

FGM, FORCED MARRIAGE AND HONOUR-BASED ABUSE – THE LEGAL FRAMEWORK

WORKING TOGETHER TO PROTECT AND SUPPORT GIRLS

NEELAM SARKARIA

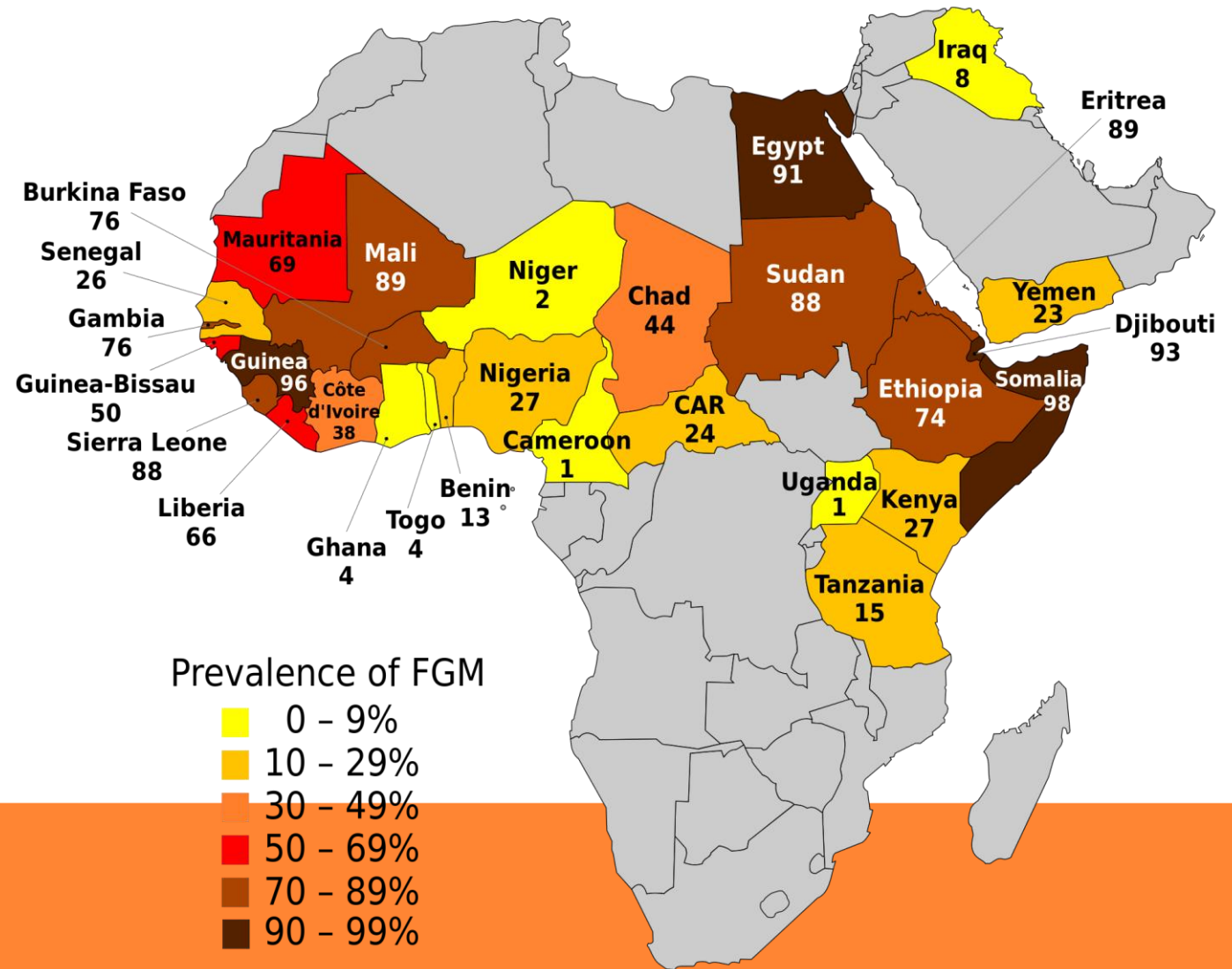
VICE-PRESIDENT, ASSOCIATION OF WOMEN BARRISTERS
AND INTERNATIONAL GENDER-BASED VIOLENCE EXPERT

200 MILLION WORLDWIDE (WHO) AND INCREASING

UK: CITY UNIVERSITY / EQUALITY
 NOW 2011 PREVALENCE STUDY: 137,000
 WOMEN & GIRLS WITH FGM BORN IN COUNTRIES
 WHERE FGM IS PRACTICED, WERE
 PERMANENTLY RESIDENT IN ENGLAND AND
 WALES IN 2011.

FROM 1996 TO 2010, 144,000 GIRLS WERE
 BORN IN ENGLAND & WALES TO MOTHERS FROM
 FGM PRACTISING COUNTRIES. IT WAS ESTIMATED
 THAT 60,000 OF THESE GIRLS AGED 0-14 IN
 2011 WERE BORN TO MOTHERS WITH FGM.

**HSCIC FGM ENHANCED DATA SET: 5,702 NEWLY
 RECORDED CASES OF FGM AND 8,656 TOTAL
 ATTENDANCES WHERE FGM WAS IDENTIFIED OR
 A PROCEDURE FOR FGM WAS UNDERTAKEN (1ST
 YEAR: APRIL 2015 – MARCH 2016)**



PREVALENCE OF FORCED MARRIAGE

- The Forced Marriage Unit gave advice and support in 1428 cases in 2016
- Of those cases 371 cases involved victims below the age of 18; and
- 497 cases involved victims aged 18-25
- 80% of the total number of cases involved women
- Top countries of origin Pakistan 43%, Bangladesh 8%, India 6%
- 30 cases victims identified themselves as LGBT
- 10% of cases involved victim with a learning disability

WHAT IS FEMALE GENITAL MUTILATION?

Child Abuse and a gross violation of human rights, in particular those of the girl child

Female Genital Mutilation (FGM) refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons (World Health Organisation)

WHO has classified FGM into four main types:

Type 1 – Clitoridectomy: partial or total removal of the clitoris and rare cases, only the prepuce

Type 2 – Excision: partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora

Type 3 – Infibulation: narrowing of the vaginal opening through the creation of a covering seal

Type 4 – Other: all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterising the genital area [Impact on girls and women's autonomy]

THE LAW (IN E, W, NI). FGM ACT 2003

It is an offence for any person (regardless of their nationality or residence status) to:

- Perform FGM (excise, infibulate, mutilate) in England, Wales, NI (section 1);
- Assist a girl to carry out FGM on herself in England, Wales, NI (sec 2);
- Assist (from England, Wales, NI) a non-UK person to carry out FGM outside the UK on a UK national or UK resident (section 3).

If the mutilation takes place in England, Wales or NI the nationality or residence status of the victim is irrelevant.

THE OFFENCES – FGM ACT 2003

Under the Female Genital Mutilation Act 2003 (“the FGM Act”) it is an offence for any person in England, Wales or Northern Ireland (regardless of their nationality or residence status) to perform female genital mutilation (FGM) (section 1) or to assist a girl to carry out FGM on herself (section 2)

It is also an offence to assist (from England, Wales or Northern Ireland) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident (section 3)

Section 4 of the FGM Act extends sections 1 to 3 to extra-territorial acts, making it also an offence for a UK national or permanent UK resident to: perform FGM abroad; assist a girl to perform FGM on herself outside the UK; and assist (from outside the UK) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident.

VICTIM ANONYMITY - NEW SECTION 4A AND SCHEDULE 1

- Inserted by Section 71 Serious Crime Act 2015. The provisions are modelled on those in the Sexual Offences (Amendment) Act 1992
- The effect of these provisions is to prohibit the publication of any matter that would be likely to lead members of the public to identify a person as the alleged victim of an offence under the FGM Act (including the new offence provided for in section 72, as well as aiding, abetting, counselling and procuring the “principal offence”)
- The prohibition lasts for the lifetime of the alleged victim.
- The prohibition covers not just more immediate identifying information, such as the name and address or a photograph of the alleged victim, but any other information which, whether on its own or pieced together with other information, would be likely to lead members of the public to identify the alleged victim
- “Publication” is given a broad meaning and would include traditional print media, broadcasting and social media such as Twitter or Facebook.

NEW SECTION 5B MANDATORY REPORTING

Inserted by Section 74 Serious Crime Act 2015. A new mandatory reporting duty requiring specified regulated professionals in England and Wales to make a report to the police

The duty applies where, in the course of their professional duties, a professional discovers that FGM appears to have been carried out on a girl aged under 18 (at the time of the discovery)

The duty applies where the professional either:

- is informed by the girl that an act of FGM has been carried out on her, or
- observes physical signs which appear to show an act of FGM has carried out and has no reason to believe that the act was necessary for the girl's physical or mental health or for purposes connected with labour or birth

SECTION 4 AMENDED BY SECTION 70(1) SERIOUS CRIME ACT 2015

- The extra-territorial jurisdiction extends to prohibited acts done outside the UK by a UK national or any UK resident
- Consistent with that change, section 70(1) also amends section 3 of the 2003 Act so it extends to acts of FGM done to a UK national or any UK resident

“UK resident” is defined as “an individual who is habitually resident in the UK”

The term “habitually resident” covers a person's ordinary residence, as opposed to a short, temporary stay in a country.

captures offences of FGM committed abroad by or against those who are at the time habitually resident in the UK, irrespective of whether they are subject to immigration restrictions

CONTINUED ...

It is also an offence for a UK national or UK resident (even in countries where FGM is legal) to:

perform FGM abroad on a UK National or UK Resident;

assist a girl (UK National or Resident) to perform FGM on herself outside the UK; and

assist (from outside the UK) a non-UK person to carry out FGM on girl or woman who is a UK National or UK Resident.

[British National or Habitually Resident i.e. Ordinarily Resident]

NEW SECTION 3A

FAILING TO PROTECT A GIRL AT RISK OF FGM

Inserted by Section 72 Serious Crime Act 2015 and in force from 3 May 2015 in England, Wales and Northern Ireland.

This means that if an offence under section 1, 2 or 3 of the FGM Act is committed against a girl under the age of 16, each person who is responsible for the girl at the time of FGM occurred will be liable under the new either way offence.

To be “responsible” for a girl, the person will either:

- have “parental responsibility” for the girl (for example, mothers, fathers married to the mothers at the time of birth, and guardians) and have “frequent contact” with her);
- or be a person aged 18 or over who has assumed responsibility for caring for the girl “in the manner of a parent” (for example family members to whom parents might send their child during the summer holidays).

SECTION 73 SERIOUS CRIME ACT 2015 IN FORCE 17 JULY 2015 (E, NI AND WALES)

FGM Protection Orders to protect a girl against the commission of a genital mutilation offence or protecting a girl against whom such an offence has been committed

Breach is a criminal offence with a maximum penalty of five years' imprisonment, or as a civil breach punishable by up to two years' imprisonment

The court may make a FGMPO on application by the girl who is to be protected or a third party. The court must consider all the circumstances including the need to secure the health, safety, and well-being of the girl

Contain prohibitions, restrictions or other requirements for the purposes of protecting a victim or potential victim of FGM. e.g. surrender a person's passport or any other travel document; and not to enter into any arrangements, in the UK or abroad, for FGM to be performed on the person to be protected

B AND G (CHILDREN) (NO2) V LEEDS CITY COUNCIL [2015]

Case provides guidance for future FGM cases. Makes the point that a child whose suffered FGM can be considered to have reached the care proceedings threshold. Each case should be considered on its facts.

I do not want there to be any doubt. FGM is a criminal offence.... It is an abuse of human rights. It has no basis in any religion (para 55)

The President reiterated (para 68) that "any form of FGM constitutes significant harm...."

"The only further comment I would hazard is that local authorities and judges are probably well advised not to jump too readily to the conclusion that proven FGM should lead to adoption" (para 77)

WHAT IS A FORCED MARRIAGE?

A forced marriage is a marriage that takes place without the full and free consent of both parties. Force can include physical force, as well as being pressurised emotionally, being threatened or being a victim of psychological abuse.

Forced marriages are not the same as arranged marriages. In an arranged marriage families take the lead in selecting a marriage partner but the couple have the free will and choice to accept or decline the arrangement.

- Consent
- Compatibility
- Choice

SECTION 121(1) DEFINITION OF FORCED MARRIAGE

Section 121(1)

“A person commits an offence under the law of England and Wales if he or she –

- a. Uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
- b. Believes, or ought to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.”

SECTION 121(4) DEFINITION OF MARRIAGE

Section 121(4)

“Marriage” means any religious or civil ceremony of marriage (whether or not legally binding).

ELEMENTS OF THE OFFENCE

Section 121(3)

“A person commits an offence under the law of England and Wales if he or she—

- (a) practises any form of deception with the intention of causing another person to leave the United Kingdom, and
- (b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in England or Wales.”

CAPACITY TO ENTER MARRIAGE AND CONSENT

Section 121(5)

“Lacks capacity” means lacks capacity within the meaning of the Mental Capacity Act 2005.

Section 121(2)

‘In relation to a victim who lacks capacity to consent to marriage, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form coercion).’

EXTRA-TERRITORIAL JURISDICTION

Section 121(7)

A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception—

- (a) the person or the victim or both of them are in England or Wales,
- (b) neither the person nor the victim is in England or Wales but at least one of them is habitually resident in England and Wales, or
- (c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national

Section 121(8)

“UK national” means an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 is a British subject; or
- (c) a British protected person within the meaning of that Act

THE PENALTY FOR FORCED MARRIAGE

Section 121(9)

“A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.”

VICTIM ANONYMITY

Section 173 Policing and Crime Act 2017 in force from 31 January 2017

Lifelong anonymity for victims of FM from the time an allegation is made. The publication or broadcast of any information likely to result in the identification of the victim to members of the public is prohibited

FORCED MARRIAGE PROTECTION ORDER CIVIL ORDER WITH CRIMINAL DISPOSAL OF THE BREACH

Civil remedy under Forced Marriage (Civil Protection) Act 2007 in force from 25 November 2008

Forced Marriage Protection Orders can be sought under section 4A of the Family Law Act 1996 (“the 1996 Act”).

The 1996 Act makes provision for protecting both children and adults at risk of being forced into marriage and offers protection for those who have already been forced into marriage. The terms of orders issued under the Act can be tailored to meet the specific needs of victims.

The person who is to be protected by the order

A relevant third party

Any other person with the permission of the court

A Relevant Third Party is someone appointed by the Lord Chancellor to make applications on behalf of others

Adults or children (those under 18) can apply for a Forced Marriage Protection Order. Children may have a ‘next friend’ or someone to assist them, but do not have to, if they have a legal representative or if the court agrees.

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