

The abolition of female circumcision in Eritrea: Inadequacies of new legislation

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Summary

Female circumcision is one of the predominant and most prevalent forms of violence against women in Eritrea. In an effort to tackle the formidable challenges of such a harmful traditional practice, a growing international awareness has emerged in the last few decades, resulting in the adoption of international conventions and declarations at the international level, and policies and legislation at the national level. Eritrea has recently adopted legislation banning female circumcision, joining the ranks of a few African countries which have adopted similar mechanisms to eradicate female circumcision as a form of violence against women. This article critically discusses the shortcomings of the new legislation and the overall strategy of the Eritrean government in the eradication of female circumcision. It is submitted that, in countries such as Eritrea where female circumcision is culturally deeply rooted, outright criminalisation without effective accompanying mechanisms is not always advisable. Female circumcision can only be eradicated by a multidimensional approach. Such an approach must encompass, among other things, meaningful and comprehensive education and campaign programmes, the involvement of independent democratic institutions and processes, as well as community and civil society engagement, all of which are vitally important in the eradication of female circumcision.

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1 Introduction

Eritrean history is predominantly characterised by a constant threat of natural and man-made calamities. Foremost among such disasters are the 30-year war for independence (1961-1991); the major famines of the 1940s, 1970s, 1980s, and the continued challenges of food security; the border conflict with Ethiopia (1998-2000); the suppression of fundamental rights by former colonial rulers and its continuation by the current government; and harmful traditional practices which still persist, affecting several segments of the Eritrean society. The overall impact of the above unfortunate developments has given rise to an impoverished society with women being one of the major groups affected by the imbalances. Of particular relevance to this study is the persistence of female circumcision (FC), one of the harmful traditional practices which inflict immense suffering on the wellbeing, health and human rights of Eritrean women. FC is one of the major causes of discrimination and violence against women (VAW) in Eritrea.

In an effort to tackle the formidable challenges of FC, the Eritrean government has recently promulgated legislation¹ which bans the practice of FC in Eritrea. The major objective of this article is to critically interrogate the role of the new legislation in the eradication of FC in Eritrea. The first part of the article discusses the practice and prevalence of FC in Eritrea and the societal attitude towards the practice. This is followed by an appraisal of the international obligations of Eritrea and a brief discussion of the national strategies and policies on FC before and after the independence of the country in 1991. The article evaluates the new legislation and its inherent shortcomings in the light of the prevailing legal and political context in Eritrea. Finally, based on the experi-

¹ Proclamation 158/2007: The Female Circumcision Abolition Proclamation (FC Proclamation); a copy of the legislation is available at <http://www.nuew.org/resources> (accessed 6 June 2007). It is also annexed to this article. The FC Proclamation uses the terms 'circumcision', 'cutting' and 'mutilation' intermittently. Without delving too deeply into the circumcision-cutting-mutilation dichotomy and following the approach adopted by the Eritrean legislation, the term FC will be used consistently in this article. However, the author is fully aware of the growing global concern that the term FC may undermine the harmfulness of the practice. For effective legal policy and action, a wide range of women's health and human rights organisations, including UN bodies, prefer the term female genital mutilation to FC. For further discussion on the issue of terminology, see RJ Cook *et al* *Reproductive health and human rights: Integrating medicine, ethics, and law* (2003) 262-263; A Rahman & N Toubia (eds) *Female genital mutilation: A guide to laws and policies worldwide* (2001) x; L Favali 'What is missing? Female genital surgeries: Infibulations, excision, clitoridectomy in Eritrea' (2001) 1 *Global Jurist Frontiers* 4 6; EH Boyle *et al* 'International discourse and local politics: Anti-female-genital-cutting laws in Egypt, Tanzania and the United States' (2001) 48 *Social Problems* 526; SA Dillon 'Healing the sacred *yoni* in the land of Isis: Female genital mutilation is banned (again) in Egypt' (2000) 22 *Houston Journal of International Law* 321; L Nyirinkindi 'Female genital mutilation as manifestation of gender-based violence in Africa' in E Delport (ed) *Gender-based violence in Africa: Perspectives from the continent* (2007) 147.

ence of other countries, the article draws lessons and makes practical recommendations for Eritrea.

2 Practice and prevalence

According to the definition adopted by the three major United Nations (UN) specialised agencies working in the area of women's and children's rights, the World Health Organisation (WHO), the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA), FC is a procedure 'involving partial or total removal of the external genitalia or other injury to the female genital organ, whether for cultural or other non-therapeutic reasons'.² Basically, it involves four different types of cutting, commonly known as excision, clitoridectomy, infibulation and other acts comprising a set of procedures such as pricking, piercing, incising or stretching of the clitoris or labia, and other procedures. All procedures result in irreversible and lifetime effects. The Joint Statement characterises excision as the commonest type of FC, accounting for up to 80% of all the cases around the world. Infibulation is the most extreme procedure and constitutes about 15% of all procedures.³

The FC Proclamation adopts a broader definitional spectrum, similar to that adopted by the Joint Statement. Article 2 of the Proclamation defines FC as:

- (1) the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);
- (2) the partial or total excision of the labia minora;
- (3) the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;
- (4) the stitching with thorns, straw, thread or by other means in order to connect the excision of the labia and the cutting of the vagina and the introduction of corrosive substances or herbs into the vagina for the purpose of narrowing it;
- (5) symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or
- (6) engaging in any other form of female genital cutting and/or cutting.

The three major types of FC practised in Eritrea are infibulation, clitoridectomy and excision.⁴ According to the 1995 Eritrean Demographic

² *Female genital mutilation — A joint WHO/UNICEF/UNFPA statement (1997)* 3 (Joint Statement), also available at http://www.who.int/reproductive-health/publications/fgm/fgm_statement.html (accessed 6 June 2007); see also WHO Fact Sheet No 241 *Female Genital Mutilation* (June 2000), also available at <http://www.who.int/mediacentre/factsheets/fs241/en/> (accessed 6 June 2007); WHO *Female Genital Mutilation: Report of a WHO Technical Working Group (1996)* 6.

³ Joint Statement (n 2 above) 5.

⁴ *Combined Initial, Second and Third Periodic Report of the Eritrean Government to the Committee on the Elimination of Discrimination Against Women*, UN Doc CEDAW/C/ERI/1-3/2004 (Report to the CEDAW Committee) 39.

and Health Survey,⁵ 95% of Eritrean women (about nine out of ten) had undergone some of form of FC. The 2002 Eritrean Demographic and Health Survey⁶ presents a slight (6%) decline in the prevalence of FC in Eritrea. The difference between the 1995 and 2002 EDHS is insignificant as far as the practice and prevalence of FC are concerned. Because of the insignificant difference, this article heavily relies on the 1995 EDHS. However, it is worth noting that the slight decline in the 2002 EDHS is understandably a result of the slow pace of progress in education, economic growth and urbanisation observed in the 1990s.⁷

In its initial report to the Committee on the Rights of the Child (CRC Committee),⁸ the Eritrean government recognises custom and tradition as the major reasons for the continued practice of FC in Eritrea. The prevalence of FC in Eritrea is one of the worst in the world.⁹ In some Eritrean ethnic groups, infibulation is commonly exercised. In the Afar ethnic group, notes Favali, the wound of a woman is sewn up with long mimosa thorns bound with cotton. During intercourse, 'the bridegroom deinfibulates the bride, who is held down during this usually painful defloration by two of his friends'. The practice of infibulation and deinfibulation continues 'until she has had three children'.¹⁰

Eritrean society is virtually evenly divided between Christianity and Islam in addition to minimal adherence to indigenous belief. The Eritrean lowlands are inhabited by nomadic Muslim communities, while the highlands are populated by Christian sedentary populations. Statistically, 99% of Muslim and 92% of Christian Eritreans have undergone FC. However, the disparity between the two religions as regards the practice of infibulation is remarkably noticeable:¹¹ 82% of Muslim Eritreans have undergone infibulation as compared to only 2% of Christians. The high prevalence of infibulation in the Eritrean lowlands indicates the need for an intensified awareness campaign and

⁵ 1995 EDHS. See also I Olenick 'Female circumcision is nearly universal in Egypt, Eritrea, Mali and Sudan' (1998) 21 *International Family Planning Perspectives* 47-49.

⁶ 2002 EDHS.

⁷ On the role of these factors in changing societal attitude, see Olenick (n 5 above) 48. However, with high levels of illiteracy and poverty, Eritrea is still one of the least developed countries in the world. According to the UN Development Programme (UNDP) Human Development Report 2006, available at <http://hdr.undp.org/hdr2006/statistics/> (accessed 11 October 2007), the human development index (HDI) for Eritrea is 0,454, which gives Eritrea a rank of 157th out of 177 countries.

⁸ *Initial Report of the Eritrean Government to the Committee on the Rights of the Child*, UN Doc CRC/C/41/Add.12/2002 (Report to the CRC Committee) para 215. See also R Odede & E Asghedom 'The continuum of violence against women in Eritrea' 2001 43 *Development* 71.

⁹ Report to the CRC Committee (n 8 above) para 456.

¹⁰ Favali (n 1 above) 22 (footnotes omitted).

¹¹ Favali (n 1 above) 18.

education programmes in those parts of the country. Excision and clitoridectomy are widely practised in the highlands.¹²

Although the detrimental effect of FC on the wellbeing, health and human rights of women is hardly controversial,¹³ there are claims that the harmfulness of the practice can be reduced by medicalising the procedure.¹⁴ However, studies indicate that surgical precautions do not completely eliminate the risks associated with FC.¹⁵ Moreover, leading authorities in reproductive and sexual rights confirm that there are no scientifically proven advantages of FC and as such 'the procedure carries no health benefit'.¹⁶ Above all, the practice is contrary to the obligations Eritrea has assumed under international law.

3 Eritrea's international obligations

At the heart of the debate on the abolition of FC rests the commitment of nations to respect the fundamental rights of women. According to Favali, by now a global consensus has almost developed with regard to the harmfulness of FC. Citing Sussman, Favali argues that what is not conclusively resolved is how to eradicate the practice.¹⁷ With its general mandate to promote human rights and the specific mandates of its specialised agencies, the UN has been at the forefront of efforts to eradicate FC. Regional and international bodies as well as non-governmental organisations (NGOs) and civil society organisations are also contributing immensely towards this end.

From an international human rights perspective, FC involves the infringement of several rights which are protected in various international instruments and commitments in declarations of non-binding nature. Favali recognises three major international dimensions to tackle the problem of FC, namely: the human rights dimension, the women's

¹² Report to the CRC Committee (n 8 above) para 215. There are nine officially-recognised ethnic groups in Eritrea. According to the 1995 EDHS, women of all these groups have undergone some form of FC: 100% of Hidarib; 100% of Nara; 99% of Afar; 99% of Bilen; 99% of Tigre; 98% of Kunama; 96% of Saho; 92% of Tigrinya. Rashaida constitutes by far the smallest of the nine Eritrean ethnic groups. Data on this ethnic group is not readily available. See also Favali (n 1 above) 17.

¹³ See Joint Statement (n 2 above) 7 for further details on the health complications of FC. See also the Preamble of the FC Proclamation.

¹⁴ See, eg, BM Tekeste 'Might is right, govt bans female circumcision' *Sudan Tribune* 7 April 2007 http://www.sudantribune.com/spip.php?page=imprimable&id_article=21217 (accessed 6 June 2007). Another argument by Tekeste seems to emanate from cultural relativism and finds itself somehow contrary to the widely held theory, the universality of human rights. See also Nyirinkindi (n 1 above) 147.

¹⁵ Dillon (n 1 above) 323.

¹⁶ Cook *et al* (n 1 above) 265.

¹⁷ Favali (n 1 above) 68; E Sussman 'Contending with culture: An analysis of the Female Genital Cutting Act of 1996' (1998) *Cornell International Law Journal* 31 193.

rights dimension and the children's rights dimension.¹⁸ The first approach relies on general international human rights principles¹⁹ that protect the rights of men and women equally. Support to the second approach emanates from regional and international instruments that specifically protect the fundamental rights of women.²⁰ The third approach is based on international instruments that specifically protect the rights of children, including the girl child.²¹ There are also non-binding international declarations and commitments with a firm call for the eradication of FC in the world.²² Rahman and Toubia assert that while such declarations are not legally binding, they represent international consensus on key norms.²³ The most important rights commonly discussed in the eradication of FC are:²⁴ the right to life and physical integrity;²⁵ the right to health;²⁶ the right to protection against discrimination;²⁷ the right to freedom from torture, inhuman,

¹⁸ Favali (n 1 above) 68-69. Favali attributes the formulation of this approach to S Meuwese & A Wolthuis 'Legal aspects of FGM: Legislation on international and national level in Europe' in E Leye *et al* (eds) *Proceedings of the Expert Meeting in Female Genital Cutting* (1998) 52-75. In combating FC, international anti-FC activists employ medical and human rights frames. See also EH Boyle & K Carbone-López 'Movement frames and African women's explanations for opposing female genital cutting' 2006 47 *International Journal of Comparative Sociology* 435-465; Rahman & Toubia (n 1 above) 15-43.

¹⁹ These are to be found mainly in the Universal Declaration of Human Rights, the UN Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the African Charter on Human and Peoples' Rights and other instruments.

²⁰ The most important gender-based regional and international instruments that help combat FC in the African context are the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

²¹ The international movement against FC can borrow legal support from the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

²² These include the documents emanating from the Vienna World Conference on Human Rights (1993), the Beijing Fourth World Conference on Women (1995), the Copenhagen World Summit on Social Development (1995), the International Conference on Population and Development (1996).

²³ Rahman & Toubia (n 1 above) 32.

²⁴ See generally Rahman & Toubia (n 1 above) 15-43; Nyirinkindi (n 1 above) 135-143; Favali (n 1 above) 68-73.

²⁵ See arts 1 & 3 of the Universal Declaration; arts 6 & 9(1) of CCPR; the Preamble of CESC; and art 4 of the African Charter.

²⁶ See art 25 of the Universal Declaration; art 12 of CEDAW; art 12 of CESC; arts 19(1) & 24(3) of CRC; arts 16 & 18(3) of the African Charter; art 14 of the Protocol to the African Charter; arts 14 & 21(1) of the African Children's Charter; see also CEDAW General Recommendation No 24. For further discussions on the right to health under international law, see C Ngweni & RJ Cook 'Rights concerning health' in D Brand & C Heyns (eds) *Socio-economic rights in South Africa* (2005) 107-151.

²⁷ See art 2 of the Universal Declaration; arts 1 & 55 of the UN Charter; art 2(1) of CCPR; art 2(2) of CESC; arts 1, 2 & 5 of CEDAW; art 18(3) of the African Charter; art 2 of the Protocol to the African Charter; see also CEDAW General Recommendation No 14.

and degrading treatment;²⁸ the rights of the child;²⁹ the right to culture;³⁰ and the right to religious freedom.³¹

Eritrea has ratified several international instruments which protect the fundamental rights of men and women. The following treaties ratified by Eritrea are of particular relevance to the current debate: the International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights (African Charter) and the African Charter on the Rights and Welfare of the Child (African Children's Charter). The commitment of Eritrea to ratify these instruments is commendable. There are, however, formidable challenges. As noted by the World Organisation Against Torture (OMCT), Eritrea has yet to sign other treaties and protocols, such as the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), the Optional Protocols to CRC, the Optional Protocol to CEDAW and the Optional Protocols to CCPR, all of which are vital for the full realisation of women's rights.³²

A similar concern about Eritrea's international commitment was noted by the 34th Session of the Committee on the Elimination of Discrimination Against Women. While praising the Eritrean government for ratifying CEDAW and other international instruments, the CEDAW Committee regretted that Eritrea had yet to sign the Optional Protocol to CEDAW and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³³ Eritrea has also not signed the Protocol to the African Charter on the Rights of Women in Africa.

Moreover, the Eritrean government was criticised by the CEDAW Committee for its delay in the submission of the report to the CEDAW Committee, which also did not comply with the guidelines for the preparation of reports. The Eritrean government was specifically

²⁸ See art 5 of the Universal Declaration, art 7 of CCPR, art 1 of CAT, art 37(a) of CRC, art 5 of the African Charter and arts 3 & 5 of the Protocol to the African Charter on Human and Peoples' Rights.

²⁹ See arts 2(1), 3(1), 6(1), 6(2), 16(1), 19(1), 24(1) & 24(3) of CRC; arts 4(1), 5(2), 10, 14(1) & 21(1) of the African Children's Charter.

³⁰ See arts 27(1) & 30 of the Universal Declaration; arts 5(1) & 15(10)(a) of CESCR; art 29(7) of the African Charter.

³¹ See art 30 of the Universal Declaration; art 5(1) of CCPR; and arts 8 & 27(2) of the African Charter.

³² World Organisation Against Torture (OMCT) 'Violence against girls in Eritrea — A report to the Committee on the Rights of the Child' (2003) http://www.omct.org/pdf/VAW/Publications/2003/Eng_2003_05_Eritrea.pdf (accessed 6 June 2007).

³³ Concluding Comments of the 34th Session of the Committee on the Elimination of Discrimination Against Women on Eritrea, UN Doc CEDAW/C/ERI/CO/3/2006 (Concluding Comments of the CEDAW Committee) paras 2 33-37.

urged to ratify the Optional Protocol to CEDAW and involve its parliament in the preparation of periodic reports before their submission to the CEDAW Committee.³⁴ The CEDAW Committee also urged the government to implement other obligations under CEDAW and relevant international declarations.³⁵ In principle, Eritrea demonstrates some degree of commitment in the eradication of FC, at least by ratifying some of the major international instruments. However, the country needs to do a lot in the realisation of women's rights as is required by its international obligations.

4 National strategy on the abolition of female circumcision

The Eritrean struggle for gender equality is as old as the underlying ideological transformations of the two major liberation fronts — the Eritrean Liberation Front (ELF) and the Eritrean People's Liberation Front (EPLF). As in all other cases, the pioneering liberation front in the empowerment of women is ELF.³⁶ What has been achieved by EPLF can only be seen as a continuation of what ELF has initially pioneered. EPLF, by continuing its struggle for the self-determination and empowerment of women, assumed an important role when it liberated the country in 1991. Throughout the struggle for self-determination, women played an active role. For example, of the tens of thousands of EPLF combatants, female freedom fighters constituted one-third of the liberation forces in active combat.³⁷ According to Odede and Asghedom, the mobilisation of women in the armed struggle has created a measure of equality between men and women, marking the beginning of awareness about gender disparity and the issue of reproductive and sexual rights, at the centre of which rests FC.³⁸

This was a breakthrough in the history of gender justice in Eritrea. Odede and Asghedom, for example, mention the transformation of

³⁴ As above. The recommendation of the CEDAW Committee on parliamentary involvement is particularly relevant in the context of the discussion in sec 5.4 below.

³⁵ n 33 above, paras 35 & 38. See also Concluding Observations of the 33rd Session of the Committee on the Rights of the Child on Eritrea, UN Doc CRC/C/15/Add.204/2003 para 62, in which the Eritrean government was similarly urged to ratify the Optional Protocols on CRC.

³⁶ See, eg, *The Eritrean Newsletter*, April and September 1979 issues (a publication of the ELF).

³⁷ See Statement of Ms Luul Gebreab, Head of the Eritrean Government Delegation to the 34th Session of the CEDAW Committee (24 January 2006) <http://www.un.org/womenwatch/daw/cedaw/cedaw34/statements/intstatements/eri.pdf> (accessed 6 June 2007); see also Odede & Asghedom (n 8 above) 69-70.

³⁸ Odede & Asghedom (n 8 above) 69-70. See also the National Charter of the Eritrean People's Front for Democracy and Justice (PFDJ), the successor to the EPLF, as adopted in 1994 (PFDJ Charter) 15.

marriage among EPLF fighters as a paradigm shift resulting from a revolutionary approach. For the first time in the history of Eritrea, assert the authors, 'men and women fighters were able to choose their marriage partners, contrary to the Eritrean tradition and culture of arranged marriages'.³⁹ During the armed struggle, EPLF has also forbidden the practice of FC by its members.⁴⁰ The social mobilisation towards emancipation of women heralded by the liberation struggle era served as a springboard for further planning and implementation after the liberation of the country in 1991. In the post-independence era, educational campaigns were also carried out, especially before 1998, with project activities supported by the National Union of Eritrean Youth and Students (NUEYS) and the National Union of Eritrean Women (NUEW), and the Ministries of Health, Education and Information.⁴¹ All such initiatives were, however, seriously undermined by the 1998-2000 'border conflict' with Ethiopia. After 2001, when Eritrea was formally turned into a police state,⁴² there existed no credible degree of commitment on the part of the government in the protection of human rights. By implication, the government's commitment in the eradication of FC is hardly plausible.

In the context of a clearly-defined national strategy, the first ever national anti-FC strategy of the Eritrean government was developed in 1999 as an outcome of a national workshop which was conducted in Asmara from 11 to 15 October 1999.⁴³ The workshop involved government ministries, traditional midwives, religious groups, UN agencies, bilateral donors and academics. Anything relevant to the discussion of a comprehensive national strategy on the eradication of FC, therefore, understandably begins in 1999. This was the time when the government claimed to have seriously committed itself to work for the eradication of FC in a comprehensive manner which gives priority to education and awareness campaigns. Prior to this, the government had in principle and in general terms demonstrated a commitment to gender equality via several pronouncements and documents of a binding and non-binding nature, such as the 1993 Interim Constitution,⁴⁴ the

³⁹ Odede & Asghedom (n 8 above) 69-70. See also Report to the CRC Committee (n 8 above) para 215. For further details on EPLF's anti-FC policies during the armed struggle, see Favali (n 1 above) 78-79.

⁴⁰ Rahman & Toubia (n 1 above) 146.

⁴¹ Odede & Asghedom (n 8 above) 71; Rahman & Toubia (n 1 above) 146.

⁴² On the sad state of affairs since 2001, see generally DR Mekonnen 'The reply of the Eritrean government to ACHPR's landmark ruling on Eritrea: A critical appraisal' (2006) 31 *Journal for Juridical Science* 26-56.

⁴³ Report to the CRC Committee (n 8 above) para 219.

⁴⁴ Proclamation to Provide for the Establishment, Powers and Functions of the Government of Eritrea (Interim Constitution). This Proclamation together with Proclamations 23/1992 and 57/1994 constitute the Interim Constitution of Eritrea.

1994 Macro Policy,⁴⁵ the 1994 PFDJ Charter and the 1997 Eritrean Constitution. However, as has been argued previously by this author,⁴⁶ the 1997 Eritrean Constitution has little practical significance in terms of human rights protection in Eritrea. This Constitution, adopted in 1997, has never been implemented. Moreover, the critical issues of legitimacy revolving around it make any discussion on the role of the 1997 Constitution inherently futile. In principle, however, the Constitution recognises the equal rights of men and women and prohibits discrimination based on gender.⁴⁷

5 The criminalisation of female circumcision

With a proclamation⁴⁸ promulgated in March 2007, the Eritrean government adopted a radical approach in the eradication of FC. Article 3 of the FC Proclamation outrightly abolished FC when it provided that '[f]emale circumcision is hereby abolished'. Article 4(1) prescribes that a person who performs FC 'shall be punishable with imprisonment of two to three years and a fine of five to ten thousand (5 000,00 to 10 000,00) Naqfa'.⁴⁹ The remaining part of this provision prescribes a more severe punishment for a practice of FC which causes death. The punishment may be more severe if FC is performed by a member of the medical profession. Moreover, the law intends to punish individuals who incite or promote the practice of FC. Individuals who are aware that the procedure is taking place, but who fail to inform or warn the relevant authorities, are also liable for punishment.

A legal ban is a major strategy in the abolition of FC.⁵⁰ The FC Proclamation states that FC is an invasive practice that 'seriously endangers the health of women, causes them considerable pain and suffering and

⁴⁵ Macro Policy of the Government of Eritrea (1994); Report to the CEDAW Committee (n 4 above) para 3. Although there is no functional parliament in Eritrea since 2002, arts 10(2) & 10(3)(a) of Proclamation 86/1996 (Local Government Proclamation) reserve 30% of parliamentary and regional assembly seats for women.

⁴⁶ See, eg, Mekonnen (n 42 above) 49-50. The overall issue of the 1997 Eritrean Constitution deserves urgent and special assessment in a separate contribution.

⁴⁷ Arts 7(2) & 14 of the 1997 Eritrean Constitution. Noting the historical role of women in the struggle for independence, the Preamble of the 1997 Constitution commits the nation to basic equality and mutual respect between men and women. On gender reference, see art 5 of the Constitution and B Habteselassie *The making of the Eritrean Constitution: The dialectic of process and substance* (2003) 127.

⁴⁸ FC Proclamation (n 1 above). By criminalising FC, Eritrea joined the camp of a few African countries which have adopted similar mechanisms to eradicate FC as a form of VAW. Only 14 countries out of the 29 in which FC is practised has thus far criminalised FC: Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Eritrea, Ethiopia, Ghana, Guinea, Kenya, Niger, Nigeria, Senegal and Tanzania. (Nyirinkindi (n 1 above) 148).

⁴⁹ One US dollar is approximately equivalent to 15 Eritrean Nakfa, the Eritrean currency.

⁵⁰ Joint Statement (n 2 above) 15. See also art 5 of the Protocol to the African Charter, which explicitly calls for criminalisation of FC; Nyirinkindi (n 1 above) 147-149.

threatens their lives'. FC 'violates women's basic human rights by depriving them of their physical and mental integrity, their right to freedom from violence and discrimination, and in the most extreme case, their life'.⁵¹ In the light of its detrimental effects on the wellbeing, health and human rights of women, FC is a practice which certainly has to be banned by legislation. This will be substantiated in the next subsection.

5.1 The need for legislation

The role of law in the abolition of FC was stressed by the Joint Statement in that 'legislation against female genital cutting is important both because it represents a formal expression of public disapproval and because it is the means by which governments can establish official sanctions'.⁵² In one of its latest publications, UNICEF has similarly reiterated the need for legislation which, according to the agency, must ban the practice of FC and penalise practitioners accordingly.⁵³ The critical question remains, however, whether the legal sanction and the point at which it is introduced are compatible. In this regard, the Joint Statement has warned:⁵⁴

If most people in a society value female genital cutting highly and consider it a necessary practice, then legislation in the absence of community-based action is an insufficient and inappropriate strategy. Legislation against female genital cutting is most effective when a system of child monitoring and protection is in operation, when there is widespread education of communities and mobilisation of public opinion against the practice, and when women and communities are involved in efforts to abolish the practice.

Reports by the Eritrean government claim that the promulgation of the FC Proclamation was preceded by nationwide and inter-sectoral campaigns, awareness raising and education programmes, involving all segments of society and stakeholders. For example, the head of information and research at the NUEW, Ms Dehab Suleiman, has 'expressed optimism that efforts to combat ... [FC] were bearing fruit, saying the campaign against the practice was gaining support in rural villages where *excision* was most common'.⁵⁵ This was revealed a month before the FC Proclamation was promulgated and indicated that Eritrea was ready by then to implement the ban.

However, Ms Suleiman was commenting mainly on one form of FC, that is, excision. The comments are indicative of the trends observed in

⁵¹ Paras 1 & 2 of the Preamble of the FC Proclamation (n 1 above).

⁵² Joint Statement (n 2 above) 15.

⁵³ UNICEF Child Protection Information Sheet: Female Genital Mutilation/Cutting (May 2006) <http://www.unicef.org/protection/files/FGM.pdf> (accessed 0 October 2007).

⁵⁴ Joint Statement (n 2 above) 15.

⁵⁵ IRIN News 'Campaign against FC "is working"' <http://www.irinnews.org/Report.aspx?ReportId=70174> (accessed 14 February 2007) (my emphasis).

the highlands of Eritrea, because it is in those parts of Eritrea where excision is practised widely. Without mentioning one or another form of FC, the Minister of Health, Mr Saleh Meki, has made similar comments.⁵⁶ None of the officials elaborated on the other procedures of FC prevalent in Eritrea, namely, clitoridectomy and infibulation. The latter, which is the most radical form of FC, is mainly practised in the Eritrean lowlands, where it is traditionally deeply-rooted. The Eritrean lowlands, mainly inhabited by pastoral nomadic communities, are the most disadvantaged parts of the country in which campaign and awareness should naturally have intensified. If anything, the comments of officials indicate that the purported campaign and awareness programmes focused only on certain parts of the country, disproving the claim that awareness programmes have been successfully conducted nationwide.

Neither is it evident whether awareness and education programmes have borne fruitful results in other parts of the country. Official information in this regard is severely lacking and, if available, too sketchy. There are no measurable indicators on the progress achieved through outreach and campaign programmes, including formal education. Ms Suleiman admitted this when she indicated that no statistics were available to prove the developments allegedly achieved.⁵⁷ In the absence of measurable benchmarks, it is difficult to claim that campaigns, awareness and education programmes have really achieved the desired end.

Any law adopted within such a context would, therefore, be hard to enforce. As in other African countries,⁵⁸ the social forces that motivate Eritreans to continue the practice of FC are still endemic. Criminalisation is, therefore, an inadequate response to a formidable challenge. Its impact on the eradication of FC is unlikely, at least at this stage. For any legislation to have the desired effect, there must also be a clear plan of implementation. As will be seen later, this is currently severely lacking in Eritrea. Another visible shortcoming in the FC Proclamation is that there is no clearly defined organ mandated with the responsibility to oversee and monitor the eradication of FC.

5.2 The theory of functional relevance

In societies such as Eritrea, where the practice of FC is inseparable from

⁵⁶ As above.

⁵⁷ She said: '[W]e do not have the statistics yet, but we have seen a positive response.' See IRIN News (n 55 above). Similarly, the President of the NUEW, Ms Luul Gebreab, was not quite sure when she said: 'We do not believe [the ban] will automatically eradicate circumcision.' See J Kimbau 'Eritrea bans female circumcision' Reuters <http://www.reuters.com/article/LatestCrisis/IdUSL05181425> (accessed 5 April 2007).

⁵⁸ See, eg, Egypt as discussed by Dillon (n 1 above) and Tanzania, as discussed by Boyle *et al* (n 1 above) 533-535; Nyirinkindi (n 1 above) 147. See also IRIN News 'Burkina Faso: Girl's death prompts search for new strategies to fight FGM' <http://www.irinnews.org/Report.aspx?ReportId=74529> (accessed 8 October 2007).

the cultural identity and social values of all population groups, issues of FC are relevant virtually to the whole society. In such kind of scenarios, anti-FC policies are the most contested. Boyle *et al* attribute this to the theory of functional relevance of laws.⁵⁹ Examining two African countries which have recently adopted a legal ban on FC — Egypt and Tanzania — the authors argue that in the context of the theory of functional relevance, laws have to fit into a local cultural, religious and political context.⁶⁰

In Egypt, where the prevalence of FC has a remarkable similarity to Eritrea, the adoption of anti-FC policies has always been widely controversial.⁶¹ Similarly, in Tanzania, local custom underscores the functional relevance of anti-FC policies in the sense that in some population groups ‘an uncircumcised woman is never called a “mother”, even if she has children’. In other groups, women who have not undergone FC are assigned demeaning names and ‘laughed at by other women when they go to bathe’.⁶² These attitudes are remarkably comparable to the Eritrean experience, as discussed in the preceding sections.⁶³ If anything, this implies that hasty criminalisation of the practice is not the best approach at all. In the absence of grassroots support, rushed criminalisation only paves the way for surreptitious but intensive efforts to persist with the practice.⁶⁴ Support for this argument is to be borrowed, for example, from the experience of Burkina Faso where, in the absence of effective anti-FC strategies, legislation plays little role. The latest reports from Burkina Faso indicate that children are cut during their early age (with some reports of death)⁶⁵ to avoid the report of such practices by girls against whom FC is practised. Furtive practices persist regardless of a legal ban if there is an apparent lack of a comprehensive multi-dimensional anti-FC strategy.

Conversely, in countries such as the United States of America (US), where the practice of FC is not common and has no direct cultural relevance to the vast majority, anti-FC policies are largely symbolic,

⁵⁹ Boyle *et al* (n 1 above) 531-533.

⁶⁰ Boyle *et al* (n 1 above) 531. This must not be confused, however, with cultural relativism.

⁶¹ In this regard, Boyle *et al* (n 1 above) 532 quote a pertinent comment by an Egyptian FC opponent who asserted: ‘For us, the struggle against FC involves promoting the welfare of women and their right to take full control of their lives, not conducting a battle against women who circumcise their daughters.’

⁶² Boyle *et al* (n 1 above) 533.

⁶³ See the discussion in part 2 above. Compare this with the observations of the Eritrean government as reflected in the Report to the CRC Committee (n 8 above) para 215: ‘[W]omen who have not undergone some form of circumcision are seen as being “impure”, having uncontrollable sexual impulses which drive them to sexual deviation and prostitution, and often put them in the category of being “unmarriageable”. Genital mutilation is also considered a social rite of passage that can be avoided only at the cost of ostracism.’

⁶⁴ See, eg, Dillon (n 1 above) 312-318.

⁶⁵ See, eg, *IRIN News* (n 58 above).

and a legal ban on FC is not controversial. According to Boyle *et al*, the US is one of the countries whose FC policy is 'extra-national' or substantially more international. The FC law was weighed in terms of the message it would send to other countries, where the practice is more common.⁶⁶ This debate is linked to the current issue, along with another important factor in the eradication of FC, international aid and pressure, as discussed in the next section.

5.3 International aid and pressure

The development of FC strategies in African countries, write Boyle *et al*, was influenced by growing international pressure aimed at the eradication of FC.⁶⁷ Apart from the UN, international civil society, regional and international NGOs and concerned individual countries, the developed world and international donor organisations (which are most of the time driven by the interests of the former) are also playing a prominent role in the eradication of FC. This is done mainly by linking development aid with human rights and democratisation.

Boyle *et al* identify the US as one of the leading countries which have linked its 1996 anti-FC Federal Act⁶⁸ with foreign aid in such a way that the law enabled the American government to adopt punitive measures to ensure that other countries also develop anti-FC strategies. A concrete example mentioned by the authors is Egypt, which in the 1990s was pressurised to develop a strategy on the eradication of FC under constant threat from the US to cut off financial aid.⁶⁹

Favali has also commented on the practice of the US. The US government pressurises countries to adopt anti-FC policies through its prominent development agency, USAID, by threatening to withhold assistance from those countries that have not taken positive steps.⁷⁰ Dillon argues that in countries such as Germany, there are NGOs which lobby 'the government to make a clear policy statement against FC and to make financial aid contingent on government campaigns against FC'.⁷¹ This means that at times governments can adopt anti-FC laws, not out of a genuine commitment towards such an end, but mainly due to wanting to secure or fear of losing aid from the developed world.

By the time the FC Proclamation was adopted, there was no visible pressure from the side of the US against Eritrea. However, the role of the

⁶⁶ Boyle *et al* (n 1 above) 536.

⁶⁷ Boyle *et al* (n 1 above) 529. See also, eg, Joint Statement (n 2 above) 17, which proposed the eradication of FC in three generations.

⁶⁸ Public Law No 104-208, 1 10 Stat. 3009-3708, 1996, as quoted in Boyle *et al* (n 1 above) 535.

⁶⁹ n 68 above, 533-535; see also Dillon (n 1 above) 320.

⁷⁰ Favali (n 1 above) 66.

⁷¹ Dillon (n 1 above) 302.

European Union (EU) deserves critical examination. The diplomatic relationship between Eritrea and the EU was a strained one since Eritrea expelled the representative of the EU in 2001. Relations begun to improve in January 2007 when the EU Commissioner for Development and Humanitarian Aid, Mr Louis Michel, paid a surprise visit to Eritrea, becoming the first and highest EU official to visit the country in several years. In the meeting, 'the two sides agreed to open a new chapter in their relations'.⁷² The Eritrean government adopted the FC Proclamation in March 2007. In May 2007, in what became his first visit after several years of isolation from the international arena, President Isaias Afwerki was officially invited to visit Brussels.⁷³ On 4 May 2007 in his meeting with President Afwerki, Commissioner Michel singled out the legal ban on FC and praised Eritrea for that. On 7 May 2007, the EU approved a development assistance of €122 million to Eritrea.⁷⁴

Although such a claim may not be conclusive, the Eritrean case somehow fits into a scenario where the government had to, at a certain stage, expedite the promulgation of the law, not only to attract development aid but also to further other ends motivated by ulterior motives. The FC Proclamation has possibly developed as a tactful plan designed to ease international pressure against Eritrea and to refurbish the tarnished image of the Eritrean government, known for its alarming record of human rights violations.⁷⁵ The political and diplomatic developments before and after the legal ban on FC are indicative of hastiness on the part of the Eritrean government, if not pressure from the EU. Most importantly, however, the stance of the EU gives rise to other legitimate concerns. By allowing unconditional aid to one of Africa's notorious dictatorships, the EU has seriously undermined its commitment to human rights and democratisation.⁷⁶

The above inquisitive analysis on the speedy adoption of the FC Proclamation must be seen against the long-standing 'strategy' of the Eritrean government which emphasised that FC should be seen as a

⁷² ReliefWeb 'President holds talks with EU delegation' <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EGUA-6XZR82?OpenDocument> (accessed 6 June 2007).

⁷³ See Reuters AlertNet 'EU embraces Eritrea in search for Horn peace' <http://www.alertnet.org/thenews/newsdesk/L04519421.htm> (accessed 4 May 2007).

⁷⁴ Europe Information Service 'Commission seeks to strengthen political dialogue' http://www.meskerem.net/EU_ERITREA%20COMMISSION%20SEEKS%20TO%20STRENGTHEN%20POLITICAL%20DIALOGUE.htm (accessed 7 May 2007).

⁷⁵ See in this regard DR Mekonnen 'Prosecuting the human rights violations of Eritrean government officials: Possibilities under international law' *International Journal of Transitional Justice* (forthcoming, 2008).

⁷⁶ In contrast, in 2006, the EU turned down a desperate application for funding by a prominent Eritrean civil society organisation, which works in the area of human rights and democratisation. The application was made by the Eritrean Movement for Democracy and Human Rights (EMDHR), but was turned down on peripheral grounds.

public health concern and not as a matter of prosecution.⁷⁷ The government has firmly emphasised the futility of outlawing FC without being able to convince and educate the public to abandon the deeply-rooted harmful practice. In the words of the government, 'simply banning the practice will not wipe it out'. Instead, the government held that '[l]ong-term community education is the only effective means of bringing about [a] change'. This position, which in some ways supports the conclusions of this article, was strongly voiced by the Eritrean government as recent as in 2004.⁷⁸ When the FC Proclamation was promulgated in 2007, the Eritrean government offered no quantifiable indicators on the effective transformation of the deeply-rooted belief associated with FC. In fact, circumstances on the ground disprove any positive development in that regard. Government accounts claim that in recent years campaigns have been conducted with the two non-independent 'civil society' organisations, NUEW and NUEYS, assuming a leading role in such campaigns. However, with the poor record of the government's commitment to human rights protection and the discouraging legal and political situation in the country, the government's commitment in the above regard is questionable. Furthermore, there are no clear justifications as to why the Eritrean government changed its position from that which it held in 2004. Until that time, the government's position on the eradication of FC was squarely opposed to criminalisation on the grounds that the practice remained deeply rooted in culture. In a practical sense, it is also impossible to assume that a deeply-entrenched cultural and social pressure attached to FC can vanish in a very short period of time (between 2004 and 2007). As noted by Rahman and Toubia, legislative action, unsupported by other plans, can hardly change social behaviour.⁷⁹

5.4 The issue of legitimacy

The legal and political situation under which the FC Proclamation was developed is informative of the government's flawed commitment in the eradication of FC. As is common with the promulgation of other laws, the legislative history of the FC Proclamation is not easily traceable. Eritrean legislative process is uniquely characterised by secrecy and opaqueness. The same is true about the legislative history of the FC Proclamation. Gebremedhin defines the law-making process in Eritrea as a development which offers the worst experience; and the Eritrean

⁷⁷ Rahman & Toubia (n 1 above) 145.

⁷⁸ See the position of the government as noted in the Report to the CRC Committee (n 8 above) para 215.

⁷⁹ Rahman & Toubia (n 1 above) xiv.

National Assembly (parliament) is one which 'does not even have the luxury of "rubberstamping"'.⁸⁰

The issue of access to laws and official documentation is another critical challenge in Eritrea. There is no easily-accessible depository of laws in Eritrea, making academic research extremely difficult and at the same time reflecting on the unresponsive, undemocratic and unaccountable nature of the Eritrean government. When other misleading and propagandist information is abundantly available on the official websites of the government, there is a dearth of information on laws and policies of paramount importance. For example, a copy of the FC Proclamation is not yet publicly accessible on the official government website, www.shabait.com. The only copy available is from the website⁸¹ of NUEW, which is less known by the public than the official government website.

The entry into force of the FC Proclamation also raises critical concerns. There is an absurd contradiction in this regard, with three different dates being given. According to the FC Proclamation, the law was '[adopted] at Asmara, on [the] 20th day of March 2007'.⁸² However, it was made public only on 4 April 2007 by the Ministry of Information. The Ministry of Information indicated that the legislation 'has gone into force as of 31 March 2007'.⁸³ This underscores the government's flawed commitment, not only in the eradication of FC, but also in the broader objectives of democratisation.⁸⁴ In terms of legality, the FC Proclamation falls short of legitimate authority for the following major reasons.

As is now widely reported by credible sources,⁸⁵ Eritrea is a country where a democratic culture and participatory processes are severely lacking. This is true, particularly since September 2001, when the country was literally turned into a police state as a result of a wide-ranging crackdown on popular demands for democratisation. Eritrea is now a country with no independent parliament, no independent judiciary, no

⁸⁰ Y Gebremedhin *The challenges of a society in transition: Legal development in Eritrea* (2004) 136. See also SM Weldehaimanot & DR Mekonnen 'The nebulous lawmaking process in Eritrea' *African Human Rights Law Journal* (forthcoming, 2008).

⁸¹ n 1 above.

⁸² See the last paragraph of the FC Proclamation (n 1 above).

⁸³ 'Proclamation issued to abolish female circumcision' 4 April 2007 http://www.shabait.com/staging/publish/article_006428.html (accessed 4 April 2007).

⁸⁴ On the forgotten promises of democratisation and the resultant repercussions on the Eritrean legislative process, see generally Weldehaimanot & Mekonnen (n 80 above).

⁸⁵ See, eg, Freedom House *The worst of the worst: The world's most repressive societies* (2007). See also the annual and periodic reports of Amnesty International, Human Rights Watch, Committee to Protect Journalists (CPJ), Reporters without Borders (RSF), UK Home Office Country of Origin Information Report: Eritrea (2007), and US State Department Country Reports on Human Rights Practices: Eritrea (2007).

independent press and no implemented constitution.⁸⁶ Eritrea is in fact the only country in Africa, perhaps also in the world, without an implemented constitution. The country has never seen free and fair elections since its independence in 1991. According to the Committee to Protect Journalists (CPJ)⁸⁷ and Reporters without Borders (RSF),⁸⁸ Eritrea is the biggest prison of journalists in Africa and remains without a free press for several years. Most of all, there is no independent law-making process in Eritrea from which the FC Proclamation should have emanated. This point deserves a little more explanation.

One of the adverse consequences of the 2001 crackdown was that it has severely weakened state institutions, such as the judiciary and parliament, thereby necessitating an unfettered concentration of power in the hands of the President. Although a rubberstamp since its inception, the Eritrean National Assembly was the major state institution severely affected by the 2001 crackdown.⁸⁹ Since then, the National Assembly was only convened in February 2002. This was done only to denounce a group of reformers, who criticised the President and by reason of which all remained in detention without trial.⁹⁰ Afterwards, contrary to the requirements that it be convened every six months,⁹¹ the Eritrean National Assembly has never convened and remained in hibernation. In its report to the relevant UN bodies, the Eritrean government has made it clear that the promulgation of laws in Eritrea is a major task reserved to the National Assembly.⁹² It is not clear, however, how the FC

⁸⁶ For the adverse political developments after the September 2001 crackdown, see generally Awate Team 'The chronology of the reform movement' <http://www.awate.com/cgi-bin/artman/exec/view.cgi/17/578/printer> (accessed 5 December 2002); D Connell *Conversations with Eritrean political prisoners* (2005); Mekonnen (n 42 above).

⁸⁷ Committee to Protect Journalists (CPJ) 'Special reports from around the world: In imprisoning journalists, four nations stand out' http://www.cpj.org/Briefings/2005/imprisoned_04/imprison_release03feb05na.html (accessed 5 February 2005).

⁸⁸ Reporters without Borders (RSF) 'Africa's biggest prison for the press since 18 September 2001' http://www.rsf.org/article.php3?id_article=11422 (accessed 20 September 2004).

⁸⁹ The judiciary was also affected by the summary dismissal of the President of the High Court of Eritrea, the highest court in the country, Judge Teame Beyene. Judge Beyene was dismissed as a result of his widely acclaimed public statement which denounced the unjustified interference of the executive branch in the domains of the judicial organ. See T Beyene 'The Eritrean judiciary: Struggling for independence' (paper presented at the Conference on the 10th Anniversary of Eritrea's Independence, Asmara, May 2001), also available at http://news.asmarino.com/Comments/August2001/kidaneHG_08_23.asp (accessed 6 June 2007).

⁹⁰ See Mekonnen (n 42 above) 28.

⁹¹ See art 4(3) of the Interim Constitution (n 44 above). Compare this with the Concluding Comments of the CEDAW Committee (n 33 above) paras 2 33-37, in which the Eritrean government was advised to involve its parliament in the preparation of periodic reports to the CEDAW Committee. This implies that there is no parliamentary role of whatsoever nature in Eritrea.

⁹² See, eg, the Report to the CRC Committee (n 8 above) paras 14 & 41 and the Report to the CEDAW Committee (n 4 above) 32.

Proclamation was adopted in March 2007. In reality, there is no functioning parliament in Eritrea and this was the case when the FC Proclamation was adopted.⁹³

What is worst, there are no independent alternative mechanisms in Eritrea by which the general public could participate in the adoption of laws which affect the rights and interests of individuals and communities. Inherently, the FC Proclamation falls short of the requirements of legitimacy from which the power and enforceability of the law should emanate. Such a sad development may also possibly frustrate future anti-FC strategies in Eritrea.

5.5 Inter-sectoral involvement

Any strategy that aims at the eradication of FC can bear fruitful outcomes only if the adoption of such a strategy is augmented by inter-sectoral involvement. In its Report to the CEDAW Committee, the Eritrean government clearly stated that deeply-rooted traditional practices such as FC can only be eradicated by 'a well-co-ordinated and integrated inter-sectoral campaign among all stakeholders (public sector, local and community authorities, religious community, local NGOs, etc)'.⁹⁴ Inter-sectoral involvement should also mean the participation of international civil society organisations as well as opposition groups. The emergence of innovative approaches and the introduction of new ideas are crucial in this regard. However, the overall legal and political situations in Eritrea do not allow for the adoption of a multi-dimensional approach towards FC. In Eritrea, there are neither opposition parties nor independent civil society organisations or NGOs which could have added independent input in the adoption of pertinent national policies such as the FC Proclamation. Since 1997, as a result of a harsh anti-NGO policy, several international civil society organisations have been expelled from Eritrea, leaving a huge gap in different areas of expertise.⁹⁵ The few still operating in the country are only involved in humanitarian and emergency assistance programmes such as de-mining, the reintegration of internally displaced communities, and so forth.

The major NGOs involved in the adoption of anti-FC strategy were the NUEYS and the NUEW. These two organisations are the youth and

⁹³ Art 4(4) of the interim Constitution (n 44 above) proclaims that the National Assembly is the highest legal authority in Eritrea. Art 5(h) has explicitly reserved 'the promulgation of laws' to the National Assembly.

⁹⁴ Report to the CEDAW Committee (n 4 above) 39.

⁹⁵ The latest report by Human Rights Watch, eg, indicates that in 2006, the Eritrean government expelled six Italian aid NGOs and confiscated their equipment and supplies. The government told Mercy Corps, Concern Worldwide and the Agency for Co-operation and Research in Development (ACORD) to leave. These were some of the last NGOs remaining in Eritrea. See Human Rights Watch 'World Report 2007: Eritrea' <http://hrw.org/englishwr2k7/docs/2007/01/11/eritre14698.htm> (accessed 6 June 2007).

the women's leagues (arms) of the ruling party, whose leaders are single-handedly appointed by the party. In other words, they are typical examples of government-operated non-governmental organisations (GONGOs). In contemporary civil society discourse, GONGOs are set up or maintained by undemocratic governments as 'NGOs' to disguise foreign aid and pay lip service to civil society participation.⁹⁶ A clear indication in this regard is that the delegation of the Eritrean government to the 33rd session of the CEDAW Committee was headed by the President of the NUEW.⁹⁷ In all such sessions, state parties to CEDAW are represented by an official government delegation. If the NUEW was an NGO, the story would have differed. The NUEYS and the NUEW are part and parcel of the ruling party apparatus. In a real sense, there was no meaningful inter-sectoral involvement in the adoption of the FC Proclamation.

There is also a general understanding that education, awareness raising, advocacy, economic growth and urbanisation are important factors in changing societal attitude favourably. Nyirinkindi is of the view that attitudes towards FC can be influenced by customised interventions aimed at the demystification of the practice and diversion of circumcisers into other professions. She also suggests that the cultural rite of passage associated with FC can be neutralised by the introduction of innovative alternative rituals.⁹⁸ The education of women is regarded as the most important factor in this regard. Olenick asserts that, in most countries, education plays a pivotal role in achieving lower levels of support for FC. As a reflection of this, FC is supported by 75% of Eritreans with no education, 34% of those with a primary education, and 18% of those with secondary or higher education.⁹⁹ In spite of this, the educational system in Eritrea is alarmingly unpromising. Since 2003, the government has implemented a stringent educational policy, the effects of which have severely undermined academic freedom and research, impacting on the essence of the educational curricula.

As a result of brutal martial rule, which has prevailed in the country over the last several years, demagoguery, indoctrination and militarisation have effectively overtaken the educational curricula in Eritrea. The

⁹⁶ Examples of GONGOs in other countries are the Myanmar Women's Affairs Federation; Nashi, a Russian youth group; the Sudanese Human Rights Organisation; Saudi Arabia's International Islamic Relief Organisation; Chongryon, the General Association of Korean Residents in Japan; etc. See M Naím 'What is a GONGO?' *Foreign Policy* May/June 2007 http://www.foreignpolicy.com/story/cms.php?story_id=3818&fsrc=ealert070430 (accessed 6 June 2007).

⁹⁷ See Statement of Ms Luul Gebreab (n 37 above). It must also be noted that the defection of the former Chairperson of the NUEYS, Mr Muhyedin Shengeb, in 2004, is another indication of the non-independence of the NUEYS. Ever since, Mr Shengeb lives in exile.

⁹⁸ Nyirinkindi (n 1 above) 143-145 150.

⁹⁹ 1995 EDHS (n 5 above); Olenick (n 5 above) 48.

country's 'high schools' and 'colleges' have been turned into militarised schools, where students are regimented and disciplined under stringent martial rule. In 2004, the militarisation of education was criticised by the UNICEF representative in Eritrea as a violation of the African Children's Charter, because it separated children from their families and forced them into a military environment.¹⁰⁰ As such, the current educational policy and the substance of its curricula are neither student-friendly nor conducive to nurture critical thinking with the ultimate objective of transforming harmful traditional practices. Similarly, in terms of educating women, little influence has been had by the government, the NUEYS and the NUEW in recent years, especially since 2001. Moreover, the role of the media in the eradication of FC is understandably indispensable. With the right to freedom of expression severely curtailed, there is no space for an independent media to play any role in anti-FC strategy.

6 Conclusion

FC is an exceedingly prevalent harmful practice in Eritrea. It is inherently detrimental to the enjoyment of the fundamental rights of women as protected by international human rights standards. Although a consensus has by now developed with regard to the harmfulness of the practice, the debate on how to eradicate the practice remains controversial. In countries such as Eritrea, where the practice of FC is inspired by the cultural identity and social values of all population groups, anti-FC issues are virtually relevant to all local communities. In such an environment, outright legislative abolition of the practice without supporting mechanisms may prove counterproductive.

Although criminalisation is one of the most important approaches in the eradication of FC, experience in some countries tells us that FC cannot be eradicated merely by criminalising the act. Anti-FC strategies must be supported by a multidimensional approach involving different measures and policies. A legislative action inherently suffering from severe inadequacies, merged with apparent lack of government commitment in the promotion of human rights and democratisation, will continue to seriously undermine anti-FC strategies in Eritrea.

The new legislation is not the outcome of a genuine government commitment towards the eradication of FC. In any event, the law lacks the required legitimate foundation that gives it enforceability and popular acceptance by the general public. The legal and political contexts under which the FC Proclamation was adopted have dire implications for the strategy. All national strategies and policies in

¹⁰⁰ Amnesty International "You have no right to ask". Government resists scrutiny on human rights' 24 May 2004 (AI Index: AFR 64/003/2004).

Eritrea can only bring the desired effect when the country commits itself to a genuine and accountable democratic culture, the foundation of which is the protection of fundamental rights. This is severely lacking in Eritrea and will continue to undermine the realisation of women's rights in the country.

Annexure

Proclamation No 158/2007 (A Proclamation to Abolish Female Circumcision)

Whereas, female circumcision is a procedure that seriously endangers the health of women, causes them considerable pain and suffering and threatens their lives;

Whereas, this procedure violates women's basic human rights by depriving them of their physical and mental integrity, their right to freedom from violence and discrimination, and in the most extreme case, their life;

Whereas, the immediate or long-term harmful consequences of this procedure vary according to the type and custom of the procedure performed;

Whereas, its immediate consequences include severe pain, haemorrhage which can cause fainting or death, ulceration of the genital region and injury to adjacent tissues, urine retention and dangerous infection;

Whereas, its long-term consequences include recurrent infection of the urinary system, permanent infection of the fertility system, complications in child-birth (barrenness) and scar formation such as increasing abscess in the labia minora and, prevention of menstruation;

Whereas, it has been traditionally practiced and is prevalent in Eritrea; and

Whereas, the Eritrean Government has decided to abolish this harmful procedure which violates women's rights;

Now, therefore, it is proclaimed as follows:

Article 1 Short citation

This proclamation may be cited as 'The Female Circumcision Abolition Proclamation No. 158/2007'.

Article 2 Definition

In this Proclamation, 'female circumcision' means:

- (1) the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);
- (2) the partial or total excision of the labia minora;
- (3) the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;
- (4) the stitching with thorns, straw, thread or by other means in order to connect the excision of the labia and the cutting of the vagina and the introduction of corrosive substances or herbs into the vagina for the purpose of narrowing it;
- (5) symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or

- (6) engaging in any other form of female genital cutting and/or cutting.

Article 3 Prohibition of female circumcision

Female circumcision is hereby abolished.

Article 4 Punishment

- (1) Whosoever performs female circumcision shall be punishable with imprisonment of two to three years and a fine of five to ten thousand (5,000.00 to 10,000.00) Nakfa. If female circumcision causes death, imprisonment shall be from five to ten years.
- (2) Whosoever requests, incites or promotes female circumcision by providing tools or by any other means shall be punishable with imprisonment of six months to one year and a fine of three thousand (3 000,00) Nakfa.
- (3) Where the person who performs female circumcision is a member of the medical professions, the penalty shall be aggravated and the court may suspend such an offender from practicing his/her profession for a maximum period of two years.
- (4) Whosoever, knowing that female circumcision is to take place or has taken place, fails, without good cause, to warn or inform, as the case may be, the proper authorities promptly about it, shall be punishable with a fine of up to one thousand (1 000,00) Nakfa.

Article 5 Effective date

This Proclamation shall enter into force as of the date of its publication in the Gazette of Eritrean Laws.

Done at Asmara, this 20th day of March, 2007
Government of Eritrea