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Female Genital Mutilation (FGM): Background Information and Issues for Congress

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Summary

Congress has acted to help prevent female genital mutilation (FGM) in several ways. Broadly, it has passed legislation that targets women and aims to improve health conditions around the globe. Specifically, Congress has passed language protecting victims of FGM and criminalizing the practice in the United States in the *FY1997 Omnibus Consolidated Appropriations*, P.L. 104-208. It has also passed the *Foreign Affairs Operations, Export Financing, and Related Programs Appropriations Act, 2001*, P.L. 106-429, which contains language requiring the U.S. Department of State to compile statistics on FGM.

FGM is a term that refers to the removal or alteration of the female genitalia. It is estimated that 2 million girls in the Middle East and Africa are subjected to the procedure per year. The practice occurs most often in Yemen, Egypt, Oman, United Arab Emirates, Saudi Arabia, Iraq, Jordan, Syria, Southern Algeria, and 28 African countries. In addition, it has been reported that certain Muslim populations in Indonesia, Sri Lanka, Malaysia, and India practice FGM in varying levels. Although the United States and a number of industrialized countries have banned FGM, they continue to contend with it among immigrant communities who may use doctors from their home countries to perform the surgery or send their children to home countries to receive the procedure. This report discusses the prevalence of FGM, highlights programs that seek to counter its occurrence and describes the debate on FGM-related policies. This report will be updated as needed.

Female genital mutilation (FGM) is a term that refers to the removal or alteration of the female genitalia. Some advocate using the term female circumcision to respect the culture of those who use the procedure. In Western nations, the term FGM is most often used. In this report, the term FGM will be used as reflected in U.S. legislation.

FGM occurs in varying degrees. “Sunna circumcision,” the mildest form, entails the removal of the prepuce — the loose fold of skin that covers the tip of the clitoris. The second form, “clitoridectomy,” involves the partial or entire removal of the clitoris, and can include the scraping off of the labia majora and minora — the outer folds of skin that surround the clitoris, the opening of the urethra, and the opening of the vagina. “Infibulation,” the most severe form representing 15% of all FGM cases, includes the first two forms followed by the sewing of the scraped sides of the vulva. A small opening is left to allow the flow of urine and menstrual blood. Girls who have been infibulated must be cut in order to have intercourse, and may be repeatedly opened and closed at the husband’s will to ensure fidelity.¹

Between 8 and 10 million girls in the Middle East and Africa are at risk of undergoing FGM, and another 10,000 are estimated to be at risk in the United States.² About 135 million girls and women have already undergone the procedure with approximately 2 million girls subjected to the procedure each year, about 6,000 per day.³ Circumcision is usually performed on girls between the ages of four and 13.⁴ According to a variety of sources, FGM occurs most frequently in Yemen, Egypt, Oman, United Arab Emirates, Saudi Arabia, Iraq, Jordan, Syria, Southern Algeria, and 28 African countries. Also, certain Muslim populations in Indonesia, Sri Lanka, Malaysia, and India reportedly practice FGM in varying levels. Western countries, including the United States, also contend with the practice among immigrant populations who sometimes use doctors from their home countries to perform the surgery.

FGM reportedly is still most often performed with crude instruments, such as broken glass, scissors, kitchen knives, and razor blades. The same tool is often used on a succession of girls during rite of passage ceremonies, which facilitates the transmission of viruses, including HIV. Antiseptics and anesthesia are rarely used. The effects of FGM are numerous, and immediate consequences can include excruciating pain and hemorrhaging.⁵ Infections of the genitals and urinary tract are common. Girls have also died from hemorrhage and septicemia, an infection of the blood. An affected woman can face chronic pelvic infections and inflammation, genital malformation, delayed menarche, and recurrent urinary tract infections over the term of her life. She may also develop scar tissue that damages her birth canal and increases her chances of having stillbirths and

¹ Amnesty International, *Female Genital Mutilation: A Human Rights Information Pack*, 1998, at [<http://www.amnesty.org/ailib/intcam/femgen/fgm1.htm>] and USAID website, “USAID: Working to Eradicate Female Genital Cutting,” cited on Mar. 15, 2004. (Hereafter cited as Amnesty International, *Female Genital Mutilation*.)

² Marianne Sarkis, *Female Genital Cutting: An Introduction*, The Female Genital Cutting Education and Networking Project, accessed on Apr. 29, 2004, at [<http://www.fgmnetwork.org/intro/fgmintro.html>].

³ Amnesty International, *Female Genital Mutilation*.

⁴ BBC News, *Female Circumcision ‘on the Rise’*, Mar. 24, 2004, at [<http://news.bbc.co.uk/1/hi/uk/3564203.stm>].

⁵ USAID Office of Women in Development, *Female Genital Mutilation*, Information Bulletin, Mar. 1997, at [<http://www.usaid.gov/wid/pubs/fgm97.htm>].

developing obstetric fistula, a condition that causes incontinence.⁶ During labor, an infibulated woman is often cut again to prevent her child's head from being crushed by her damaged birth canal.

U.S. and International Response

An international consensus to end FGM has been growing. The United Nations (UN), United Nations Children's Fund (UNICEF), and the World Health Organization (WHO) have expressed their views that FGM is a violation of human rights, and have made a number of recommendations designed to end the practice. In addition, a number of international declarations and conventions have deemed female genital mutilation to be a violation of human rights, including the *Universal Declaration of Human Rights*; the *International Covenant on Civil and Political Rights*; the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; and the *Declaration on the Elimination of Violence Against Women*.⁷ The United States considers FGM a crime, and U.S. immigration courts recognize it as a form of persecution in asylum adjudications. It appears, however, that only a few women have been granted asylum in the United States and elsewhere under these terms.

The United States, largely through the U.S. Agency for International Development (USAID), seeks to eliminate FGM through a number of strategies. First, in September 2000, the Agency incorporated FGM eradication into its general development agenda, particularly within its family planning initiatives. Second, USAID collaborates with other groups to advocate for research, policy change, and public awareness on the harmful effects of FGM. Finally, it advocates behavior change and alternative rituals.⁸

Despite the international efforts, anti-FGM legislation has not ended the practice in many countries. For example, although Britain banned the practice almost 20 years ago, an estimated 74,000 African women have undergone FGM and 7,000 girls are at risk in the country.⁹ In Niger, FGM was made illegal in 2001, but still the practice continues and no one has been prosecuted for performing the procedure.¹⁰ Ghanaian women's rights advocates complain that while a few have been prosecuted under that country's law, anti-FGM laws are not strong enough. The Ghanaian Association for Women's Welfare

⁶ For more information on obstetric fistula and what the U.S. government has done to combat it, see CRS Report RS21773, *Reproductive Health Problems in the World: Obstetric Fistula: Background Information and Responses*, by Tiaji Salaam.

⁷ Article 24 (3) of the *United Nations Convention on the Rights of the Child*; Article 21 of the *African Charter on the Rights and Welfare of the Child* (1990); Article 2 of the *Declaration on the Elimination of Violence Against Women* (1993); and paragraphs 4.22 and 7.40 of the *Programme of Action of the United Nations International Conference of Population and Development* (1994). For more information on other international agreements that condemn FGM see [<http://www.usaid.gov/wid/pubs/fgm97.htm>].

⁸ USAID website, "USAID: Working to Eradicate Female Genital Cutting" at [http://www.usaid.gov/our_work/global_health/pop/publications/docs/eradicateFGM.html]

⁹ BBC News, "Female Circumcision 'On the Rise'," Mar. 24, 2004, at [<http://www.bbc.co.uk>].

¹⁰ UN Office for the Coordination of Humanitarian Affairs, "Niger: Legal Ban on Female Circumcision Widely Ignored," Feb. 6, 2004, at [<http://www.irinnews.org>].

(GAWW) advocates for stiffer penalties, including the prosecution of parents who force or allow their daughters to undergo FGM.¹¹

Analysts contend that current laws are not wholly effective in combating the practice, because they are rarely enforced and are limited in scope and jurisdiction. Some argue that the laws should be expanded to punish those who help the practitioners, such as parents, extended family members, and community members. Additionally, advocates call for greater regional cooperation. Critics of legislation-only approaches to combat FGM point out that while the African Union has created a legal framework to help countries enforce anti-FGM laws, only 16 African countries have adopted such laws.¹²

Proponents of anti-FGM initiatives argue that the inability of women and girls to make decisions about their own health and bodies contributes to the continuation of the practice. FGM is a cultural practice that is traditionally established and strongly protected in many areas. Many women and girls fear that uncircumcised girls will be considered unmarriageable. In response, some countries have tried a variety of initiatives, including creating alternative rites of passage, and educating midwives to become trained health care workers who receive monthly stipends. In parts of Ghana and Kenya, some groups have begun to replace FGM with other practices, such as pricking other parts of the body to let out a small drop of blood, or eliminating bloodletting entirely.

Congressional Actions and Issues

Domestic Policies. In the mid-1990s, Congress debated and enacted provisions aimed at preventing FGM in the United States. Most importantly, §645 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208) criminalized the practice of FGM.¹³ IIRIRA further required in §644 that all intending immigrants and foreign visitors be provided information concerning the potential legal consequences in the United States for performing FGM, or allowing a child under his or her care to be subjected to female genital mutilation (under criminal or child protection statutes or as a form of child abuse). Anyone who is convicted of circumcising a girl under the age of 18 in any form is to be fined and/or imprisoned for up to five years. Noncitizens who are convicted under this provision, moreover, are subject to deportation.¹⁴

While some maintain that these provisions impose sufficient penalties, others argue that they should be strengthened. The latter note that the law does not include punishment for those who send the girls abroad to be circumcised. Advocates argue that if the law were expanded to punish those who attempted to circumvent U.S. law, then it might deter parents from sending their children abroad to have the procedure done. Opponents of this

¹¹ U.N. Office for the Coordination of Humanitarian Affairs, “*Ghana: Women Call for Stiffer Female Circumcision Laws*,” Feb. 2, 2004, at [<http://www.irinnews.org>].

¹² U.N. Office for the Coordination of Humanitarian Affairs, “*Africa: Conference Delegates in Ethiopia Call for End to FGM*,” Feb. 6, 2004, at [<http://www.irinnews.org>].

¹³ §116 of USC 18, *Crimes and Criminal Procedure*.

¹⁴ CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by (name redacted) and (name redacted).

expansion assert that young girls are sometimes circumcised against the parents' wishes while visiting relatives, and such a law might unfairly punish innocent parents. Others point out that establishing intent to violate the law would be virtually impossible to prove, rendering such an expanded provision unenforceable. Proponents of current law maintain that, regardless of where the procedure took place, child protective services would remove the child from the home for extreme child abuse if FGM is reported.

The Immigration and Nationality Act (INA) provides immigration protections to aliens who have a well-founded fear of persecution, most notably in the form of refugee and asylum status. Aliens seeking asylum must demonstrate a well-founded fear that if returned home, they will be persecuted based upon one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion.¹⁵ The asylum process differs from refugee processing, which is wholly outside of the United States, although both refugees and asylees must demonstrate a well-founded fear of persecution.¹⁶ Legal guidance for Asylum Officers issued in 1995 stated that “severe sexual abuse does not differ analytically from beatings, torture, or other forms of physical violence that are commonly held to amount to persecution.”¹⁷ Most importantly, the U.S. Board of Immigration Appeals held *In Matter of Kasinga*, that a subjective ‘punitive’ or ‘malignant’ intent is not required for harm to constitute persecution and — in the landmark case — granted asylum on the basis of FGM in 1996.¹⁸

Some advocate amending the INA’s definition of refugee and asylee to expressly mention FGM, as was done for resistance to coercive population control policies.¹⁹ Proponents argue that such a provision would strengthen the policy and speed up the lengthy asylum adjudication process. Others argue against changes to refugee and asylum law that would “itemize” the grounds for granting relief, warning that specifying the types of persecution could limit future grants to only those types of persecution specified in the law. They maintain that current law affords adequate protections for females fleeing FGM.

International Policies. The 106th Congress passed language requiring the U.S. Department of State to compile statistics on FGM in P.L. 106-429, *Foreign Affairs*

¹⁵ In 1968, the United States became party to the 1967 United Nations Protocol Relating to the Status of Refugees. The Refugee Act of 1980 codified the U.N. Refugee Protocol’s definition of a refugee (§207 of INA), included provisions for asylum (§208 of INA), and instructed the Attorney General to establish uniform procedures for the treatment of asylum claims of aliens within the United States.

¹⁶ For a discussion of refugee policy, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by (name redacted).

¹⁷ U.S. Department of Justice memorandum to all INS Asylum Officers, *Considerations for Asylum Officers Adjudicating Asylum Claims from Women*, from Phyllis Coven, Office of International Affairs, May 26, 1995.

¹⁸ To read this case, see [http://www.usdoj.gov/eoir/library/intdec/id_pdf/3278.pdf]. For background, see [<http://news.bbc.co.uk/2/hi/africa/394345.stm>].

¹⁹ The coercive family planning provision was added by §601 of IIRIRA (P.L. 104-208). See CRS Congressional Distribution Memorandum, *Asylum Granted on the Basis of Coercive Family Planning*, by (name redacted) (available from author).

*Operations, Export Financing, and Related Programs Appropriations Act, 2001.*²⁰ As these data are now being included in the State Department country reports, more people are becoming aware of the prevalence of FGM. Some suggest that existing legislation could be used more creatively to raise awareness about the dangers of the practice. For example, some propose amending P.L. 108-25, *United States Leadership Against HIV/AIDS, Tuberculosis, Malaria Act of 2003*, to integrate FGM awareness-raising into § 304, *Pilot Program for the Placement of Health Care Professionals in Overseas Areas Severely Affected by HIV/AIDS, Tuberculosis, and Malaria*. Proponents of this idea argue that combating FGM is an integral part of the global fight against HIV/AIDS, particularly in heavily affected countries. U.S. health care professionals participating in the pilot program could train health care workers in target areas to raise awareness about the intersecting risks of HIV/AIDS and FGM. Residents of the area could also be sensitized on how HIV can be transmitted through the practice. Opponents of further changes in the law maintain that the Administration may accomplish efforts such as these within current law. Still others object to any U.S. policies that might be perceived to interfere with cultural norms and indigenous practices in other parts of the world.

²⁰ Requirement is discussed in Conference Report H.Rept. 106-199.

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