documents (archival records) with regard to jurisprudence concerning cases related to FGM. To our knowledge in Belgium, no national court cases concerning FGM have occurred. Such cases would have been remarkable and therefore published in (legal) journals and/or would have been commented in the media.

To check whether this presumption was correct, we have requested public prosecutors of the 27 judicial districts in Belgium if there have been any penal cases and/or child protection measures taken to protect a girl at risk of FGM, either in Belgium or abroad. With the exception of one district (we received no

reply from the judicial district of the city of Mons), all districts answered negatively to both questions.

3.2. Case study

Empirical evidence concerning the implementation of legislation applicable to FGM was collected and analysed through a case study. This case study aimed at identifying whether legislation is implemented, and at identifying the hampering factors for the implementation of the legislation.

The case study started with the definition of a practising community in Belgium and the corresponding geographic jurisdiction. Our case study was performed in Brussels, the largest city of Belgium. Here the share of the foreigners in the total population is the biggest and the estimated number of girls that might be in the age group at risk of FGM and the estimated number of women who could have FGM, is the highest (see following chapter).

The case study consisted of conducting semi-structured interviews with key-informants. These key-informants were:

- Child protection officer in Brussels
- Gynaecologist/obstetrician in major hospital in Brussels, who acts as a referral gynaecologist for women with health problems due to FGM
- Activist from NGO in Brussels that works towards the prevention of FGM
- Officer at the federal prosecution office
- Officer at child and family care (Kind en Gezin)
- Examining magistrate in Brussels
- Gynaecologist at a hospital in Brussels where a lot of foreigners go to

The interviews have been conducted following an interview guide (see annex III). Main issues of the interviews were knowledge about FGM and related laws, possible (dis)advantages of a specific law, difficulties for implementing legislation.

The interviews were taped and transcribed. Two researchers analysed the transcriptions. The analysis consisted of:

- Reading of the transcription to eliminate irrelevant items and to recognise essential items
- Classification of the content of the interviews around analytical categories
- Codification of the interviews
- Retrieval of text segments with similar codes
- Comparative analysis of text segments
- Identifying common patterns across all interviews.

The analytical categories have been defined before the interviews were conducted. The implementation of the law was analysed at the level of the police,

prosecutors, child protection, correctional court and youth court. Obstacles were analysed according to 4 categories:

- Knowledge about the practice of FGM,
- Knowledge about the legal aspects of FGM,
- Perceptions and attitudes towards a legal intervention
- Practices and procedures to be followed in case of a legal intervention.

4. FGM-PRACTICING COMMUNITIES IN BELGIUM

4.1. Preliminary remark

Estimating the prevalence of women with FGM and the number of girls at risk of FGM, meets several critical problems.

- The number of women who might have FGM, and the number of girls that might be at risk of FGM was estimated based on figures from the National Institute of Statistics (NIS), who keeps track of women coming from Africa, by nationality and age group. However, the nationality of women does not reveal the ethnic groups to which these women belong, although ethnicity or the region where women come from would give a much more accurate picture of the presence of FGM than nationality.
- The NIS figures do not take into account asylum seekers and women in Belgium illegally. African women and girls that have obtained the Belgian nationality are not visible anymore in these statistics.
- The percentages of women with FGM in the African countries of origin are also based on estimations that vary in quality. The prevalence estimations in Africa in the tables 2 to 4 are based upon figures from the following publication: "FGM. Integrating the prevention and management of the health complications into the curricula of nursing and midwifery. A teacher's guide. WHO, 2001". WHO classified the estimations from most reliable estimations (marked with a +) to other estimations (marked with *) to questionable estimations (marked with -).
- The foreign population of a country tends to change rapidly due to migration flows (numbers of migrants and diversities in origin). Up to date changes in these migration flows are not reflected in the figures of the NIS: the tables below give an overview of the foreign population on January 1, 2002.
- We consider girls in the age group 0 to 14 years, and coming from a country where FGM is performed, as being at risk of FGM. However, girls that are born in Belgium and that have the Belgian nationality are not taken into account.

In conclusions, the following statistics are not conclusive, but provide some indication of the possible prevalence of FGM in Belgium.

4.2. Foreign population in Belgium

On January 1, 2002, the official Belgian population number was 10.309.725. The number of residents with a non-Belgian nationality has fallen from 861.700 to 847.000, between January 1 2001 and January 1 2002. However, the migration balance (difference between immigration and emigration) doubled during that same period (from 12.137 to 24.887). This does not mean that there are less people from foreign origin on Belgian territory, but that they have taken the

Belgian nationality more often. During the year 2001, 62.982 foreigners became Belgian, in 2.000 61.980. The so-called “become Belgian fast” - law, that came into practice in May 2000, facilitated obtaining the Belgian nationality for some categories of foreigners. 91,8% of the population in Belgium has the Belgian nationality and 8,2 % has a foreign nationality⁵.

In the tables below, foreigners who obtained Belgian nationality (population register) are included as well as foreigners who received permission to reside in Belgium for more than 3 months, but who did not obtain Belgian nationality (foreigners register). Asylum seekers are not included in this table; they are registered in the ‘waiting register’⁶, which is not easily accessible (a specific permission is required to obtain information about nationality, age group and sex).

The highest number of foreigners in Belgium is from European countries (Italy, France and the Netherlands, with respectively 190.792, 111.146 and 92.561 residents). From non-European countries, most foreigners come from Morocco (90.642), Turkey (45.866) and Democratic Republic of Congo (12.974). From Sub-Saharan Africa, the majority comes from DR Congo, Cameroon (1.896) and Ghana (1.828).

Table 1: Total foreign population in Belgium, January 1 2002⁷

| Country | Total population | Sub-Saharan African country | Total population |
|-------------|------------------|-----------------------------|------------------|
| Morocco | 90.642 | DR Congo | 12.974 |
| Turkey | 45.866 | Cameroon | 1.896 |
| DR Congo | 12.974 | Ghana | 1.828 |
| USA | 11.814 | Nigeria | 1.164 |
| Algeria | 7.216 | Angola | 1.088 |
| China | 4.472 | Senegal | 848 |
| Japan | 3.691 | Rwanda | 845 |
| India | 3.589 | South Africa | 762 |
| Tunisia | 3.324 | Mauritius | 752 |
| Philippines | 3.276 | Burundi | 651 |
| Canada | 2.413 | Ivory Coasts | 637 |

The majority of foreigners are situated in the age group 25 to 29 years (12,1%), 30 to 34 years (12,4%) and 35 to 39 years (11,2%). A lesser number is found within youngsters from 0 to 17 year (6,0%) and in older people from 64 years and more (5,4%)⁵.

⁵ National Institute for Statistics. Brochure: Foreign Population on January 1, 2002, published March 25, 2003. http://statbel.fgov.be/products/population_nl.asp, accessed 24 October 2003.

⁶ Ministerie van Binnenlandse Zaken. Algemene onderrichtingen betreffende het houden van de bevolkingsregisters, Gecoördineerde versie april 2002, Ministerie van Binnenlandse Zaken, Algemene Directie van de Wetgeving en van de Nationale Instellingen, Directie van de Verkiezingen en van de Bevolking, http://www.registrenational.fgov.be/pdf/ONDERR_versie%2004-2002.pdf, 13/11/2003.

⁷ National Institute of Statistics, Info shop Ghent, October 31, 2003. Figures from year 2002. E-mail Philippe Deman [Philippe.Deman@statbel.mineco.fgov.be], SEI-GENT.

4.3. Foreign population from African countries where FGM is practiced

The total number of female foreigners in Belgium from African FGM risk countries is 12.415. These figures are based on data from the population and foreigners' registers in Belgium on January 1, 2003.

To estimate the prevalence of women living in Belgium that might have suffered FGM, and the number of girls at risk of being genitally mutilated, we have taken the female foreign population in Belgium according to nationality and age group and multiplied these numbers by the estimated prevalence in the African country of origin. For example: there are 1.011 women from Cameroon in Belgium, where a 20% have undergone the practice. This gives an estimated 202 women from Cameroon in Belgium that might have had FGM.

The estimated prevalence of women (girls and women) that could be affected by FGM in Belgium is 2.745 (table 2). In this group, a total of 534 girls are from African countries where FGM is practiced and are in the age group that might be at risk of FGM (0-14 years) (table 3). As these statistics do not reveal any information on ethnic groups, the estimations should be interpreted with caution.

Table 4 shows that females with FGM or at risk of FGM are most likely coming from Ghana. In Ghana as well as the DR Congo, type II of FGM is performed. Women in Belgium that could have been infibulated (type III of FGM) are most likely coming from Somalia (98% prevalence of infibulation), Egypt (9%), Nigeria (infibulation practiced only in the North), and Ethiopia (practiced in regions bordering Sudan and Somalia). Consequently, the estimated number of women with infibulation in Belgium from these countries might be lower, as we do not know from which region the women are.

In the year 2000, the number of foreigners in Belgium was the highest in Antwerp, Brussels, Charleroi, Liège, Gent⁸ (table 5). The share of the foreigners in the total population is the biggest in Brussels-City with a percentage of 30.5, followed by Liège (16.5%), Charleroi (15.3%), Antwerp (12.4%) and Gent (7.1%)².

Table 6 shows the estimated prevalence of women that could have FGM or could be at risk of FGM, by nationality and age group, in the 5 cities with the highest number of foreigners.

⁸ Source: Stad Gent, Kansarmoedeatlas.

<http://www.gent.be/gent/wonen/kansarmo/atlas2002/dem-06.htm>, accessed September 26, 2003.

Table 2: Estimated female foreign population that might have FGM by nationality and age group, January 1, 2003

| Country of origin | 0-17 year | 18-64 year | 65 and more | Total | Estimated prevalence | Number of women |
|--------------------------|------------------|-------------------|--------------------|---------------|-----------------------------|------------------------|
| Benin | 18 | 81 | 0 | 99 | 50% (*) | 49,5 |
| Burkina-Faso | 26 | 125 | 0 | 151 | 72% (+) | 108,7 |
| Cameroon | 189 | 813 | 9 | 1.011 | 20% (-) | 202,2 |
| Central Afr. Rep. | 11 | 35 | 0 | 46 | 43% (+) | 19,8 |
| Chad | 13 | 31 | 1 | 45 | 60% (*) | 27,0 |
| D.R. Congo | 1.792 | 4.690 | 142 | 6.624 | 5% (-) | 331,2 |
| Djibouti | 12 | 20 | 1 | 32 | 98% (-) | 31,4 |
| Egypt | 52 | 162 | 17 | 231 | 97% (+) | 224,1 |
| Eritrea | 1 | 10 | 0 | 11 | 95% (+) | 10,5 |
| Ethiopia | 28 | 117 | 2 | 147 | 85% (*) | 125,0 |
| Gambia | 8 | 36 | 0 | 44 | 80% (*) | 35,2 |
| Ghana | 320 | 822 | 2 | 1.144 | 30% (*) | 343,2 |
| Guinea-Bissau | 3 | 21 | 1 | 25 | 50% (-) | 12,5 |
| Guinea | 58 | 183 | 2 | 243 | 99% (+) | 240,6 |
| Ivory Coast | 58 | 274 | 3 | 335 | 43% (+) | 144,1 |
| Kenya | 28 | 161 | 0 | 189 | 38% (+) | 71,8 |
| Liberia | 22 | 54 | 0 | 76 | 60% (*) | 45,6 |
| Mali | 20 | 70 | 0 | 90 | 94% (+) | 84,6 |
| Mauritania | 14 | 34 | 0 | 48 | 25% (-) | 12,0 |
| Niger | 11 | 42 | 0 | 53 | 5% (+) | 2,7 |
| Nigeria | 109 | 530 | 1 | 640 | 25% (+) | 160,0 |
| Senegal | 55 | 284 | 2 | 341 | 20% (*) | 68,2 |
| Sierra-Leone | 29 | 79 | 1 | 109 | 90% (*) | 98,1 |
| Sudan | 11 | 48 | 0 | 59 | 89% (+) | 52,5 |
| Somalia | 72 | 121 | 4 | 197 | 98% (+) | 193,1 |
| Tanzania | 12 | 55 | 3 | 70 | 18% (+) | 12,6 |
| Togo | 69 | 222 | 4 | 295 | 12% (+) | 35,4 |
| Uganda | 10 | 47 | 0 | 57 | 5% (-) | 2,9 |
| Yemen | 1 | 2 | 0 | 3 | 23% (+) | 0,7 |
| Total | | | | 12.415 | | 2.745 |

Table 3: Female foreign population in age group that might be at risk of FGM by nationality and age group, January 1, 2003

| Country of origin | 0-4 year | 5-9 year | 10-14 year | Total risk | Estimated prevalence | Girls in age group at risk |
|-------------------|----------|----------|------------|--------------|----------------------|----------------------------|
| Benin | 4 | 7 | 4 | 15 | 50% (*) | 7,5 |
| Burkina-Faso | 7 | 4 | 9 | 20 | 72% (+) | 14,4 |
| Cameroon | 65 | 56 | 37 | 158 | 20% (-) | 31,6 |
| Central Afr. Rep. | 3 | 2 | 2 | 7 | 43% (+) | 3,01 |
| Chad | 5 | 2 | 5 | 12 | 60% (*) | 7,2 |
| D.R. Congo | 549 | 461 | 466 | 1476 | 5% (-) | 73,8 |
| Djibouti | 5 | 5 | 2 | 12 | 98% (-) | 11,76 |
| Egypt | 31 | 11 | 6 | 48 | 97% (+) | 46,56 |
| Eritrea | 1 | 0 | 0 | 1 | 95% (+) | 0,95 |
| Ethiopia | 10 | 9 | 6 | 25 | 85% (*) | 21,25 |
| Gambia | 3 | 1 | 3 | 7 | 80% (*) | 5,6 |
| Ghana | 72 | 64 | 95 | 231 | 30% (*) | 69,3 |
| Guinea-Bissau | 1 | 1 | 1 | 3 | 50% (-) | 1,5 |
| Guinea | 21 | 15 | 12 | 48 | 99% (+) | 47,52 |
| Ivory Coast | 13 | 12 | 18 | 43 | 43% (+) | 18,49 |
| Kenya | 3 | 12 | 7 | 22 | 38% (+) | 8,36 |
| Liberia | 14 | 4 | 3 | 21 | 60% (*) | 12,6 |
| Mali | 4 | 6 | 4 | 14 | 94% (+) | 13,16 |
| Mauritania | 5 | 3 | 3 | 11 | 25% (-) | 2,75 |
| Niger | 4 | 2 | 5 | 11 | 5% (+) | 0,55 |
| Nigeria | 50 | 31 | 15 | 96 | 25% (+) | 24 |
| Senegal | 21 | 11 | 16 | 48 | 20% (*) | 9,6 |
| Sierra-Leone | 17 | 8 | 4 | 29 | 90% (*) | 26,1 |
| Sudan | 6 | 4 | 1 | 11 | 89% (+) | 9,79 |
| Somalia | 22 | 16 | 20 | 58 | 98% (+) | 56,84 |
| Tanzania | 7 | 2 | 3 | 12 | 18% (+) | 2,16 |
| Togo | 30 | 18 | 12 | 60 | 12% (+) | 7,2 |
| Uganda | 1 | 4 | 4 | 9 | 5% (-) | 0,45 |
| Yemen | 0 | 0 | 1 | 1 | 23% (+) | 0,23 |
| Total | | | | 2.509 | | 534 |

Table 4: Female population that might have FGM/might be in age group at risk of FGM, according to most prevalent nationalities, January 1, 2003

| FGM risk country | Estimated prevalence | Type of FGM performed ⁹ | Number of women that might have FGM (0->65 yr) | Number of girls in age group that might be at risk (0-14yr) |
|------------------|----------------------|---------------------------------------|--|---|
| Ghana | 30% | Type II | 343.2 | 69.30 |
| DR Congo | 5% | Type II | 331.2 | 73.80 |
| Guinea | 99% | Type II | 240.6 | 47.52 |
| Egypt | 97% | Types II (72%), I (17%) and III (9%) | 224.1 | 46.56 |
| Cameroon | 20% | Types I and II | 202.2 | 31.6 |
| Somalia | 98% | Type III | 193.1 | 56.84 |
| Nigeria | 25% | Types I and II, III only in the North | 160 | 24.00 |
| Ivory Coast | 43% | Type II | 144.1 | 18.49 |
| Sierra Leone | 90% | Type II | 98.1 | 26.10 |
| Ethiopia | 85% | Types I and II | 125 | 21.25 |
| Burkina Faso | 72% | Type II | 108.7 | 14.4 |

Table 5: Number of foreigners in Belgian cities

| City | Census date | Absolute number of foreigners |
|---------------|--------------------|-------------------------------|
| Antwerp | 2003 ¹⁰ | 51.736 |
| Brussels-City | 2000 ⁶ | 40.954 |
| Charleroi | 2000 ⁶ | 30.556 |
| Liège | 2002 ¹¹ | 29.540 |
| Gent | 2000 ³ | 15.888 |

Table 6: Female population that might have/be at risk of FGM by nationality and age group, in the 5 Belgian cities with the highest number of foreigners, January 1, 2003

| | Brussels | Antwerp | Liège | Gent | Charleroi |
|--|----------|---------|--------|--------|-----------|
| Age group at risk of FGM (0-14 yr) | 206.4 | 90.05 | 27.02 | 23.58 | 4.59 |
| Estimated number of women who could have or are at risk of FGM | 1,141.99 | 408.75 | 139.43 | 130.13 | 17.25 |

⁹ Toubia Nahid. Caring for women with circumcision. Technical manual for health care providers. 1999, Rainbo.

¹⁰ Diversiteit. Vreemdelingen, Bevolkingsaandeel Belgen & niet-Belgen (bevolkings- en vreemdelingenregister. Dienst Bevolking Stad Antwerpen maart 2003, SOMA vzw Databank Sociale Planning, <http://www.antwerpen.be/feitenencijfers/demografie/diversiteit.htm>, accessed October 22, 2003.

¹¹ Rebia M. Hakim, Jehin Jean-Baptiste. Ville de Liège: Tableau de Bord de la Population Liégeoise. Echevinat de l'Etat Civil et de la Population. Plan Fédéral pour les Grands Villes. 28/02/2003. <http://www.liege.be/cadreslg/cadrech.htm>, accessed October 22, 2003.

5. DESCRIPTION OF THE LEGISLATION WITH REGARD TO FGM IN BELGIUM

5.1. Criminal Law

Since 1986 there have been multiple attempts to modify the Belgian Criminal Code prohibiting explicitly the practice of genital mutilation. Finally on the 28th of November of 2000, Belgium passed a specific criminal law provision prohibiting female genital mutilation that came into force on April 1 2001.

Even before the adoption of a specific law provision, female genital mutilation was punishable in Belgium. General criminal provisions addressing acts of violence causing bodily injury and serious bodily injury could be enforced against practitioners. However, female genital mutilation has never been subject of prosecution under this general criminal law provisions.

The elaboration of the specific criminal law provision has to be situated within the context of a broader project of law concerning the criminal protection of minors. The constitution of this project was one of the consequences of the paedophilia scandal “Dutroux” by which the Belgian society was confronted in august 1996. The objectives of this project of law were: to modernise the criminal code, especially with regard to the criminal protection of minors; 2. to assure the coherence within the criminal code; 3. to enhance the criminal protection of minors. In this project of law, crimes against minors are emphasised including violation of the physical and sexual integrity of the minor. Female genital mutilation on (minor) women is considered to be part of this item¹².

Concerning female genital mutilation the law of 28th of November of 2000 provides:

- The integration of article 409 into the Code of Criminal Law
- The integration of article 458bis into Code of Criminal Law
- The adaptation of article 10ter and article 21bis Preceding Title Code of Criminal Procedure

With regard to female genital mutilation, article 12 Preceding Title Code of Criminal Procedure and article 422bis Code of Criminal Law are also relevant. All articles are discussed below.

¹² Handelingen Kamer 1998-1999, 4 januari 1999,4-11.

Art. 409 Code of Criminal Law

§ 1. Anyone who undertakes, facilitates or promotes any form of mutilation of the genitalia of a person of the female sex, with or without her consent, will be punished by a term of imprisonment of three to five years.

Attempted mutilation will be punished by a term of imprisonment of eight days to one year.

§ 2. If the mutilation is undertaken on a minor or in pursuit of profit, the punishment is confinement of five to seven years.

§ 3. If the mutilation has caused an apparently incurably illness or a lasting incapacity for work, the punishment is confinement of five to ten years.

§ 4. If the mutilation results in death, even though there was no intent to kill, the punishment is confinement of ten to fifteen years.

§ 5. If the mutilation referred to in § 1 is undertaken on a minor or a person who, by reason of their physical or mental state, is not in a position to provide for themselves, by their father, mother or another blood relation in the ascending line, or by any other person who has authority over the minor or the legally disqualified person, or by a person who has them in their care, or by a person who occasionally or usually lives with the victim, then the minimum punishment as referred to in §§ 1 to 4 is doubled in the case of a term of imprisonment and increased by two years in the case of confinement.

- Art. 409 Code of Criminal Law prohibits each form of mutilation of female genitals; consequently all forms of FGM are envisaged, ranging from clitoridectomy to infibulation. According to the preparatory works of the law, piercing and tattoos are excluded. Transsexual operations are also excluded as they are considered as lawful acts of medical care¹³.
- The preparatory works of the law define “mutilation” as the complete or partial removal of female genital organs. The practice of re-infibulation is not explicitly mentioned in this context. As this practice doesn’t remove an organ but re-stitches the vulva after childbirth to make it resemble the former state of infibulation, it is not clear whether the legislator considers it as an illegal mutilation or rather as a re-storing of the pre-delivery state¹⁴.
- Art. 409 Code of Criminal Law is not applicable on genital mutilation of boys: only the physical and sexual integrity of women is envisaged by this criminal law provision.
- As the law doesn’t mention ethnic background, art. 409 Code of Criminal Law could also be applicable on the performance of genital mutilation on non-African women. Nevertheless, making reference to “traditional practices that damage the child’s and women’s health”, the preparatory works of the law

¹³ Handelingen Kamer 1998-1999, 4 januari 1999, 15.

¹⁴ Handelingen Kamer 1998-1999, 4 januari 1999, 15-16

indicate that this criminal law provision is essentially addressed to African women who believe that it is required as a matter of custom or ritual.

- The consent of the victim does not affect the legal qualification of the act. In this context reference must be made to a new trend, mostly required by non-African women: the cosmetic surgery described as “designer vaginas”. This practice consists of reducing the labia and narrowing the vaginal orifice and the end results are in no way different from the results of some types of female genital mutilation. It is not clear whether this specific criminal law provision outlaws these kind of genital changes, also on non-African women.
- The criminal offence consists of the performance of FGM, the participation in the performance of FGM, the facilitation of the performance of FGM and the attempt to perform FGM.
- The penalty consists of an imprisonment from 3 to 5 years in case of performance of FGM and of an imprisonment from 8 days to 1 year in case of attempt to performance.
- Art. 409 Code of Criminal Law does not mention age, but the commitment of the offence against a minor is considered as an aggravating circumstance that increases the penalty. Other aggravating circumstances are: the offence is committed with lucrative intentions; the offence is performed by a parent or by any person having authority or custody of the minor; the offence causes permanent loss of working capacity, permanent and incurable corporal lesions, the death of the victim.

Art. 10ter Preceding Title Code of Criminal Procedure

Anyone can be prosecuted in Belgium if they are guilty, outside the territory of the Kingdom, of:

1° [...];

2° one of the criminal offences referred to in Articles 372 to 377 and 409 of the same Code, if this is perpetrated on a minor;

3° [...]

- If the crime as described in art. 409 Code of Criminal Law has been committed **in Belgium**, any person can be pursued, prosecuted and punished in Belgium. It doesn't matter whether the offender or the victim are Belgian citizens.
- If the crime as described in art. 409 Code of Criminal Law has been committed **abroad**, the offender can be pursued, prosecuted and punished in Belgium on the condition that the victim is a minor. It doesn't matter whether the offender or the victim are Belgian citizens. This is the principle of extra-territoriality. This principle makes FGM punishable, even if it is committed outside the borders of that country.

- According to the preparatory works of the law, there is no intention to pursue, prosecute and punish immigrants and refugees arriving from countries where the practice is prevalent. The objective is rather to avoid that young immigrant girls, residing in Belgium, are taken “on holiday” for the operation to be performed abroad¹⁵.

Art. 12 Preceding Title Code of Criminal Procedure

Except in the cases of Article 6, Number 1 and 2, Article 10, Number 1 and 2, as well as Article 10bis, legal proceedings are instituted in the case of the criminal offences referred to in this chapter only if the suspect is found in Belgium.
[...]

- In order to permit the extra-territorial application of art. 409 Code of Criminal Law, the offender must be found on the Belgian territory, but this does not mean that the offender has to reside effectively in Belgium. Even if the offender is only passing through the Belgian territory, he can be pursued, prosecuted and punished in Belgium.

Art. 21bis Preceding Title Code of Criminal Procedure

In the cases referred to in Articles 372 to 377, 379, 380 and 409 of the Code of Criminal Law, the period for the preclusion of criminal proceedings by reason of lapse of time only begins as of the day on which the victim reaches the age of eighteen [...].

- In case of a crime as described in art. 409 Code of Criminal Law, the period of prescription of the criminal proceedings, covering a lapse of time of 10 years, only starts on the day that the victim has reached the age of 18 years.

¹⁵ Handelingen Kamer 1998-1999, 4 januari 1999,16; Wetsontwerp betreffende strafrechtelijke bescherming van minderjarigen, Verslag namens de commissie voor de Justitie, Parl. St. Senaat, 1999-2000, 35-36.

Art. 422bis Code of Criminal Law

Anyone who fails to render or provide assistance to anyone who is in serious danger, whether they have noted the person's situation themselves or this situation has been described to them by the persons requesting their assistance, is liable for a term of imprisonment of eight days to one year and a fine of between fifty francs and five hundred francs.

For the offence, the person who failed to provide assistance must have been able to assist without serious danger to themselves or to others. If the persons who fail to provide assistance did not themselves observe the danger threatening the person requiring assistance, then they cannot be punished, if they had reason to believe, on the grounds of the circumstances in which they were requested to assist, that the request was not serious or that it involved danger.

The punishment referred to in the first paragraph is increased to two years if the person who is in serious danger is a minor.

Any person can be punished when he voluntary fails to help or to bring assistance to a person in great danger **and**:

- **If** he personally certified the dangerous situation **or if** the person in danger described him the risky situation.
- **And if** he could help without serious risks for himself or for other persons.
- The commitment of this offence against a minor is considered as an aggravating circumstance that increases the penalty.
- According to jurisprudence and doctrine, a person is in "great danger" if there is an immediate and serious threat to his physical or psychological integrity. A girl at eminent risk of genital mutilation could be considered as a person in a dangerous situation.
- The steps to be taken in order to help a person in great danger depend on the means and the competence of the person who is called to help: the help lend by a medical doctor will differ from the aid of a teacher. If it seems to be impossible to help the person in danger by his personal action, the person who has to help can rely on another person to bring assistance.
- To help or to bring assistance doesn't mean automatically that a report has to be made to judicial authorities.

Art. 458bis Code of Criminal Law

Anyone who by reason of their status or profession holds secrets and thereby has knowledge of an offence as described in Articles 372 to 377, 392 to 394, 396 to 405ter, 409, 423, 425 and 426, committed on a minor, may, irrespective of the obligations imposed upon them by Article 422bis, inform the Public Prosecutor of the offence, provided that they have examined the victim or have been taken into the victim's confidence, note a serious and imminent danger to the mental or physical integrity of the person concerned and cannot protect this integrity themselves or with the help of other people.

Each professional bound to secrecy in his work, has the right -and not the obligation- to report to the prosecution authorities:

- **If** he knows for sure that a crime as described in article 409 Code of Criminal Law has been committed against **a minor**, either because he diagnosed the genital mutilation, either because the victim told him in confidence. **And if** there is a serious danger for the psychological and physical integrity of the victim. **And if** he can't assure the psychological and physical integrity of the minor.
- This criminal law provision cannot be used if there is a suspicion that a girl is **at risk** of mutilation: the crime has to be committed.
- It doesn't matter if the crime has been committed in Belgium or abroad.
- This right to report doesn't release the professional of his duty to help a person in great danger, as described in art. 422bis Code of Criminal Law.
- According to the preparatory works of this law, the legislator aims to find a balance between the obligation to help a person in danger in an environment of confidentiality and the subsidiary right of the professional to report a crime¹⁶.
- Article 458bis Code of Criminal Law is supplementary to article 458 Code of Criminal Law that stipulates the principle of professional secrecy. Health care providers are specifically mentioned in article 458 Code of Criminal Law, although other professionals bound to secrecy such as police officials, education staff, officials on youth assistance and social workers are also envisaged.
- According to article 458 Code of Criminal Law, confidential information only may be disclosed when the professional bound to secrecy is required to witness in court or when the law imposes disclosure. In this sense, article 29 Code of Criminal Procedure determines that public officials, such as police

¹⁶ *Handelingen Kamer 1998-1999, 4 januari 1999,37-39; Wetsontwerp betreffende strafrechtelijke bescherming van minderjarigen, Verslag namens de commissie voor de Justitie, Parl. St. Senaat, 1999-2000,71-75.*

staff, have a duty to report any knowledge about a crime to the prosecution authorities.

- According to jurisprudence the duty to secrecy as described in article 458 Code of Criminal Law is related to facts, which could cause damage to the person who consults the professional in confidentiality. For example, a professional is held to secrecy when an offender of a criminal fact consults him and disclosure of confidential information could lead to arrest and prosecution of the consultant. Although, when a victim of a crime consults the professional, he has no duty to secrecy related to the criminal facts. On the other hand, when the offender accompanies the victim in order to consult the professional, the latter will be held to secrecy.
- In the context of article 458 Code of Criminal Law, the general principle of “emergency” can be applied. This means that each professional bound to secrecy can disclose confidential information as an “*ultimum remedium*” in order to turn away an immediate and serious threat to another right that outweigh the duty to professional secrecy. Appealing to this principle, a professional bound to secrecy can disclose information with the objective to protect the physical or psychological integrity of a girl at eminent risk of genital mutilation, on the condition that there is an immediate danger and there is no other way to protect her.
- De facto, article 458bis Code of Criminal Law doesn’t add anything to the right to disclose secret information as foreseen in article 458 Code of Criminal Law. On the contrary, article 458bis Code of Criminal Law exemplifies one condition for disclosure that was already covered by the general principle of “emergency”.

5.2. *Child protection law*

Belgium’s specific criminal law provision prohibiting female genital mutilation describes an act considered unlawful by the state. Offenders of the criminal law provision can face arrest, prosecution and punishment by respectively police officials, crime prosecution authorities and judges. The criminal approach is mainly concerned with punishing parents, guardians or other performers of female genital mutilation. The other way round, child protection provisions are designated to protect the child’s well being.

The Belgian child protection law (*Wet betreffende Jeugdbescherming*), adopted on the 8th of April 1965 and revised several times, provides protective procedures and preventive measures towards minors’ welfare, sometimes without a legal intervention of a judge. The Belgian Child Protection Law does not specifically mention the practice of female genital mutilation. But the Child Protection Law could envisage the child’s interest, possible victim of female genital mutilation, given that the possibility of carrying out this practice represents a situation of risk and harm for the child.

Officials on youth assistance administer child protection and they try to prevent harm to the child through voluntary participation of the parents or the guardians. References concerning a pending risk for female genital mutilation could be followed up by visiting the family, counselling them on the issue, and by assuring them that the practice is illegal in Belgium and legal action will be taken if an offence is committed.

If the health, security or morality of a minor are endangered by the behaviour of the parents or the guardians, prosecution authorities may request the intervention of the youth court based on article 36.2 of the Child Protection Law. In this context, the judge can organise a hearing with the parents and he may decide for further investigations. A variety of measures can be taken in order to protect the child, such as the transfer of the child to another home, if possible to the home of another member of the family.

In the case of an immediate and serious threat to the child's physical or psychological integrity, where the parents or guardians are unwilling to co-operate with the officials on youth assistance, a youth court may intervene and pronounce compulsory measures to protect the child, as described in article 32 of the Child Protection Law. This legal intervention could be used if there is a clear risk that a girl may be genitally mutilated and there is no other way to protect her.

Article 32 of Child Protection Law

The following may be partially or wholly divested of parental authority over all children, or one or more children:

1° the father or the mother given a sentence for a criminal or a minor offence for any act committed on the person or with the help of one of the children or descendents;

2° the father or the mother who, by poor treatment, misuse of authority, obvious poor behaviour or serious negligence, endangers the health, safety or morality of the child.

3° [...]

The divestiture is pronounced by the juvenile court, on the orders of the public prosecutor.

The youth court, on demand of the prosecution authorities, can pronounce suspension of parental authority:

- Imposed as a civil sanction and not as a criminal sanction.
- The notion of an "immediate and serious threat to the child's physical or psychological integrity" takes a central place in the reasoning of the youth court.

- Suspension of parental authority constitutes a facultative measure, in the sense that it will only be pronounced if it promotes the child's interest. Each case is analysed in concreto.

According to article 33 of the Child Protection law, the suspension of parental authority can be integral, including the removing of the child from the family. The youth court can also pronounce a partial suspension, stipulating explicitly which rights are excluded from parental authority. In the latter case, the youth court can establish that the family remains together but that certain acts of the parents are subject to court permission, for example the parental decision to take the girl abroad "on holiday".

Pronouncing integral or partial suspension of the parental authority, the youth court appoints - based on article 34 of the Child Protection Law - a tutor, who will be, under the control of the youth court, in charge of those rights of which the parents() are excluded from parental authority, and who will fulfil the obligations that go with these rights.

As described in article 60 of the Child Protection law, the youth court can make the suspension of parental authority undone on the condition that this measure will promote the child's interest.

In any case, it must be mentioned that the suspension of parental authority, integral or partial, as described in article 32 Child Protection Law is considered as a very last resort. If the health, security or morality of a minor are endangered by the behaviour of the parents or the guardians, it is more common to appeal to article 36, 2 Child Protection Law.

6. REFERRAL PROCEDURES IN BELGIUM

As stated above, legal provisions pertaining to FGM are found in a variety of sources including criminal laws and child protection laws. In order to concretise these legal provisions, a succession of actions should be undertaken, involving the competent public officials and respecting prescribed formalities. Referral procedures describe such scenarios and, as such, they are a tool to put the legal provisions into practice.

In Belgium, referral procedures differ according to actual FGM or fear of future performance of FGM. Once the crime has been committed, criminal procedures should be started with the objective to prosecute parents, guardians or other performers of FGM. When the main concern is to protect the child's well being and physical health and to prevent harm, child protection provisions should be initiated.

Both procedures, emphasising respectively the dimension of punishment and prevention, contain an established series of steps, starting with a report of a case or a suspicion of FGM, then an investigation phase and ending with the decision whether to take legal action or not.

To explain both procedures to be followed in Belgium, we have to rely on a hypothetical case, as no cases have ever been reported. Our key-informants suggested the standard procedures for crimes and child protection, taking into consideration the general difficulties associated with the investigation and prosecution of crimes committed in family. Both referral procedures are discussed below.

6.1. Criminal procedures

In Belgium, each crime has a code, facilitating the cataloguing and storing of all court cases at the prosecution authority departments. Although there is a specific criminal law provision prohibiting female genital mutilation, there is not yet a specific code for this offence. Consequently, it remains unclear how a possible case of FGM would be codified and this could result in a non-uniform classification of cases at the different prosecution authority departments.

There is no legal obligation for members of the public to disclose information concerning a performed crime to the police or the prosecution authorities. As described in Article 458bis, a professional bound to secrecy has - under restricted conditions - the right to report to prosecution authorities, if he/she knows for sure that a crime of FGM has been committed against a minor. There is jurisprudence stating that the general duty to professional secrecy should only apply if

disclosure of information will cause harm to the person to whom the information relates.

Consequently, when the perpetrator of a crime consults a professional, the latter should be held to secrecy as regards the criminal facts. On the other hand, when the victim consults him/her, he/she could disclose relevant information concerning the crime. Article 29 of the Code of Criminal Procedure determines that all public officials, such as police staff, have the duty to report any knowledge about a crime to the prosecution authorities.

Cases reported to the police are referred to the prosecution authorities and a prosecutor is appointed as head of the investigation (illustration 1). At this point, two different scenarios can be followed. In the majority of cases, the prosecutor himself leads the investigation in order to find evidence of the crime. At the end, the prosecutor can ask whether to close the case or to open a court case.

Another scenario is initiated if the investigation requires compulsory measures, for example the performance of a medical examination. The prosecutor appoints an examining judge who will lead the investigation, under the auspices of an examining court. Upon receiving the conclusions of the investigation, the prosecutor can propose whether to classify the case or to submit the case to a pre-trial investigation in chambers, where a debate with all involved parties is organised. If the probable conclusion is that FGM was illegally performed, a criminal court trial will be opened; otherwise the case is closed.

6.2. Child protection procedures

There is no legal obligation for members of the public to disclose information concerning a suspicion of a future crime. In the context of Article 458 of the Code of Criminal Law, a professional bound to secrecy can disclose confidential information as an '*ultimum remedium*' in order to prevent an immediate and serious threat to another right that outweighs the duty of professional secrecy.

Appealing to this principle, information can be disclosed with the objective to protect the physical or psychological integrity of a girl at imminent risk of genital mutilation, on the condition that there is an immediate danger and there is no other way to protect her. Article 29 of the Code of Criminal Procedure determines that all public officials, such as police staff, have a duty to report any knowledge about a crime to the prosecution authorities.

Child protection authorities follow up references concerning an impending risk for FGM. A hearing with the family is organised and parents or guardians are counselled (illustration 2).

If the health, security or morality of a minor is endangered by the behaviour of the parents or the guardians, the case is referred to the prosecution authorities. Based on Article 36.2, the intervention of the youth court can be requested and a variety of measures can be taken in order to protect the child, such as the transfer of the child to another home, and if possible, to the home of another member of the family.

In case of an immediate and serious threat to the child's physical or psychological integrity, and if the parents or guardians are unwilling to co-operate, the youth court can pronounce the suspension of parental authority as described in Article 32 of the Child Protection Law, if it is in the child's best interest. According to Article 33 of the Child Protection law, the suspension of parental authority can be integral, including the removal of the child from the family. The youth court can also pronounce a partial suspension, stipulating explicitly which rights are excluded from parental authority. In the latter case, the youth court can establish that the family remains together but that certain acts of the parents are subject to court permission, for example, the parental decision to take the girl abroad 'on holiday'. A tutor is appointed to be in charge of the rights that are excluded from parental authority.

Illustration 1: Referral system in case of suspicion of performed FGM

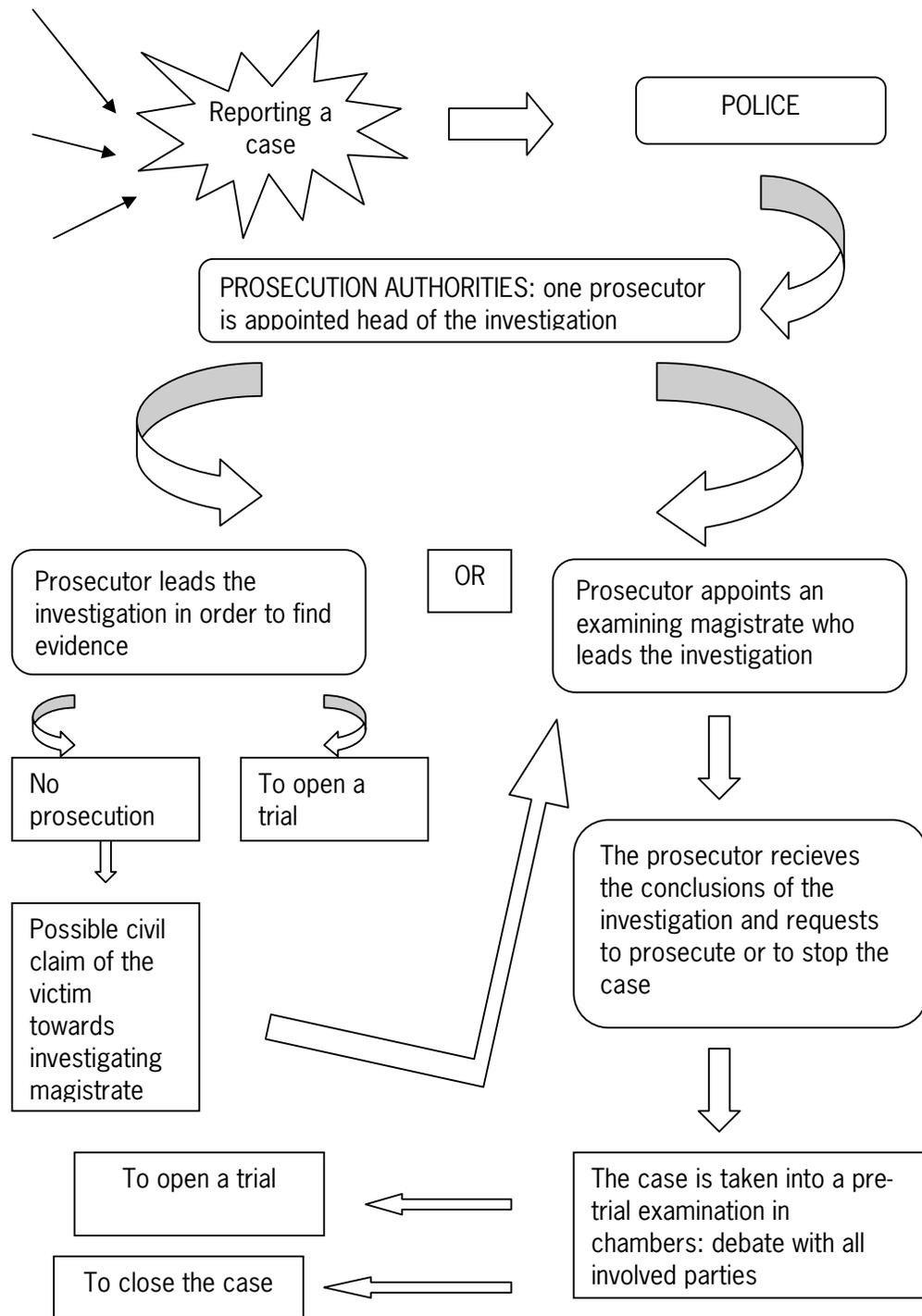
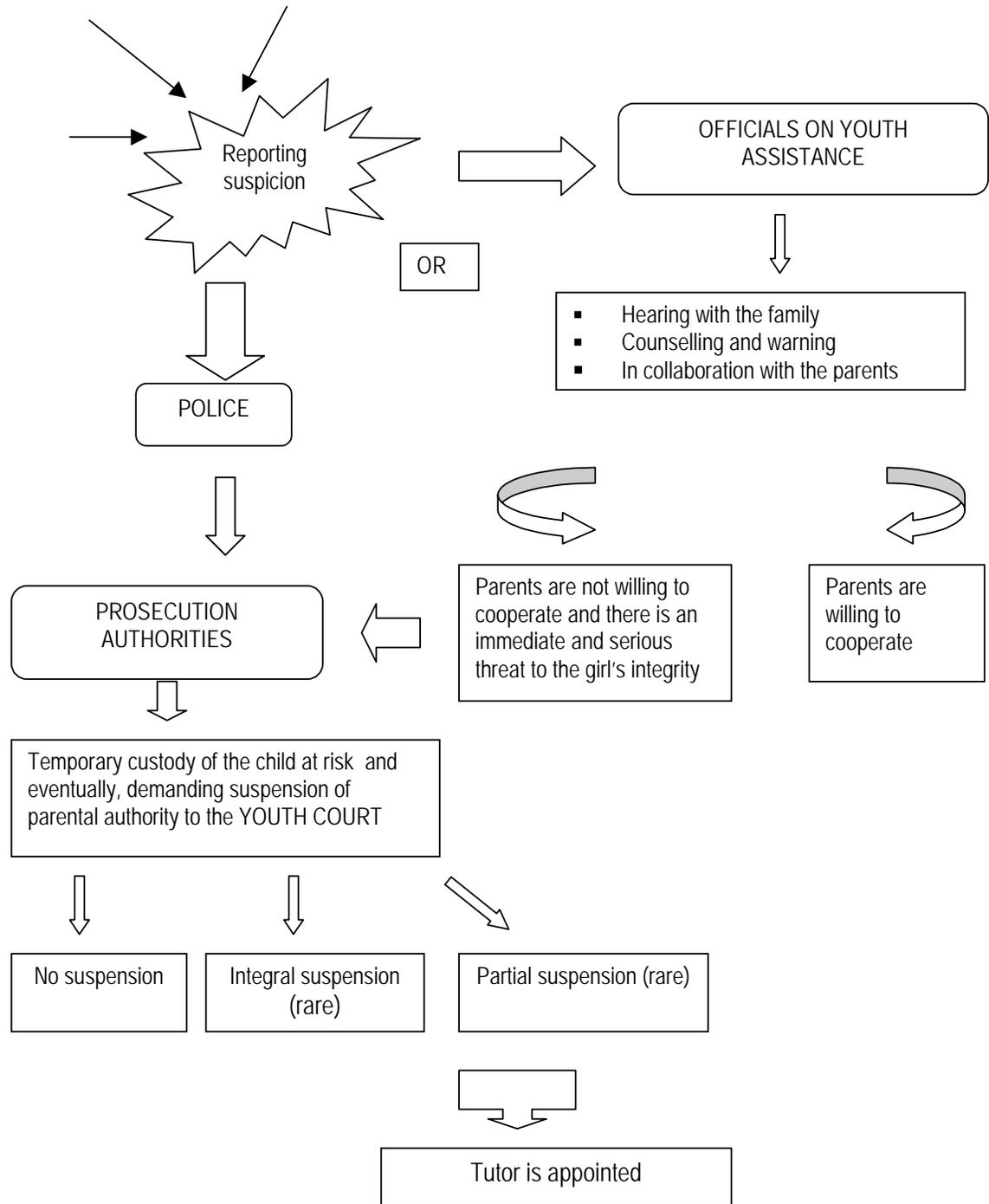


Illustration 2. Referral system in case of fear of future performance of FGM



7. IMPLEMENTATION OF LEGISLATION APPLICABLE ON FEMALE GENITAL MUTILATION

Referral procedures as described above give an overview of the actions that should be undertaken in order to concretise the legal provisions pertaining to FGM. Both criminal and child protection procedures contain an established series of steps and a variety of public officials and professionals are involved in each phase.

The implementation of the legislation constitutes the totality of actions that are undertaken de facto, to give effect to the legal provisions at distinct levels of interaction by a number of different agents, who make use of multiple strategies.

While the referral procedures describe an ideal scenario to be followed, the reality of implementation concerns the performance of the scenario by the stakeholders involved. The following gives a review of how legal provisions are actually implemented in Belgium. This review is based upon research conducted in Belgium (mainly through in depth-interviews with key informants and document analysis).

1. European countries are confronted with a relatively new and unfamiliar practice, that has been imported by immigrants and refugees from countries where the practice of female genital mutilation is prevalent. European countries address the practice as a violation of women's rights and consider that such violation can under no circumstances be justified by respect for cultural traditions or initiation ceremonies. Within this European context, we presume that a national court case in Belgium concerning female genital mutilation would be remarkable and therefore this case would certainly be published in (legal) journals and/or commented in the media. Until so far, no publication concerning this matter has been identified.
2. Moreover, letters have been sent to the prosecution authorities of all 27 jurisdictions in Belgium. They declared unanimously that no cases of suspicion of performed female genital mutilation have reached them. Nor have there been any known cases of fear of future performance of female genital mutilation. Consequently, we can state that no cases in Belgium have reached the criminal court or the youth court with a view to punishing or preventing the performance of female genital mutilation.
3. Key informants in this case study do not know of any reports from members of the public to the police or to child protection authorities concerning a suspicion of performed FGM, or concerning a risk of future mutilation. No report from the healthcare sector, child and family care, (pre-) school sector or social sector has been recorded.

4. There are even no suspected cases of performance of female genital mutilation in Belgium. Some key-informants however indicated that there are rumours that female genital mutilation is performed in Koekelberg, a district of Brussels.
5. On the other hand, key-informants reported a demand for both re-infibulation and de-infibulation in Belgian hospitals, which is an indicator of the presence in Belgium of female foreigners coming from countries where female genital mutilation is practised. Nevertheless, this demand as such doesn't reveal whether the performed mutilation on these women was illegal or not.
6. According to the narratives of the key-informants, gynaecologists in Belgium who are confronted with a demand for re-infibulation don't know what they are allowed to do. It is not clear whether the legislator considers it as an illegal mutilation or rather as a re-storing of the pre-delivery state. In the technical advice for health professionals with regard to female genital mutilation, re-infibulation is discouraged¹⁷.

In conclusion, no evidence has been found in Belgium in order to implement the law at any level: police, prosecution, child protection and criminal court interventions.

¹⁷ Richard F; Daniel D; Ostyn, B; Colpaert E, Amy JJ. Technisch advies voor gezondheidspersoneel in België. Vrouwelijke genitale verminking (vrouwenbesnijdenis) – Handleiding bij de bevalling.

8. OBSTRUCTING AND FAVOURING FACTORS

This chapter gives an analysis of the interviews with the key-informants. These interviews assessed the possible obstructing and favouring factors for implementing the law in Belgium.

8.1. Related to the knowledge about the practice

In Belgium there is a clear lack of knowledge about FGM among those professionals who could be confronted with it: police officers and police physicians, teachers and health professionals. The latter received training organised on a modest scale by “Kind en Gezin” (Child and Family Care). It should also be noted here that a small guide has been distributed that gives technical advice for health professionals in Belgium, regarding FGM and delivery¹⁸.

Until so far no training about the practice of FGM has been given to the police. Therefore their knowledge about the practice is very limited which can result in an inadequate settlement of the case by the police officer in charge.

“A police officer who does not have any knowledge about FGM and who is confronted with it for the first time, could have inadequate reactions. And if you want that a case be treated in correct way, police officers have to be informed, otherwise they could react very emotional and not treat the case in a professional way. Therefore, education sessions are necessary so that they would know this new offence”. (Examining magistrate)

“For example, if a young girl knows that they are going to take her to Africa to be circumcised, and she does not want that to happen, and she goes to the police, if they do not have any knowledge about FGM, they will send her back telling her « what nonsens are you telling us ! »” (Activist)

Police physicians who are appointed in an investigation procedure of performed FGM and who have to assess the facts, did not have any training on FGM and the related aspects.

“Sometimes it is held against police physicians, who perform gynaecological examinations on minors in order to assess evidence, that they are not well educated in doing such examinations. I think that might be the same in case of FGM, because they have never been confronted with it.” (Examining magistrate)

¹⁸ Richard F; et al. *ibid.*

"I think that police physicians might not need specialised training, but it is necessary to give at least information about FGM. I think there is not one Belgian police physician who has knowledge about that." (Examining magistrate)

A training course about the practice of FGM has been organised on a modest scale for health professionals and intercultural mediators within Child and Family Care in several Flemish provinces. It is obvious that not all medical doctors and nurses within Child and Family Care have been trained.

"I have given trainings in several Flemish provinces. Amongst them were nurses and intercultural collaborators, but not all of them were present. And the issue of FGM has shortly been tackled on a seminar for medical doctors". (Officer at Child and Family Care)

Teachers at school are ignorant about the practice of FGM.

"There is a total ignorance among teachers. We, as an NGO, are giving information leaflets to schools." (Activist)

8.2. Related to the knowledge about the legal aspects

Several key informants noted the lack of knowledge about the criminal law provisions with regard to FGM among professionals (child protection officers, gynaecologists) and immigrant communities themselves.

The child protection officer for example, never established the link between FGM and child abuse, until the time of the interview.

"Because you came to interview me about this issue, I talked about it with my colleagues, and also for them it was the first time that they heard about FGM as an issue of child abuse." (Child protection officer)

The child protection officer did not have any knowledge about the existence of the specific criminal law provision in Belgium.

"I did not know that there was a specific law on FGM. And I can also tell you that in the 18 years that I work here, there has never been any reported case of FGM". (Child protection officer)

One of the key informants said that she suspected a lack of knowledge about the existence of the specific criminal law provision in Belgium among gynaecologists confronted with a demand for re-infibulation.

"Many professionals will not see FGM as bodily injury, but as an 'operation', and they are not aware that doing it is illegal." (Officer at Child and Family Care)

Some key informants mentioned that there is a lack of knowledge about the existence of the specific criminal law provision in Belgium among immigrants. Inadequate knowledge of the official languages in Belgium and the fact that some of the immigrants have only recently arrived in Belgium, are contributing factors of the poor knowledge of the legislation.

"I assume that immigrants do not know that it is illegal, and even if they do know, they do not tend to think that what they are doing is an illegal act." (Federal prosecution officer)

"It took 10 years for people to realise that abortion was not illegal any more in Belgium. And in this case, people have probably less communication problems because they know the language. So most probably, it will take 20 years before immigrants realise that FGM is illegal in Belgium. Moreover, these people have only recently arrived in Belgium". (Gynaecologist)

8.3. Related to the perceptions and values

In Belgium, there has never been a public debate about FGM (except in the Parliament), as the problem never occurred in court or in the media until now. At the time of the expert meeting on FGM, organised in November 1998 in Ghent¹⁹, FGM came into focus on national and local TV channels, the radio and in some newspapers, but this did not trigger a heated debate at national level. This might be due to the small number of women at risk of with FGM in Belgium, residing in Belgium. As one of the interviewees (gynaecologist of a large Brussels hospital) mentioned: "I see about 15 women with infibulation per year".

Some key informants stated that they would be hesitant to deal with it in case they were confronted with FGM, and even the non governmental organisation (NGO) has sometimes problems in reaching the affected communities, as they do not receive precise information about rumours of FGM, because the African community fears of being reported to the police.

"We heard rumours about FGM being performed in Brussels, but we do not succeed to put our finger on the problem, amongst others, because the people do not trust us, they think we will denounce them to the police". (Activist)

The child protection officer believes that supporting a family in giving up the practice of FGM is difficult and that the abandonment of the practice should be supported from the own culture.

¹⁹ See for more information about this Meeting: LEYE Els; DE BRUYN MARIA; MEUWESE Stan Proceedings of the Expert Meeting on Female Genital Mutilation. Ghent - Belgium November 5-7, 1998

“When you ask a family to abandon FGM, you ask them to give up part of their culture, and that is a hard thing to do, they will need support to do this. And I do not think that we can give support in this, I think they need this support from their own culture”. (Child protection officer)

Another gynaecologist thinks it is difficult to address the issue of FGM, when she does not know the woman very well:

“It is not easy for a doctor, who is monitoring the pregnancy and who must look after many other things, to address the subject when he/she doesn’t know the woman very well.” (Gynaecologist)

8.4. Related to the practice and legal procedures

Key informants mentioned that the reported cases of child abuse from migrant population are minimal and the reported cases of FGM are non-existent. They suggested some of the reasons that could explain this lack of reported cases: problems tend to be solved in the own community, resistance to report to police or prosecution authorities, lack of knowledge of judicial structures and procedures, the familiar and secret character surrounding the practice of FGM.

“We have seen that if migrants have problems, they tend to solve them within their community”. (Child protection officer)

“Because FGM happens in migrant communities, where the lack of knowledge about the Belgian structures is high and initial resistance exists, I think that they do not consider it necessary to report cases to the police. Moreover, cases of FGM will most probably only be known within the family, so there should already be high disagreements within a family before any member of the family would go to report to the police. FGM is surrounded by secrecy, it’s a family matter, and happens in a world that does not know our judicial world. Therefore, the chance that anyone will take the initiative to report is very small.” (Federal prosecution officer)

The child protection officer does not believe that the removal of the child in case of risk of FGM is an adequate solution. The removal of the child can only be considered as a last resort, in case of an immediate danger for the child.

“If removal of a child from the family is the only way to safeguard it from being mutilated, than we would do it, but... That is only in case when a dialogue with the family is not possible. It would be a short term solution, but what to do on the long run? Removing the child does not solve the problem”. (Child protection officer)

Informants indicate difficulties to find concrete evidence in order to take compelling measures, for example the removal of the child from home in case of a real risk of FGM. If child protection services for example, cannot find enough arguments to support a legal intervention, they decline from reporting to the prosecution services.

"It is useless to report to the prosecutor when you do not have enough concrete evidence. In that case, the service provider needs to give the maximum support possible... Reporting a case to the prosecutor, who must then decide that there are no arguments to justify an intervention, discredits our further actions". (Child protection officer)

Several key informants mentioned that gynaecological examinations of girls are the only possibility to find evidence. However, they also stated that there is no systematic and compulsory gynaecological examination of girls within Child and Family Care (up to 3 years), neither is it integrated in medical check-ups at school. Consequently evidence of FGM is not established and no cases are reported.

"Children up to 2,5 – 3 years are checked by Child and Family Care, after that by school doctors. However, it is not the norm to examine girls' genitals, and there are so many other things to check. Moreover, we are also not talking about the average population. So it would be very difficult to systematically check and monitor this". (Officer at Child and Family Care)

"The only line of approach that I see, in order to find cases, is through the medical check ups in schools, which could refer a case to us. That is the only possibility that I see." (Federal prosecution officer)

"The only way to do systematical check-ups is through Child and Family Care and medical school check-ups. But therefore we need a law that makes it compulsory for school doctors to perform such examinations on girls". (Activist)

One key informant mentioned that, in case a health professional is confronted with a girl at risk of FGM, he would not know where to turn to for information and help. Another one mentioned the lack of national guidelines with regard to the prosecution of FGM.

"Suppose you are confronted with a question, where do you go to for information?" (Officer at Child and Family Care)

"There are no circular letters from ministries with regard to FGM." (Federal prosecution officer)

Consequently, a prosecutor must decide on the opportunity of a prosecution. And than the principle of discretionary powers plays an important role. In each case, the investigating prosecutor decides, independently, whether it is opportune to prosecute or not.

“With regard to the issue of FGM (more than in other issues) one must consider the opportunity of prosecution”. (Federal prosecution officer)

The key informant from the federal prosecution office also mentioned difficulties with regard to investigations where the principle of extraterritoriality is involved.

“The principle of extraterritoriality can make the “onus of proof” complicated. But in such cases I always thought that even it is only once a year you can arrest someone based on such evidence, it is for the better. But it is a fact that many laws with regard to sexual crimes and extraterritoriality only give rise to a few cases”. (Federal prosecution officer)

Another practical problem is the absence of a specific code for the prosecution departments in order to classify and store cases about FGM. This can result in an inconsistent classification of cases at the different prosecution departments, according to the interpretation of the facts.

“In case of a new law with regard to a new kind of crime, one does not know where to classify such a crime if it does not have a specific code. For example in case of FGM, does it belong under the category of bodily injury or under the category of vice crimes? Moreover, there are various qualifications possible for one offence, depending on the outcome of the crime.” (Examining magistrate)

Key informants mentioned that the international dimension of the problem of FGM needs attention. For example in case excisors travel around Europe to perform FGM, or in case girls are taken abroad (Europe and Africa) to be genitally mutilated, a coordinated approach at judiciary level is needed.

“If there are enough elements that show that it is an international problem, then it will be necessary to take coordinated actions. Then cross-bordering investigations could be done.” (Examining magistrate)

“It would be good to have someone at the Federal prosecution office that is knowledgeable of this problem, specifically because the problem has an international dimension.” (Examining magistrate)

“If it is only Belgium who has a law, then people will go to countries where there are no laws or regulations”. (Activist)

The international dimension of the problem of FGM also requires a coordinated effort between the fieldworkers in Europe and Africa.

“That is why it is very important to work together with the national committees of the Inter-African Committee”. (Activist)

Until now, the media in Belgium has never covered the practice of FGM, nor have large prevention campaigns been organised.

“In the past, prevention campaigns and/or media coverage on sexual abuse has always led to a rise in the number of reported cases. The “Dutroux” case for example, gave rise to the number of files with 60 to 70%. In the months after the “Dutroux summer”, we had 200 new files in the months September and October. Due to this case, the initial resistance among people dropped, and the public also saw that in some cases actions were undertaken. There was also a rise in the number of reported cases by victims themselves or their surroundings, by schools that were sensitised”. (Federal prosecution officer)

The only NGO in Belgium working towards the prevention of FGM struggles with severe lack of means and personnel. And this has, as one of the consequences, that they are not able to check rumours of FGM cases in Belgium.

“I cannot check such rumours, one because we do not have sufficient personnel, secondly because the people mistrust us because they think that we will denounce them to the police, and thirdly we do not have the means. Should we have a precise fact, we could call the police, but in case of rumours we cannot do that”. (Activist)

The child protection officer mentioned the difficult relationship between child protection services and judiciary. The work of child protection services is based on confidentiality towards the victim and the family. If a child is at risk of FGM, the confidentiality can only be broken if there is an immediate danger and if the protection services cannot get a grip on the situation. In case of performed FGM, confidentiality is still a major obstacle to report.

“In case you are informing a family of the illegality of the practice of FGM, then you show to the family that in case something happens to the girl, you will report. And this is contrary to our normal way of working.... Confidentiality is the key in our way of working (to try to stop abuse and to limit the damage), and you have to be very careful with this. You can only destroy the relation of confidentiality with the family if you are absolutely sure that you do not have a grip on the situation, in case there is a permanent danger for the child that we cannot control... Justice and child protection services both have their own specificities, if we are doing the maximum within our field, we will have the maximum effect... But on the other hand, if

you do not report a case of FGM, it means also that you are giving a signal to the community that you tolerate it". (Child protection officer)

8.5. Favouring factors

Many key informants also thought that having a specific legislation had advantages.

- One key informant mentioned that the immigrant population is more sensible to the notion of "liability" than the Belgian population, and therefore the specific criminal provision prohibiting FGM would be the only argument that counts for compared to the cultural argument.

"We (child protection officers) have seen that the notion of liability has more weight among immigrants than among Belgians. It is the only argument that holds against the cultural dimension of the problem: if something is liable, there is not so much you can put against that". (Child protection officer)

- One key informant mentioned that the specific criminal law provision has a warning function towards the practicing communities.

"The law has a symbolic function that FGM is not tolerated in Belgium." (Federal prosecution officer)

- Several key informants noted that one advantage of such a specific criminal provision is that it makes things clear, it avoids discussion between the warring parties concerning the liability of the practice of FGM under general criminal law. Consequently, the discussion in the court can be focused on the facts that constitute the case.

"The dialogue will be more explicit between the prosecution policy and what the court says". (Federal prosecution officer)

Such a law can be a helpful guideline for a judge. The existence of the specific criminal law provision which clearly states that it concerns a sexual mutilation, leaves less space for interpretation in case a judge would tend to be convinced by the lawyer of an infibulator (or someone else) to see FGM as a ritual, to judge the practice as a very old tradition and to show understanding for the social context. This law avoids this, which I think is a very good thing". (Gynaecologist)

"When a lawyer is using the argument of "FGM is part of their culture", then we turn around in circles, the victim is not defended.

That is why it is necessary to be very clear, if we do not define the practice very clear, then we trivialise it". (Activist)

- One key informant noted that the specific criminal provision provides gynaecologists with a legal argument to refuse the performance of reinfibulation.

"... Otherwise gynaecologists will tend to give two sutures more when doing an episiotomy." (Gynaecologist)

- One key informant was convinced that the principle of extraterritoriality in the specific criminal law provision, would be able to avoid that immigrant girls are taken "on holiday" for the operation to be performed abroad.

"When parents are informed that if they mutilate their girl when they are on holiday in Africa, they can be prosecuted when returning in Belgium that would prevent them from doing it". (Gynaecologist)

- Another advantage of the principle of extraterritoriality was mentioned by the examining magistrate, in that it can be used in order to pursue, to prosecute and to punish excisors who travel around in Europe.

9. CONCLUSIONS

- There are no reliable national data on the number of women that might have FGM or the number of girls that might be at risk of FGM. The statistics shown in this report are not conclusive, but provide some indication of the possible prevalence of FGM in Belgium.
- The total number of women that could be affected by FGM in Belgium is around 2,700, with some 500 girls who are in the age group that might be at risk of FGM (0 to 14 years). Most of these women/girls are from Ghana and the Democratic Republic of Congo (former Zaire).
- There is a scarce knowledge of FGM among those professionals who could be confronted with FGM (police, police physicians, health professionals and teachers). Key informants request training sessions for these professionals.
- Legal aspects about FGM are not known; even the link between FGM and child abuse or bodily injury has not been established by child protection officers and health professionals. Professionals also have a lack of knowledge about referral procedures. Key informants also mentioned a possible lack of knowledge among immigrants about the specific legal provision in Belgium.
- Belgian child protection services feel powerless in tackling this traditional practice, which is culturally linked. On the other hand the only NGO working for the prevention of FGM, does not receive precise information about rumours of circumcisions, because the African community fears of being reported to the police.
- There are many practical obstructing factors: First of all finding evidence is difficult both in case of performed FGM (gynaecological examinations are not compulsory), as well as in cases of risk of FGM. Evidence gathering is even more complex in extraterritorial cases. Further obstructing factors are the absence of national guidelines for prosecutors, the absence of a code for the crime of FGM, the lack of coordinated actions at European judiciary level and between African and European fieldworkers and the lack of means of the Belgian NGO for the fieldwork. All these factors may hamper the adequate reporting of cases.
- Key informants are not unanimous with regard to take legal interventions towards FGM. Reporting performed FGM is not a priority and in case of fear of a circumcision, they prefer to dialogue with the family in a confidential way before considering the removal of the child.
- A positive aspect of having a specific law provision is that it could have a warning function towards practicing communities and avoids discussion about cultural arguments in favour of the practice. It also gives gynaecologists a legal argument to refuse re-infibulations. The principle of extraterritoriality is believed to avoid that girls are circumcised when on holiday and to facilitate prosecution of circumcisers.

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ANNEX I: TEXT OF THE LAWS

Art. 409 Strafwetboek

§ 1. Hij die eender welke vorm van verminking van de genitaliën van een persoon van het vrouwelijk geslacht uitvoert, vergemakkelijkt of bevordert, met of zonder haar toestemming, wordt gestraft met gevangenisstraf van drie jaar tot vijf jaar. De poging wordt gestraft met gevangenisstraf van acht dagen tot een jaar.

§ 2. Indien de verminking uitgevoerd wordt op een minderjarige of met een winstoogmerk, is de straf opsluiting van vijf jaar tot zeven jaar.

§ 3. Indien de verminking een ongeneeslijk lijkende ziekte of een blijvende arbeidsongeschiktheid heeft veroorzaakt, is de straf opsluiting van vijf jaar tot tien jaar.

§ 4. Wanneer de verminking zonder het oogmerk om te doden, toch de dood ten gevolge heeft, is de straf opsluiting van tien jaar tot vijftien jaar.

§ 5. Is de in § 1 bedoelde verminking op een minderjarige of een persoon die uit hoofde van zijn lichaams- of geestestoestand niet bij machte is om in zijn onderhoud te voorzien, uitgevoerd door zijn vader, moeder of andere bloedverwanten in de opgaande lijn, of door enige andere persoon die gezag heeft over de minderjarige of de onbekwame, of door een persoon die hen onder zijn bewaring heeft, of door een persoon die occasioneel of gewoonlijk samenwoont met het slachtoffer, dan wordt het minimum van de bij de §§ 1 tot 4 bepaalde straffen verdubbeld in geval van gevangenisstraf en met twee jaar verhoogd in geval van opsluiting.

Art. 10ter Voorafgaande Titel Wetboek Strafvordering

Eenieder kan in België vervolgd worden wanneer hij zich buiten het grondgebied van het Rijk schuldig maakt aan:

1° [...];

2° een van de misdrijven bepaald in de artikelen 372 tot 377 en 409, van hetzelfde Wetboek, indien het feit werd gepleegd op een minderjarige;

3° [...]

Art. 12 Voorafgaande Titel Wetboek Strafvordering

Behoudens in de gevallen van artikel 6, nrs. 1 en 2, artikel 10, nrs. 1 en 2, alsmede van artikel 10bis, heeft de vervolging van de misdrijven waarvan sprake in dit hoofdstuk, alleen plaats wanneer de verdachte in België wordt gevonden. [...]

Art. 21bis Voorafgaande Titel Wetboek Strafvordering

In de gevallen bedoeld in de artikelen 372 tot 377, 379, 380 en 409 van het Strafwetboek, begint de verjaringstermijn van de strafvordering pas te lopen vanaf de dag waarop het slachtoffer de leeftijd van achttien jaar bereikt.

In geval van correctionalisering van een misdaad bedoeld in het vorige lid, blijft de verjaringstermijn van de strafvordering, die welke is bepaald voor een misdaad.

Art. 422bis Strafwetboek

Met gevangenisstraf van acht dagen tot een jaar en met geldboete van vijftig frank tot vijfhonderd frank of met een van die straffen alleen wordt gestraft hij die verzuimt hulp te verlenen of te verschaffen aan iemand die in groot gevaar verkeert, hetzij hij zelf diens toestand heeft vastgesteld, hetzij die toestand hem is beschreven door degenen die zijn hulp inroepen.

Voor het misdrijf is vereist dat de verzuimer kon helpen zonder ernstig gevaar voor zichzelf of voor anderen. Heeft de verzuimer niet persoonlijk het gevaar vastgesteld waarin de hulpbehoevende verkeerde, dan kan hij niet worden gestraft, indien hij op grond van de omstandigheden waarin hij werd verzocht te helpen, kon geloven dat het verzoek niet ernstig was of dat er gevaar aan verbonden was.

De straf bedoeld in het eerste lid wordt op twee jaar gebracht indien de persoon die in groot gevaar verkeert, minderjarig is.

Art. 458bis Strafwetboek

Eenieder, die uit hoofde van zijn staat of beroep houder is van geheimen en die hierdoor kennis heeft van een misdrijf zoals omschreven in de artikelen 372 tot 377, 392 tot 394, 396 tot 405ter, 409, 423, 425 en 426, gepleegd op een minderjarige kan, onverminderd de verplichtingen hem opgelegd door artikel 422bis, het misdrijf ter kennis brengen van de Procureur des Konings, op voorwaarde dat hij het slachtoffer heeft onderzocht of door het slachtoffer in vertrouwen werd genomen, er een ernstig en dreigend gevaar bestaat voor de psychische of fysieke integriteit van de betrokkene en hij deze integriteit zelf of met hulp van anderen niet kan beschermen.

Art. 32 Wet betreffende Jeugdbescherming

Van het ouderlijk gezag ten aanzien van alle kinderen, of van één of meer onder hen, kan geheel of ten dele worden ontzet:

1° de vader of de moeder die is veroordeeld tot een criminele of correctionele straf wegens enig feit gepleegd op de persoon of met behulp van een van de kinderen of afstammelingen;

2° de vader of de moeder die, door slechte behandeling, misbruik van gezag, kennelijk slecht gedrag of erge nalatigheid, de gezondheid, de veiligheid of de zedelijkheid van het kind in gevaar brengt.

3° [...]

De ontzetting wordt uitgesproken door de jeugdrechtbank, op vordering van het openbaar ministerie.

ANNEX II: QUESTIONNAIRE FGM LEGISLATION BELGIUM

* For the explanation of the terminology: see glossary at the back

Does your country have a specific criminal law provision prohibiting female genital mutilation (FGM)?

- Yes, then go to section 1
 - No, then go directly to section 2
-

Section 1. Treatment of FGM in a specific criminal law provision

1.1. What are the contextual factors (background), which contributed to the realisation of this criminal law provision?

The elaboration of this specific criminal law provision has to be situated within the context of a broader project of law concerning the criminal protection of minors. The constitution of this project was one of the consequences of the Dutroux scandal by which the Belgian society was confronted in august 1996. The objectives of this project of law were: to modernise the penal code, especially with regard to the criminal protection of minors; 2. to assure the coherence within the penal code; 3. to enhance the criminal protection of minors. Crimes against minors are emphasized among what violation of the physical and sexual integrity of the minor. Female genital mutilation on (minor) women is considered to be part of this item.

1.2. What is the date of entering into force of this criminal law provision: 27th of March 2001

1.3. Has the criminal law provision ever been modified?

- Yes, in
- No

1.4. Is the criminal law provision also applicable on genital mutilation of boys?

- Yes
- No

1.5. What is the exact content of this criminal law provision? Please add the text of the actual version of this criminal law provision in the original language and if possible with an English translation
See annex 1

1.6. Which items are included in the criminal law provision?

- Clitoridectomy
- Excision
- Infibulation
- Re-infibulation
- All other practices involving female genitalia, such as piercing, pricking, stretching, burning of clitoris and/or surrounding tissues. Piercing and tattoo's are not included (based on the preparatory works of the criminal provision)

1.7. What does the criminal offence consist of?

- Performance FGM
- Participation in the performance of FGM
- Facilitation of the FGM performance
- Attempt to perform FGM
- Procure for FGM services
- Other: ...

1.8. What is the penalty?

Performance: imprisonment from 3 to 5 years

Attempt to performance: imprisonment from 8 days to 1 year

1.9. What are the aggravating circumstances that increase the penalty?

- Offence is committed against a minor
- Offence is performed by a parent or by any person having authority or custody of the minor
- Loss of use of essential parts of the body
- Permanent loss of working capacity
- Permanent and incurable corporal lesions
- Offence endangers the life of the victim
- Offence causes the death of the victim
- Other: ...

1.10. Can a woman consent to the mutilation of her own genitalia?

- Yes
- No
- Only in case of an adult woman

1.11. Is the principle of extra-territoriality applicable?

- Yes
- No

1.12. Conditions for the application of the principle of extra-territoriality:

- Exigency of double incrimination
- The victim has to be a national from the prosecuting country
- The victim has to be a resident from the prosecuting country
- The victim has to be a minor
- Exigency of a complaint of the victim
- The offender must be found on the territory of the prosecuting country
- Other:

Section 2. Treatment of FGM under general criminal law provisions

- 2.1. Which general criminal law provisions can be applied to FGM? Please add the text of the relevant provisions in the original language and if possible with an English translation.
- 2.2. Which criminal offence(s) do(es) the provision(s) consist of?
- Bodily injury
 - Serious bodily injury
 - Voluntary corporal lesion
 - Mutilation
 - Others...
- 2.3. What is the penalty?
- 2.4. What are the aggravating circumstances that increase the penalty?
- Offence is committed against a minor
 - Offence is performed by a parent or by any person having authority or custody of the minor
 - Loss of use of essential parts of the body
 - Permanent and incurable corporal lesions
 - Permanent loss of working capacity
 - Offence endangers the life of the victim
 - Offence causes the death of the victim
 - Other: ...
- 2.5. Is any exception to the general rule of territoriality applicable?

Section 3. Other legislative texts tackling (indirectly) the practice of FGM

- 3.1. Are there any other laws in your country of residence that can be brought against female genital mutilation?
- No
 - Yes, then please specify below
- 3.2. Are there any other provisions of criminal law in your country of residence that can be brought against female genital mutilation?
- Unlawful medical practice
 - Commission by omission
 - Doctor's reporting right in case of violence
 - Doctor's reporting duty in case of violence
 - Other: ...
- 3.3. Are there any provisions of child protection law in your country of residence that can be brought against female genital mutilation?
- Certain acts of the parents are subject to court permission *
 - Suspending parental authority *
 - Removing the child from the family *
 - Other
- * In the case of an immediate and serious threat to the child's physical or psychological integrity, where the parents or guardians are unwilling to cooperate with the officer on youth assistance, a youth court may intervene to protect the child.
- 3.4. Other legal provisions? ...

Section 4. Law enforcement

- 4.1. Do you know about criminal prosecutions for FGM in your country of residence?
- Yes
 - No
- 4.2. If yes, can you give more details of these cases of law enforcement?
- 4.3. Do you know about interventions based on the child protection law in your country of residence?
- Yes
 - No
- 4.4. If yes, can you give more details of these cases of law enforcement?

Section 5. FGM and asylum

5.1. Can fear for FGM be ground for asylum in your country of residence?

- Yes
- No

To belong to a “specific social group” may be ground for asylum. A woman that requests a refugee status based on fear for FGM, belongs to a specific social group: she fears persecution from non-state actors (family, community) and she cannot avail herself from protection of the authorities. In practice, it seems that fear for FGM is invoked amongst other more classic motives that can be ground for asylum, such as discrimination, sexual violence, inhuman treatment, war.

5.2. Do you know about cases of asylum granted on the ground of fear for FGM in your country of residence?

- Yes
- No

5.3. If yes, can you give describe the case(s)?

Section 6. Personalia

What is your age: **32**

What is your sex:

- Female
- Male

What is your profession: researcher in reproductive health

Glossary

Clitoridectomy: excision of the prepuce with or without excision of part or the entire clitoris

Excision: excision of the clitoris, with partial or total excision of the labia minora

Infibulation: excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening

Re-infibulation: re-stitching of the vulva after childbirth to make the vaginal opening smaller

Principle of territoriality: to pursue, to prosecute and to punish the practice of female genital mutilation, on the condition that the offence was committed within the frontiers of the country

Principle of extra-territoriality: to pursue, to prosecute and to punish the practice of female genital mutilation, even if the offence was committed outside the frontiers of the country

Principle of extra-territoriality, with the exigency of double incrimination: to pursue, to prosecute and to punish the practice of female genital mutilation, even if the offence was committed outside the frontiers of the country but on the condition that female genital mutilation is also an offence in the country where it was committed.

ANNEX III: INTERVIEW GUIDE WITH KEY-INFORMANTS

Sex: male/female

Age:

Profession:

Organisation:

Country:

Territorial competence:

1. What do you know about female genital mutilation (FGM) or female circumcision (assessment of knowledge about cultural and religious aspects)
2. Have you been in contact with FGM related issues in Belgium? If yes, how?
3. Have you ever heard about circumcisions being done in Belgium?
4. What's your attitude towards this problem? (assessment of possible fear of being accused of racism, of possible pressure of the African community, of fear for confrontation)
5. What is the legislation in Belgium with regard to FGM?
6. What are the advantages and disadvantages of such legislation?
7. What are the difficulties or obstacles to implement the law? (assessment of obstacles related to knowledge about FGM, to knowledge about legislation, to attitudes and values, to practice and procedures)
8. (For Public Prosecutor) Are there any guidelines or decisions concerning the persecution of FGM?
9. (For the Public Prosecutor) What is the policy with regard to the prosecution of FGM?
10. What is the procedure to be followed in case of FGM? (assessment of procedure, codification, referral)

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