

# scottish justice matters

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**REFORM**  
IN SCOTTISH CRIMINAL JUSTICE

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## Theme: Reform in Scottish Criminal Justice

Theme editorial <i>Nancy Loucks and Alan Staff</i>	2
Why the Commission on Women Offenders recommended structural reform <i>Elish Angiolini</i>	3
Reform? Revisit? Replace? Two views on how social work with offenders should be organised in Scotland <i>Michelle Miller and Fergus McNeill</i>	5
Making sense of a radically changing landscape: the key contours of police reform in Scotland <i>Nicholas Fyfe</i>	9
Reform and the prosecution of crime <i>Catherine Dyer</i>	11
Getting a good hearing? Reform and the Children's Hearings <i>Maggie Mellon</i>	13
Eyes and ears of the community: a short history of the reform of Prison Visiting Committees in Scotland <i>Mary Munro</i>	15

## Current issues

Beyond the revolving court door: is it time for Problem-Solving Courts in Scotland? <i>Cyrus Tata</i>	17
Female genital mutilation in Scotland <i>Niki Kandirikirira and John Fotheringham</i>	19
A day in the life of a criminal justice social work team manager <i>Allan Weaver</i>	24

## International

Trial and error in criminal justice reform in the USA <i>Greg Berman and Aubrey Fox</i>	25
Interview: HM Chief Inspector of Prisons Hugh Monro <i>Talking to Nancy Loucks</i>	27
Scottish Justice Brief	29



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# FEMALE GENITAL MUTILATION IN SCOTLAND



## Niki Kandirikirira explains why female genital mutilation is an issue for Scotland.

**IMAGINE** a young teenage girl in Glasgow hanging out at school with her friends, chatting about who will win X Factor, whom she fancies most in Twilight, which shoes she is going to buy ... and how excited she is about going "home" for the holidays: "there's gonna be sun and sand and my Dad says they are throwing a BIG party for me...".

Now, imagine her some months later sat in school trying to focus on passing her Highers scarred and struggling with the psychological and physical challenges that her FGM has brought about.

### What is FGM?

"Female genital mutilation (FGM) comprises all procedures that involve the partial or total removal of the external genitalia, or other injury to the female genital organs for non-medical reasons" (World Health Organisation, 2013).

The World Health Organisation has defined four types of FGM as follows: **(1) clitoridectomy**, which involves the partial or total removal of the clitoris and or the prepuce; **(2) excision**, which involves the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora; **(3) infibulation**, which involves narrowing of the vaginal orifice with creation of a covering seal by cutting and repositioning the labia minora and/or the labia majora, with or without excision of the clitoris; **(4) all other harmful procedures to the female genitalia for non-medical purposes**, for example pricking, piercing, incision or scraping and cauterization.

### How is FGM done?

The custom and practice surrounding female genital mutilation varies from community to community but is often traditionally carried out by a local elder woman designated for the task or by traditional birth attendants. Although, in Sierra Leone, for example, the cutter will have been in training since childhood, in many instances FGM is often carried out in non-sterile environments (in cattle kraals, in the courtyard of a home, in the bush, on the kitchen table) without anaesthetic using unclean sharp instruments such as razor blades, scissors, kitchen knives or broken glass. Some cutters have implements designed specifically for the purpose. Because the mutilation often takes place as part of a cultural ceremony or event, cutting instruments are frequently used on several girls in succession increasing the risk of infection and the transmission of viruses, including HIV. There is some increase in the use of health professionals (trained midwives and even physicians) to avoid the health complications but this brings with it its own ethical dilemmas.

### What are the consequences of FGM?

Immediate consequences of FGM include extreme pain, shock and the permanent disfiguration of genitalia, but may also result in excessive bleeding, septicaemia, the transmission of infection and diseases and, on occasion, severe haemorrhaging and death.

Long term health complications of FGM include problems with passing urine, recurrent urinary tract infections, abscesses, keloid formation, fistulae (vesico/recto vaginal), difficulties in menstruation and infections due to repeated de-

infibulations and reinfibulation. (Women who are infibulated are de-infibulated for child birth and then reinfibulated postpartum; others are deinfibulated to release menstrual blood that has been trapped behind the scar tissue and then reinfibulated). Women that have undergone FGM may also suffer from sexual dysfunction, genital phobia, infertility and miscarriages. There are also many associated problems during antenatal care and difficulties with health care for example. smears, foetal monitoring, and getting "clean" samples. Infants of mothers with more extensive forms of FGM are at increased risk of dying during birth. Despite all of these issues many women fail to make the link between the health impacts of FGM and the mutilation. This is because this happens to most of the girls and women around them so these impacts are normalised.

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## **The families that subject their girls to FGM believe they are doing the right thing, it is very much part of their cultural identity and confers status and credibility**

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The involvement of immediate family members in the infliction of such pain can also result in a loss of trust and trauma. Women have also reported longer-term psychological problems, such as post-traumatic stress disorders, including sexual problems, depression and anxiety. Depending on the severity of the mutilation and or trauma women may also have difficulty having sex or conceiving which can lead to domestic abuse from frustrated husbands.

### **How widespread is FGM?**

It is estimated that some three million women and girls are mutilated annually in Africa alone (International Federation of Gynaecology and Obstetrics, 2013). There are 140 million women and girls living with the impact, mainly but not exclusively, in or from African and Middle Eastern countries.

### **Is FGM relevant to Scotland?**

As the number of immigrants, asylum seekers and refugees increases in Scotland, so does the number women living with the impact of FGM and the number girls at risk of being mutilated. It is difficult to estimate the actual numbers at risk because vulnerability is associated with ethnicity rather than nationality, information that is not captured in immigration data. However, a 2007 study provided some insight into the number of African women and girls living with or at risk of FGM in England and Wales in 2001, by cross referencing the number of known females of African origin living there against the prevalence of FGM in their country of origin. Their estimate was that 66,000 women were living with FGM in England and Wales, and that around 20,000 girls were at risk (Forward, 2007).

Although conducting or enabling FGM is illegal in the UK, girls from FGM practising communities are still at risk. FGM

practising communities in the UK are known to have their own practitioners here and to arrange for practitioners to come to the UK from the originating country to conduct FGM on groups of girls. Other girls are sent 'home' for mutilation during school holidays. The internet means that diaspora communities in the UK cannot avoid traditional expectations and mothers find themselves under huge pressure from older female relatives 'back home' to conform. It has been known for girls that have been sent 'home' on holiday to have been mutilated by family members without their parents' consent.

Mothers have to be highly motivated and assertive to resist on-going pressure to conform to tradition. Women who decide not to circumcise their daughters may face on-going internal doubts, especially if they plan to return 'home'. Some families may decide to 'fake' their daughter's circumcision to avoid pressure but this can backfire in later life if a husband insists it is done to her after marriage.

Although it is usually women that take a lead in the act of FGM, men are also involved as enablers: they are responsible for making preparations, resourcing, buying gifts for the girls, organising the parties and so on.

### **Who is at risk of FGM in Scotland?**

Those at risk of FGM in Scotland include all women and girls from FGM practising communities, particularly any girl born to a mother who has already undergone FGM, who is between 0-18 years old, or a girl who has a sister or cousin that has been subjected to FGM.

The families that subject their girls to FGM believe they are doing the right thing, it is very much part of their cultural identity and confers status and credibility. The tradition of FGM is older and considered more important than the concerns of any individual. It is a cultural requirement and an obligation of the family to 'purify' the girl for her own good and that of society. The vulva in its natural state is considered unattractive and unclean. If the girl is not mutilated it is understood that she will be shunned by her society and will be considered dirty and unsuitable as a wife. For many parents ensuring marriageability is both the responsible thing to do and an economic imperative. These families and the men expecting a 'purified' bride are caught up in age-old notions of chastity, fidelity and honour that seek to control female sexuality before and during marriage. FGM is underpinned by erroneous ideas that a good woman is sexually undemanding, and that FGM makes a woman calm and sex better for men.

### **Is FGM required by religion?**

There are those that argue that FGM is a religious obligation, which it is not. The practice predates many religions and is practiced among religious and non-religious groups alike including Muslims, Coptic Christians, Christians, Ethiopian Jews and animists. Nawal El-Sadawi in her book *'The Hidden Faces of Eve'* suggests that FGM came about, much as chastity belts did, when societies shifted from nomadic pastoralism to settled agriculture and men started leaving their women behind, and that this reflects, as do many of our patriarchal systems and structures, men's preoccupation with wanting to ensure that the baby is actually theirs.

## FGM is a violation of Human Rights

Whatever its source, FGM violates women and children's human rights. It:

- ❖ Violates the 1979 UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).
- ❖ Negates the 1989 UN Convention on the Rights of the Child (CRC) – the right to equality and to freedom from mental and physical violence.
- ❖ Interferes with the right to attain the highest standard of sexual and reproductive health.
- ❖ Affects the right to be free from torture or cruel and inhuman or degrading treatment.

## FGM is a Crime

In Scotland, since the Prohibition of Female Genital Mutilation (Scotland) Act 2005, is clear that it is a criminal offence. Yet since 2005 there have been no referrals, arrests or convictions.

There is a lack of knowledge and understanding of FGM across the services that need to know; education, social work, health, police and legal services. This is exacerbated by a fear of interfering in others' tradition, culture or religion, and being labelled a racist. Yet it is clearly more racist not to take action.

There is a need for a national action plan that brings together the understanding and efforts of NGOs, Scottish Government, police, social work, legal services, health education and the UKBA to bring the FGM (Scotland) Act 2005 to life.

## Scottish resources

Dignity Alert Research Forum (DARF) for training for service providers and awareness for the public and also offer advice and support to survivors or family members with concerns  
[www.darf.org.uk/](http://www.darf.org.uk/)

Shakti Women's Aid also offer advice support and survivor counselling [www.shaktiedinburgh.co.uk](http://www.shaktiedinburgh.co.uk) as does Saheyliya [www.saheliya.co.uk](http://www.saheliya.co.uk)

El Saadawi, Nawal (2007) *The Hidden Face of Eve*. Zed Books.

Forward (2007) A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales  
[www.forwarduk.org.uk/download/96](http://www.forwarduk.org.uk/download/96)

International Federation of Gynaecology and Obstetrics (12.2.13) "3m girls subjected to FGM annually, activist claims".  
[www.ifo.org/news/3m-girls-subjected-fgm-annually-activist-claims-0010885](http://www.ifo.org/news/3m-girls-subjected-fgm-annually-activist-claims-0010885)

World Health Organization. Female Genital Mutilation Fact sheet  
[www.who.int/mediacentre/factsheets/fs241/en/](http://www.who.int/mediacentre/factsheets/fs241/en/)

**Niki Kandirikirira is Executive Director of Engender. Until recently she was the chair of the Dignity Alert Research Forum, a Scottish / Tanzanian NGO that exists to raise awareness and end FGM and forced marriage.**

# What is the legal view?

## John Fotheringham explains the law on female genital mutilation in Scotland.

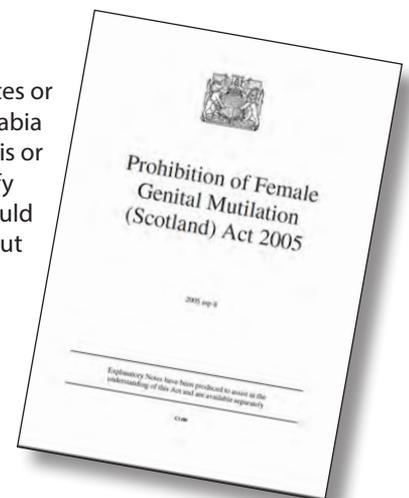
**FGM IS A CRIME** in Scotland, and a serious one, but there may be a lot of work to be done if those who believe that the practice is traditional, necessary and culturally sanctioned are to be made to understand that it cannot and will not be tolerated in this country, no matter where the victim or perpetrator may come from.

The Prohibition of Female Genital Mutilation (Scotland) Act 2005 is very brief and seeks to address a phenomenon which is uncommon in Scotland but almost certainly under-reported. The phenomenon is low incidence – high impact because, although it may not be widespread across the general population, the effects of FGM can be devastating for the victims concerned.

## The basic offence

The basic offence is set out in Section 1 and is committed by any person who excises or infibulates or otherwise mutilates the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of another person. The Act does not specify that the victim must be female, so the offence would still be committed if the mutilation were carried out on a person who had female genitalia as a result of gender reassignment surgery. The offence is not committed by a medical practitioner carrying out an operation for clinical reasons, including cosmetic surgery which may be necessary for a patient's mental health. When assessing the patient's mental health, no account is to be taken of any mental health issue which derives from a belief that FGM is necessary for cultural reasons. There may be difficult clinical decisions to be taken in this area and practitioners will have to be careful of any pressure, however subtle, being put on patients to conform to traditional community practices.

The words "or otherwise mutilates" are necessary because the traditional practices of FGM varies considerably according to the culture of the perpetrator.



## FGM, children and the family

The Act, by virtue of Section 7, amends the Criminal Procedure (Scotland) Act 1995 Schedule 1 by adding an offence against Section 1 of the 2005 Act where the victim is a child under the age of 17 years. This enhances the powers of the court in sentencing and also brings FGM into the realm of the Children's Hearing.

Section 3 provides that the offence under Section 1 is committed by a person who aids, abets, counsels, procures or incites anyone who commits an offence under Section 1. This can clearly criminalise a large group of people – possibly a whole family – if pressure is put upon a young person to consent to mutilation.

The scope of the Act is extended to include mutilation carried out abroad. Previously it was possible for a would-be perpetrator in Scotland to send his or her daughter outwith the UK to be mutilated there, or to encourage or abet such a move. By virtue of s4, that is an offence in Scotland and is treated as if the whole process of the mutilation had been carried out here.

The seriousness with which the Scottish Parliament has treated the matter is illustrated by the terms of Section 5 which deals with the penalties for an FGM offence which are on summary conviction to imprisonment for a term not exceeding six months for a fine or both and on conviction on indictment, imprisonment for a term not exceeding 14 years or a term not exceeding 14 years or a fine or both.

### No prosecutions – yet

So far as I am aware, there have been no prosecutions at all under the 2005 Act and this may be partly due to the small number of cases in Scotland. It may also be partly to do with the fact that corroboration will be required for any prosecution. But in England where there is no such strict requirement, there is an almost identical statute. It is safe to say that both demographically and numerically there is more FGM in England than in Scotland, and there have been almost no prosecutions there either. To some extent that may be because a potential victim reporting a family member as a perpetrator or encourager is already alleging a crime, unlike the person who seeks a Forced Marriage Protection Order which has no criminal significance unless and until it is breached. Most likely, however, the lack of prosecutions has been caused by a lack of appreciation or expectation within those communities in which FGM is practiced that the Scottish authorities intend to treat the case with great seriousness. Furthermore, potential victims themselves may not even regard the practice as being particularly objectionable – in the sense that they have any right to object to it.

Anecdotally FGM in Scotland is a feature principally of the Somali community although I know of no official statistics which support that view. If it is happening in Scotland at all then there are people who are carrying it out, aiding, abetting and encouraging it, all of whom are committing serious crimes. Some of the blame however must lie with those who have evidence of the practice, and who personally disapprove but who nevertheless feel that it's not their place to intervene lest they be thought racist or culturally insensitive.



A road sign in Uganda campaigning against female genital mutilation.

### What is to be done?

What can be done to ensure that the practice of FGM does not happen here, and to ensure that Scottish girls are not sent abroad to be mutilated? According to media reports, 6,000 French women and girls are mutilated every year despite a specific statute prohibiting it. By law every French child is medically examined up to the age of six, so a perpetrator will be unwise to attempt mutilation of a child below that age if he wishes the daughter to be brought up in France. Beyond that age it may be hoped that a child would at least be able to report the fact of mutilation and that may act as a slight deterrent. That sort of intervention is very unlikely to be introduced in Scotland.

In the USA several States have their own laws prohibiting FGM, and since 1997 there has been a Federal law prohibiting FGM (defined in almost the same terms as in the Scottish statute). In Australia the practice has been illegal since the 1990s but according to an ABC report, Melbourne Royal Women's Hospital sees 600 -700 women each year who have been FGM victims (ABC News, 2010).

Plainly a statute is not enough. As in many things, public education is the key both for the potential perpetrators who must understand that FGM is a serious crime in Scotland, and for potential victims who may have to be taught and reminded that it is something which they need not tolerate in Scotland, nor anywhere else.

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ABC News 6.2.10. "Female circumcision happening in Australia"  
[www.abc.net.au/news/2010-02-06/female-circumcision-happening-in-australia/2594496](http://www.abc.net.au/news/2010-02-06/female-circumcision-happening-in-australia/2594496)

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Prohibition of Female Genital Mutilation (Scotland) Act 2005.  
For bill, debates, Committee hearings and associated papers, see:  
[www.scottish.parliament.uk/parliamentarybusiness/Bills/24919.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/24919.aspx)

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