

AFRO-ARAB EXPERT CONSULTATION ON LEGAL TOOLS  
FOR THE PREVENTION OF FEMALE GENITAL MUTILATION

## Notes

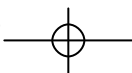
- 1) FGM in view of the legal liability in the Egyptian Law by Counselor Salah Eweiss, Vice President of the Cassation Court – Cairo 1993
- 2) Hereafter referred to as FGM
- 3) Second United Nations Conference for Women.
- 4) Note on terminology: The term “female genital mutilation” is most commonly used by advocates for women’s rights and health who wish to emphasize the damage caused by the procedure. However, the term may be offensive to women in communities in which the practice is prevalent and constitutes a form of ethnic identity. Out of respect and sensitivity, many organizations have adopted local terminology or more neutral terms, such as “female circumcision” or “female genital cutting.” Some scholars, such as Adrienne Katherine Wing, have also proposed the nomenclature “female genital surgeries.” In recognition of these varying approaches, this paper will employ the dual term female circumcision / female genital mutilation (FC/FGM).
- 5) The term “customary law,” as used here, refers to the legal systems that are applicable to particular communities. The term does not necessarily encompass practices that may be viewed as obligatory as a matter of culture, but are not mandated by “law.”
- 6) Center for Reproductive Rights, *Women of the World: Laws and Policies Affecting their Reproductive Lives*, Anglophone Africa Progress Report 153 (2001) [hereinafter *Women of the World Progress Report*].
- 7) *Premieres Arrestations pour Excision au Senegal*, Agence France Presse, August 5, 1999; *Circumciser Jailed in Ghana*, Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) Newsletter, No. 24, Dec. 1998, p. 10.
- 8) *Two Doctors Charged with Performing Illegal Female Circumcision in Egypt*, Associated Press, July 21, 1998; *Teenage Girl in Sierra Leone Dies after Female Circumcision*, Reproductive Freedom News, Center for Reproductive Rights, September 2002.
- 9) Togo, Loi No. 98-016 of Nov. 17, 1998 concerning the prohibition of female genital mutilations in Togo, *Journal Officiel de la Republique Togolaise*, Nov. 21, 1998, p. 2-3, art. 7.
- 10) Center for Reproductive Rights & Groupe de Recherche Femmes et Lois au Sénégal (GREFELS) *Women of the World*, Francophone Africa 145 (1999).
- 11) Mali, Ordonnance No. 02-053 (June 4, 2002) on the creation of the national program to stop excision.
- 12) By 2002, at least eight states had banned the practice, including Bayelsa, Cross River, Delta, Edo, Ogun, Osun and Rivers. *Women of the World Progress Report*, supra note 3, at 82; *Alamieyeseigha Signs Genital Mutilation Prohibition*, Daily Champion, Oct. 22, 2002; *NGOs, Politicians fight FGM in Benin*, Nigeria, Africa News, April 12, 2001 (Lexis, World News Library). Two additional states, Akwa Ibom and Ebonyi, are in the process of enacting anti-FC/FGM legislation. *Circumcision: Practice against Womanhood*, Africa News, Jan. 9, 2002 (Lexis, World News Library). Benue State is also purported to be close to passing a bill prohibiting female circumcision. *Benue to pass bill outlawing female genital mutilation*, Vanguard (Nigeria), Dec. 25, 2002 ((Lexis, World News Library).

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- 13) Constitution of the Federal Democratic Republic of Ethiopia (1994), art. 35(4), translated in, *Constitutions of the Countries of the World* (G.H. Flanz, ed. 1996).
- 14) *Id.*
- 15) Constitution of the Republic of Ghana, Tema: Ghana Publishing Corp., 1992, art. 26(2).
- 16) *Id.*, art. 39(2).
- 17) Constitution of Uganda (1995), art. 33(b), reprinted in *Constitutions of the Countries of the World* (G.H. Flanz, ed. 1996).
- 18) World Health Organization (WHO), *Female Genital Mutilation, An Overview* (1998), available at <http://www.who.int/dsa/cat98/fgmbook.htm#National>
- 19) Ghana, Criminal Code (Amendment) Act, 1994, sect. 69A(2), reprinted in *47 International Digest of Health Legislation*, Vol. 47, No. 1, 1996, p. 30-31.
- 20) Republic of Senegal, Proposed Law Modifying Certain Provisions of the Penal Code (adopted 1999).
- 21) Canada, Criminal Code, Sect. 273.3(1), Consolidated Statutes of Canada; New Zealand, Crimes Act Amendment 1995 049, 204(B)(3)(a); Sweden, Act Prohibiting Female Genital Mutilation of Women (1982:316).
- 22) Benin, Loi No. 2003-03 prohibiting the practice of female genital mutilation in the Republic of Benin, art. 9, Jan. 21, 2003; Burkina Faso, Law No. 43/96/ADP of Nov. 13, 1996 on the Penal Code, arts. 380-382, *Journal Officiel du Burkina Faso*, Jan. 27, 1997.
- 23) Benin, Loi No. 2003-03 prohibiting the practice of female genital mutilation in the Republic of Benin, art. 10, Jan. 21, 2003
- 24) Committee for the Ethical Aspects of Human Reproduction and Women's Health, International Federation of Gynecology and Obstetrics, *Ethical Framework for Gynecologic and Obstetric Care*, 1994, available at <http://www.figo.org/default.asp?id=6044> (last visited June 3, 2003). In its General Recommendation on Women and Health, the CEDAW Committee called upon states to "[r]equire all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice." Committee on the Elimination of Discrimination against Women, General Recommendation 24: Women and Health (20th Sess., 1999), para. 31(e), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 244, U.N. Doc. HRI/GEN/1/Rev.5 (2001).
- 25) Côte d'Ivoire, Loi no. 98-757, Dec. 23, 1998, on the prohibition of various forms of violence against women, *Journal Officiel de la République de Côte d'Ivoire*, Jan. 14, 1999, p. 25.
- 26) Marlise Simons, "8-Year Sentence in France for Genital Cutting," *New York Times*, Feb. 18, 1999.
- 27) United Nations General Assembly, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Resolution 46/119, Dec. 17, 1991, Principle 11, 2.
- 28) *Id.*
- 29) Tanzania, The Sexual Offences Special Provision Act, 1998, sect. 169A; Kenya, The Children Act, 2001, sects. 14, 20.
- 30) Edo State of Nigeria, Law no. 4 of 1999, A Law to Prohibit Female Circumcision & Genital Mutilation, art. 4(a), Nov. 4, 1999; Cross River State of Nigeria, Law to Prohibit Girl-Child Marriages

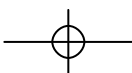
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- and Female Circumcision or Genital Mutilation in Cross River State, sect. 4(b), 2000.
- 31) Kenya, The Children Act, 2001, sects. 14, 20.
- 32) Tanzania, The Sexual Offences Special Provision Act, 1998, sect. 169A.
- 33) Anika Rahman & Nahid Toubia, *Female Genital Mutilation, A Guide to Laws and Policies Worldwide* 101 (2000).
- 34) Togo, Loi No. 98-106 of Nov. 17, 1998 concerning the prohibition of female genital mutilation in Togo, *Journal Officiel de la Republique Togolaise*, Nov. 21, 1998, pp. 2-3.
- 35) Burkina Faso, Law No. 43/96/ADP of Nov. 13, 1996 on the Penal Code, arts. 381, *Journal Officiel du Burkina Faso*, Jan. 27, 1997; Republic of Senegal, Proposed Law Modifying Certain Provisions of the Penal Code (adopted 1999).
- 36) Togo, Loi No. 98-106 of Nov. 17, 1998 concerning the prohibition of female genital mutilation in Togo, art. 4, *Journal Officiel de la Republique Togolaise*, Nov. 21, 1998, pp. 2-3.
- 37) Cross River State of Nigeria, Law to Prohibit Girl-Child Marriages and Female Circumcision or Genital Mutilation in Cross River State, sect. 4, 2000.
- 38) See e.g., Legal Information Institute, *Criminal Law: An overview*, available at [www.law.cornell.edu/topics/criminal.html](http://www.law.cornell.edu/topics/criminal.html); The Subject Matter of the Legal Systems, available at [www.leeds.ac.uk/law/hamlyn/subject.htm](http://www.leeds.ac.uk/law/hamlyn/subject.htm).
- 39) Rahman & Toubia, *supra* note 30, at 179.
- 40) Order dated Dec, 13, 2000, by Daniel Ochenja (RM) (copy on file with the Center for Reproductive Rights).
- 41) See e.g., Legal Information Institute, *Criminal Law: An overview*, available at [www.law.cornell.edu/topics/criminal.html](http://www.law.cornell.edu/topics/criminal.html);
- 42) Rebecca Cook and Bernard Dickens, WHO, *Considerations for Formulating Reproductive Health Laws*, Ref. WHO/RHR/00., Chapter 4, Part 1, available at [http://www.who.int/reproductivehealth/publications/RHR\\_00\\_1/RHR\\_00\\_1\\_Chapter4part1htm.htm](http://www.who.int/reproductivehealth/publications/RHR_00_1/RHR_00_1_Chapter4part1htm.htm).
- 43) "Egypt: Highest Court Upholds Minister's Ban on Female Genital Mutilation (FGM)," *Women's Action*, Vol. 8, No. 4, Equality Now, New York, Feb. 1998.
- 44) 'Sudan: Turning Point in the Sensitization Campaign' *Inter-African Committee Newsletter*, No. 19, June 1996, at 8.
- 45) Rahman & Toubia, *supra* note 30, 136, 153, 234.
- 46) The Traditional Medicine Act, 2000 §§ 10(1)(b), 22.
- 47) *Id.*
- 48) Center for Health Policy and Strategic Study, *State of health in Nigeria § 9 (2000)*, available at [www.expage.com/chpssstaeofhealth2000p5](http://www.expage.com/chpssstaeofhealth2000p5).
- 49) Source: Institut National de Statistique et de la Démographie (National Institute of Statistics and Demographics), EDS.
- 50) The CNLPE (Comité National de Lutte contre la pratique de l'excision, or National Committee for the Fight Against the Practice of Excision) is an institutional structure under the administrative supervision of the Ministry of Social Action and National Solidarity, which enjoys operational autonomy. The main objective of the CNLPE is to abolish the practice of excision in Burkina Faso.



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- 51) That is, shapers of public opinion (traditional, religious and customary leaders), non-governmental associations and organizations, etc.
- 52) The second reading of the Burkinese penal code was another factor that encouraged the passage of the law; previously, the penal code of French West Africa had been applied.
- 53) Assuming that 1 US\$ = 700 CFA francs
- 54) Studies carried out by the CNLPE
- 55) The program was founded in 1998 in partnership with UNICEF
- 56) Two cases are worth noting: the case of Kaya, a former excisionist who repeated the offence in March 2003 and is currently serving a prison sentence despite the marches by local women in her defense; and the case of Ouahigouya, which also concerns a repeat offender. Further cases have been reported in Dédougou and Bobo.
- 57) The difficulty here arises from the lack of documentation available, as only the office of the public prosecutor retains documents concerning the trials, with the exception of those covered by the media.
- 58) See, in the appendix, the case of the excision nurse from Bobo, the second town in Burkina to be convicted in 2002.
- 59) VOIX DE FEMMES has just carried out a study entitled "Basic survey on the practice of excision in the province of Balé" (January 2003), one of the provinces of Burkina where the prevalence rate is still quite high (87.2%) among women 15 years and older.
- 60) VOIX DE FEMMES is currently carrying out a 24 month-long project called "Training course in legal tools concerning women's rights" in three of Burkina's provinces. This project consists in spreading the various tools (including the law on FGM), training law practitioners, etc.
- 61) Lecturer in Law, School of Oriental and African Studies, University of London, LONDON, WC1H 0XG. Email:fb9@soas.ac.uk
- 62) World Health Organization (WHO) (1999) Female Genital Mutilation Programmes to Date: What Works and What Doesn't. A Review (WHO, Geneva) WHO/CHS/WMH/99. at p. 14.
- 63) Ibid at p. 1
- 64) Cf. Boyle, E. and Preves, S. "National Politics as International Process: The Case of Anti-Female-Genital-Cutting Laws" (2000) Law and Society Review 703.
- 65) Leye, E. "The Daphne Project on Female Genital Mutilation in Europe" in Proceedings of the Expert Meeting on Female Genital Mutilation" Ghent, Belgium November 5-7, 1998. Downloaded from <http://www.fgm.org/ProceedExpert.html>. Numbers are recorded as: "UK(303,454), France (180,997), Italy (133,847 in 1996) and Germany (77,795 in 1997).(at p. 8)
- 66) Britain has the Prohibition of Female Circumcision Act 1985 whilst France outlaws the practice in its Code Penal, 1992.
- 67) The positioning of the countries in this way is not to suggest that each adopts one approach and not the other. Clearly the two approaches are part of the same continuum and all countries move between these two positions depending on time (historical) and subject matter.
- 68) Some countries have laws expressly forbidding the practice. These include Norway and Sweden. See Rahman, A. and Toubia, N. (2000) Female Genital Mutilation: A Guide to Laws and Policies

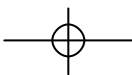


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- Worldwide (Zed Press, London) See also Bonino, E. "Una Legge Contro le Muilazioni Sessuali" *Il Reformista*, 4 April 2003. Downloaded from:  
[http://coranet/radicalparty.org/pressreview/print\\_right.php?func+detail&par=5225](http://coranet/radicalparty.org/pressreview/print_right.php?func+detail&par=5225). Some countries rely on penal laws and do not have specific legislation on FGM. Cf Meuwse, S. and Wolthuis, A. "Discussion Paper: Legal Aspects of FGM. Legislation on International and National Level in Europe" in *Proceedings of the Expert Meeting on Female Genital Mutilation* (1998) pp 59-64.
- 69) European Parliament Resolution on Female Genital Mutilation 92001/2035(INI) A5—0285/2001
- 70) BBC News "3000 UK Girls Risk Female Circumcision Every Year, Wednesday 11 November 1998 downloaded from [http://news.bbc.co.uk/hi/english/health/newsid\\_212000/212240.stm](http://news.bbc.co.uk/hi/english/health/newsid_212000/212240.stm) ,BBC News "Female Circumcision Clampdown Call" Wednesday 22 November 2000 downloaded from [http://news.bbc.co.uk/hi/english/health/newsid\\_1033000/1033732.stm](http://news.bbc.co.uk/hi/english/health/newsid_1033000/1033732.stm)
- 71) Williams, L. Dirir, S. and Warsame, J. et al (1998) "Experiences, Attitudes and Views of Young Single Somalis living in London on Female Circumcision" (London School of Hygiene and Tropical Medicine and London Black Women's Health Action Project, London) as cited in *Womankind Worldwide* (2003) "UK Government Legislation, Policy and Practice on FGM" (*Womankind Worldwide* London) at p. 1. However doctors caught carrying out FGC have been struck off the medical register and prohibited from practicing medicine. *FORWARD* Newsletter, issue no. 3 (2001) 1.
- 72) Akers, S. "Female Genital Mutilation –Cultural or Criminal? 6 (1994) *Journal of Child Law* 27
- 73) Toubia, N. (1995) *Female Genital Mutilation: A Call for Global Action* (Rainbo, New York) at p.45.
- 74) In a House of Lords debate Lord Rea questioned the usefulness of law in trying to modify behaviour pointing to the failure of prohibition in the United States and the difficulty of enforcing drug laws in the United Kingdom. He went on to note the ineffectiveness and non use of law to tackle FGC in the United Kingdom thus seeming to suggest that even where there is majority consensus on values, this may not lead to the law being obeyed or enforced. Although supporting prosecution he noted: "...real progress will come only through education and through that a change in the knowledge and attitudes of the communities wehre it is a problem. And that applies in Britain as well as those countries wehre it is a problem." Lord Rea, House of Lords Debate on Female Circumcision 1998 column 738
- 75) However even in African states it may well be that FGM is practiced by minority groups. Rahman and Toubia (2002) note "...when FC/FGC is common among one ethnic group and not another, enacting and applying a criminal law could fuel ethnic animosities." At p. 62
- 76) Weil-Curiel, L. "Sexual Mutilation: The French Approach in the Application of Law" In *Expert Group Meeting* (1998) atp.23 Downloaded from <http://www.fgm.org/ProceedExpert.html>
- 77) As cited in Rahman, A. and Toubia, N. (2000) at p. 152
- 78) *Le Progres* "Petites Filles en Danger" Jeudi, 13 Juin 1996. I am grateful to Helene Desodt for forwarding this to me. Winter, B. "Women and Cultural Relativism in France: The Case of Excision" 19 (1994) *Signs Journal of Culture and Society* 139. Renteln, A. (1994) at pp.32-34
- 79) Rahman, A. and Toubia, N. (2000) at p. 152
- 80) Renteln, A. (1994) at p.68.
- 81) Weil-Curiel (1998) at p.24

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- 82) Convention on the Rights of the Child, 20 November 1989, General Assembly Resolution 44/25 Annex, 44 UN GAOR, Supp. no. 49 at 167, UN Document A/44/49, reprinted in 28 International Legal Materials(1989) 1448.
- 83) Cf. Eekelaar, J. "The Importance of Thinking that Children Have Rights" (1994) IJLFP 220. But see An Na'im, A. "Cultural Transformation and Normative Consensus on the Best Interests of the Child" in Alston, P. (ed) The Best Interests of the Child (1994) 62,66
- 84) Alston, P. and Gilmour-Walsh, B. (1996) The Best Interests of the Child: Towards a Synthesis of Children's Rights and Cultural Values (UNICEF, Innocenti Studies, Florence)
- 85) Victoria Climbié was an eight year old girl from the Ivory Coast who had been sent to live with a distant relative and her partner. Together the two adults tortured the child until she died. Although aware of the abuse, though arguably not its severity, the social services department did not intervene to take her into care. Her death led to a public inquiry which condemned social service practice and identified a lack of co-ordination between government bodies responsible for looking after the interests of children.
- 86) Cottier, M. (2001)
- 87) Cottier, M. at pp.109-110
- 88) Weil Curiel (1998) op cit
- 89) Leye, E. "The Daphne Project on Female Genital Mutilation in Europe" in Proceedings of the Expert Group Meeting on FGM (1998)op cit at 4.4.6
- 90) Agence France Presse "Genital Mutilation: African Body Says Practice Dramatically Reduced" 22 March 2003. Downloaded from [http://www.coranet.radicalparty.org/pressreview/print\\_right.php?func=detail&para=2121](http://www.coranet.radicalparty.org/pressreview/print_right.php?func=detail&para=2121). The report quotes the IAC Director of Communication as claiming that demographic studies indicate a reduction of a third in many countries. He is quoted as saying "This represents an important step forward...Ten years ago, no country would have dared to introduce legislation against female circumcision. Today it is banned in some 12 countries."
- 91) House of Lords Debate on Female Circumcision 10 November 1998-See Baroness Rendell at column 735, Lord Hunt at column 746. See also Lord Rooker, House of Lords Debate on Asylum Seekers: Female Circumcision, Tuesday 10 July 2001 column 1005. However Hunt questions the use of law and points to the difficulty of obtaining evidence with which to bring the prosecutions. Lord Hunt House of Lords Debate on Female Circumcision 1998 column 747. Similarly Baroness Gould urged caution on the cultural condemnation front noting: "Any intervention must therefore be culturally appropriate, tactful and sensitive and in no way make the women feel ashamed or guilty of their culture." House of Lords Debate on Female Circumcision 1998 Baroness Gould at column 733.
- 92) House of Lords Debate on Female Circumcision 1998, Baroness Rendell column 734. The European Parliamentary Resolution (2001) provides in para 11 : "pursue, prosecute and punish any resident who has committed the crime of female genital mutilation, even if the offence was committed outside its frontiers (extraterritoriality)."
- 93) Female Genital Mutilation Bill 2003. This Bill, together with details from the second reading of the Bill, can be downloaded from:



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<http://www.appg-opdevrh.org.uk/Parli%20News/commons/clwydFGM2ndreadingde>

94) The Norwegian and Swedish statutes are examples of the new English approach. Indeed Sweden was the first country in Europe to enact legislation prohibiting FGM. Both countries have comprehensive programmes on fgm. For the Norwegian one see Ministry of Children and Family Affairs "Governmental Action Plan Against Female Genital Mutilation". Available at <http://odin.dep.no/bfd/engelsk/publ/handbooks/004021-120008/index-hov001-b-n-a.h> The law is covered in chapter 3. I am grateful to Anne Hellum for forwarding this to me.

95) Female Genital Mutilation Bill section 5(a)

96) Womankind Worldwide (2003) at p.1. (Paper collating the views of some NGOs working on the issue in the UK).

97) Female Genital Mutilation Bill Explanatory Notes. Downloaded from

<http://www.publications.parliament.uk/pa/cm200203.cmbills/021/en/03021x--htm> at p. 3. Indeed section 3(2) of the Bill provides "An act is a relevant act of female genital mutilation if –

(a) it is done in relation to a United Kingdom national or permanent United Kingdom resident."

98) There was a special European Parliament hearing on FGM on 29 November 2000. Africa Online Com "Europe Impotent in Fighting Female Mutilation Among African Women" [afrol.com](http://afrol.com) 30 November 2000. Downloaded from

[http://www.afrol.com/Categories/Women/Wom015\\_fgm\\_europe2.htm](http://www.afrol.com/Categories/Women/Wom015_fgm_europe2.htm)

99) This Resolution reflects the speech made by Commissioner Anna Diamantopoulou on "Female Genital Mutilation: What Europe Should and Can Do", Brussels 29 November, 2000.

100) There is however the Daphne Project which, amongst other things seeks to work with immigrant communities to eradicate the practice. Project title "Towards a Consensus on Female Genital Mutilation in the European Union" Ref: 97/096/WC; 99/036/WC. Website [www.icrh.org](http://www.icrh.org). See also Proceedings of the Expert Group Meeting on Female Genital Mutilation Ghent, Belgium, November 5-7, 1998. Downloaded from <http://www.fgm.org/ProceedExpert.html>. Finally AIDOS "Female Genital Mutilation: A Bleeding Wound". Downloaded from [http://www.facetoface.org/nl\\_april2001.html](http://www.facetoface.org/nl_april2001.html)

101) European Parliament Resolution on Female Genital Mutilation (2001/2035 (INI))

102) *ibid* paras 4 and 11

103) *ibid* para Y

104) *Ibid*. Similar initiatives are underway in the United States. Center for Reproductive Law and Policy, "Legislation on Female Genital Mutilation in the United States" (1997) *Reproductive Freedom in Focus* at p. 3.

105) European Resolution on FGM (2001) at para. 11.

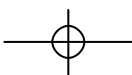
106) *ibid* para 28.

107) Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 13 September 2000, CAB/LEG/66.6. Article 3.

108) European Resolution on FGM para 23. See also paras 24 and 26.

109) *Ibid* para. 26. See also Osborne, A. and Boseley, S. "EU May Ban Aid to States that Allow Female Circumcision" *The Guardian*, London, Thursday 20 November 2000.

110) See for example the impact of the CNN report on circumcision in Egypt during the 1994



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International Conference on Population and Development. Sure the Egyptian government responded, but the people were not carried along, hence the resistance which followed. Boyle, E. and Preves, S. (2000)

111) See the analysis of British media reporting of the asylum issue and the intemperate language used about asylum seekers in Article 19 "What's the Story? Sangatte: A Case Study of Media Coverage of Asylum and Refugee Issues" (Article 19, London, May 2003) Available at <http://www.article19.org>

112) Article 1A(2), Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 150

113) See Immigration Appellate Authority (2000) Asylum Gender Guidelines at p. 6

114) Randall, M (2002) "Refugee Law and State Accountability for Violence Against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution" (2002) Harvard Women's Law Journal 281, Macklin, A. "Refugee Women and The Imperative of Categories" (1995) HRQ 213, Kelly, N. "Gender Related Persecution: Assessing the Asylum Claims of Women" (1993) Cornell Int'l L.j. 625. Beyani, C. "The Needs of Refugee Women: A Human Rights Perspective" 3 (1993) Gender and Development 29.

115) Immigration Appellate Authority (2000) Asylum Gender Guidelines at p.6.

116) UNHCR (1991) Guidelines on the Protection of Refugee Women. More recently the UNHCR has issued "Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees." HCR/GIP/02/01 7May 2002. See also UNHCR (1996) Sexual Violence Against Refugees: Guidelines on Prevention and Response. UNHCR Division of International Protection "Gender Related Persecution: An Analysis of Recent Trends" (1997) Int. J. of Refugee Law 79.

117) Immigration and Refugee Board, Ottawa, Canada, (1993) "Guidelines Issued by the Chairman, Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution" reproduced in (1993) Int'l. J. Refugee Law 278, for the United Kingdom see Immigration Appellate Authority (2000) Australian Department of Immigration and Multi-Cultural Affairs, (1996) "Guidelines on Gender Issues for Decision Makers" United States Immigration and Naturalization Service (1995) "Considerations for Asylum Officers Adjudicating Asylum Claims From Women" (updated?) Norway also recognizes gender based persecution as needing special consideration. See Norway's Sixth Periodic Report on the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 - Article 3 On Gender Equality and Human Rights" at pp.2-3. Downloaded from [http://odin.dep.no/bfd/norsk/likestilling/intern\\_samarb/004071-220003/index-hov005](http://odin.dep.no/bfd/norsk/likestilling/intern_samarb/004071-220003/index-hov005)

118) In *Islam v. Secretary of State for the Home Department, R v. Immigration Appeal Tribunal, ex parte Shah* [1999] INLR 144, Lord Steyn noted: "In 1951 the draftsman of Art 1A of the Convention explicitly listed the most apparent forms of discrimination then known, namely the large groups covered by race, religion, and political opinion. It would have been remarkable if the draftsman had overlooked other forms of discrimination. After all, in 1948 the Universal Declaration [on human rights] had condemned discrimination on the grounds of colour and sex. Accordingly, the draftsmen of the Convention provided that membership of a particular social group would be a further category." As quoted in Immigration Appellate Authority (2000) at p.39.

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- 119) See for example Lord Hoffman in Islam case *ibid* where he noted: "In my opinion the concept of discrimination in matters affecting fundamental rights and freedoms is central to an understanding of the [Refugee] Convention. It is concerned not only with cases of persecution, even if they involve denials of human rights, but with persecution which is based on discrimination...In choosing to use the general term 'particular social group' rather than the enumeration of specific social groups, the framers of the Convention were in my opinion intending to include whatever groups might be regarded as coming within the anti-discrimination objectives of the [Refugee] Convention." As quoted in Immigration Appellate Authority (2000) at p. 39. Three subgroups have been identified as constituting social group. These are "(1) groups defined by an innate or unchangeable characteristic; (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake their association; (3) groups associated by a former voluntary status, unalterable due to its historical permanence" in Vidal, M "Membership of a Particular Social Group and the Effects of Islam and Shah" 11 (1999) *Int. J. of Refugee Law* 528,528.
- 120) Although largely considered under the social group category, Crawley notes that FGC could be considered under any of the other Convention grounds. Crawley (2001) 193-196
- 121) Crawley, H. (2001) 196. Canadian Immigration and Refugee Board, *Re Khada Hassan Farah*, 13 July 1994 as cited in UNHCR Division of International Protection (1997) 79,98. However the earlier Conseil d'Etat decision in *Mademoiselle X*. Decision of September 19, 1991, although rejecting the application on the facts accepted the principle that fleeing from persecution based on a fear of being cut did entitle one to refugee status under the category social group of the 1951 Convention. Cited in Van Bueren, G. (1995) at p. 308 n.97.
- 122) European Resolution 2001 at para 14. See also paras Z and 15. Cf. The Draft Protocol to the African Charter on Human and Peoples' Rights (2000 draft) which provides in article 6(d) that States Parties undertake to: "protect and grant asylum to those women and girls who are at risk of, or have been, or are being subjected to harmful practices and all other forms of intolerance."
- 123) *In re Fauziya Kasinga*, 21 I.& N. Dec. 357 (B.I.A. 1996)
- 124) On the semantic gymnastics involved in construction of social group category by judges see Randall, M. (2002) at 290-91.
- 125) She writes about her experiences in detention in her autobiography: Kassindja, F. and Bashir, L (1998) *Do They Hear You When You Cry?* Bantam Books, New York
- 126) The Minister of State, Home Affairs (Lord Rooker) noted: "...the United Kingdom is quite ready to recognize as refugees those who have been persecuted by non-state agents as well as those persecuted by the state. In order to qualify for asylum, an applicant would have to show that female genital mutilation (FGM) is knowingly tolerated by her government or that the authorities are unable to offer effective protection." House of Lords, Tuesday 10 July 2001 column 1003. See also Immigration Appellate Authority (2000) at p.23
- 127) Even if believed it may be that FGM will be held not to fit into the 1951 Refugee Convention categories. The Minister of State, Home Affairs (Lord Rooker) noted that if that happened: "...and it was proved that it was taking place, we would grant exceptional leave to remain, even if refugee status were not granted." House of Lords, Tuesday, 10 July 2001, column 1005. However, it is important to

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note that in the United Kingdom, one is not necessarily entitled to access social security provision if one has merely been granted exceptional leave to remain. Someone given full refugee status would be able to access welfare provision immediately thus the categorization does have important practical considerations. See also the Women's National Commission of the United Kingdom "Submission to the United Nations' Committee on the Elimination of All Forms of Discrimination Against Women" February 2003 at pp. 7,12,22,23. See especially p.23 where it is noted (on the government's dispersal policy) that: "Government plans for dispersal of and holding centers for asylum seekers will jeopardize and severely curtail the access to support services that women who have undergone FGM will have."

128) Cisse, B. (1997) 442-444

129) UNHCR (1988) "Guidelines on Interviewing Unaccompanied Minors and Preparing Social Histories" cited in Van Bueren, G. (1993) International Documents on Children 379. See also Council of Europe Parliamentary Assembly "Protection and Assistance for Separated Children Seeking Asylum Motion for a Recommendation" 12 February 2003. Doc.9697. The document states that the motion had not yet been discussed in the Assembly. However it does include FGM as one of the reasons children may flee their homes. Downloaded from

<http://www.assembly.coe.int/Documents/WorkingDocs03/EDOC9697.htm>

130) Canadian Immigration Refugee Board, Re Khadra Hassan Farah, 13 July 1994.

131) Randall, M "Refugee Law and State Accountability for Violence Against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution" (2002) Harvard Women's Law Journal 281, 283, 307, 308, 309,315-16, 317

132) However Randall, M. (2002) "notes that because gender based violations occur in receiving states as well, and that receiving states have themselves often failed to protect women from gender based violence, it throws " into stark relief the paradoxical nature of the implicit assumption operating in many western states -that the problem has somehow been remedied at home." At p. 284.

133) However sometimes states use the cultural relativist argument to refuse applicants arguing that it would be wrong to interfere in other peoples' cultures. Of this, Crawley (2001:183) notes: "In these cases, the existence of other normative frameworks is used to undermine the principle of universal human rights."