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The FGM Legislation Implemented: Experiences from Sweden

Since 1982, when Sweden passed the first law against FGM, two cases have been taken to court and ended in custodial sentences. There are also a growing number of cases where young girls have been genitally examined without consent, a fact that can be seen as a sign of the general societal willingness to implement the law. These circumstances will be described below, after a brief introduction including the Swedish FGM legislation.

Africans in Sweden

In Sweden, most African immigrants origin primarily from East Africa: Somalia, Eritrea and Ethiopia. In 2007, there were 21,600 Swedish residents born in Somalia (Statistics Sweden, 2008). That figure does thus not include family members born outside Somalia, like children born in Sweden. About 18,000 were born in Ethiopia or Eritrea.

The FGM Act

In 1998 the Swedish FGM legislation was revised with a change in terminology, from "female circumcision" to "female genital mutilation", and more severe penalties for breaking the law were imposed. The law was further reformulated in 1999, to allow for prosecution in a Swedish court of someone performing female genital mutilation even if the act has been performed in a country where it is not considered criminal (removal of the principle of double incrimination). *Act (1982:316) Prohibiting Female Genital Mutilation* reads:

Act Prohibiting Female Genital Mutilation
[Lag (1982:316) med förbud mot könsstympning av kvinnor]

> Section 1: Operations on the external female genital organs which are designed to mutilate them or produce other permanent changes in them (genital mutilation) must not take place, regardless of whether consent to this operation has or has not been given.
>
> Section 2: Anyone contravening Section 1 will be sent to prison for a maximum of four years. If the crime has resulted in danger to life or serious illness or has in some other way involved particularly reckless behavior, it is to be regarded as serious. The punishment for a serious crime is prison for a minimum of two and a maximum of ten years. Attempts, preparations, conspiracy and failure to report crimes are treated as criminal liability in accordance with section 23 of the Penal Code.
> [Quoted from Rahman & Toubia (2000:219).]
>
> Section 3: A person who violates this law is liable to prosecution in a Swedish court, even if Section 2 or 3 of Chapter 2 of the Penal Code is not applicable.

Sections 2 and 3 of Chapter 2 of the Penal Code concern nationality and residency. It does not matter whether the offender or the victim are Swedish citizens. If the crime has been committed in Sweden, any person (asylum-seeker, illegal, etc.) may be prosecuted in a Swedish court. If the crime has been committed abroad, the victim does not have to be a Swedish citizen for prosecution to take place, and neither does the offender. However, they should be or have been residents of Sweden.

In a literal reading of the law, it states that all procedures which "produce […] permanent changes" are prohibited. However, the official position is that the prohibition also includes ritual procedures which do not lead to permanent changes: "According to the law all types of female genital mutilation are illegal, ranging from the most extensive, where large parts of the genitals are cut away and the vaginal opening is stitched together (infibulation), to pricking of the clitoris with a sharp or pointed object" (information sheet from the Göteborg Project, my translation from Swedish; see also the government bill Prop. 1998/99:70, page 8.) However, it remains unclear whether it would be possible to take a case including a symbolic pricking to court, based of the wording of the FGM law.

Further, it is unclear what the official stand is toward cosmetic genital surgery, so called "designer vaginas". As the Swedish law does not mention age or ethnic background, and should be enforced even if consent has been given, the Act on FGM ought to outlaw genital changes also in non-African women. So far there has not been a legal case against plastic surgeons or gynaecologists for violating the Act on FGM when performing cosmetic (not medically motivated) genital surgery on women in Sweden. However, there is a case

where a surgeon received a formal warning from the Swedish Medical Board for having removed too much genital tissue (inner labia and tissue covering the clitoris) from a patient who wanted her inner labia "trimmed" and afterwards felt "mutilated" (news article in *Sydsvenskan*, 26 Sept, 2007).

Duty to report

According to the FGM Act, all citizens have a duty to report knowledge or suspicion of FGM to the police according to the FGM Act.

Further, the *Social Services Act* states that all citizens have a duty to report knowledge or suspicion of FGM to the social authorities. Staff at schools and in children day care and ordinary citizens have a duty to report any suspicion of FGM to the social authorities. An official who fails reporting commits breach of duty and may be prosecuted. In the guidelines published by the Swedish Board of Health and Welfare, it is stressed that a citizen suspecting performed or future female circumcision has an obligation to report it: "Note that it is not a matter for the person suspecting FGM to investigate 'to know for sure' before reporting it" (The Swedish Board of Health and Welfare 2002:32). It is possible for citizens to turn in a report anonymously.

Previously, health care staff were prevented from reporting suspected illegal cases of FGM to the police, since the *Secrecy Act* bound them to not disclose any information about patients unless it concerned a crime that would possibly lead to at least two years in prison. In 2006 the Secrecy Act was reformulated – when it comes to FGM crimes, FGM being specifically mentioned, it is possible for health care professionals to give any kind of information to the police regardless of how "mild" the possible sentence would be in a trial.

If the social authorities have information that gives them reason to believe that a young girl is at real risk of being subjected to FGM, they have the possibility to take this girl into custody with or without consent from her or from her parents. This according to the *Care of Young Persons (Special Provisions) Act*. In this way, the girl can be protected from pending circumcision. There is so far no known case where this law has been used to protect girls from FGM.

There is no absolute obligation for social authorities to report serious crimes to the police authorities. In case of a crime involving a child, "the social welfare committee shall consider if it is appropriate to make a police report, based on what is regarded as the best interests of the child" (The Swedish Board of Health and Welfare 2002:50). However, when it

comes to suspicion of FGM, reporting to the police seems to be the procedure recommended by most local social welfare offices.

When there is a suspicion that FGM has been performed, the Swedish Board of Health and Welfare recommends a genital examination by a physician, but such a procedure requires a cooperative attitude from the parents. If the parents do not allow a medical examination, a prosecutor may apply for a special representative for a child, in accordance with the *Act regarding Special Representative for a Child*. A special representative for a child is appointed by the district court after a request from the prosecutor heading the police investigation. Such a representative (lawyer) can allow a medical investigation of a child, even when the child's parents refuse to grant permission for such an examination (Wilhelmsson 2003).

Implementation of the FGM Legislation

Since 1982, when the Swedish FGM Act was passed, some twenty suspected cases have been reported to the police. If we take a closer look at these twenty cases, they can be sorted into the following categories (Johnsdotter 2004):

• **No FGM had been performed**, proven by genital examination;

• **No possibility to decide whether FGM had been performed** – either due to difficulties in assessing genitals – it is very hard sometimes to tell if something has been done, since there is a wide variety when it comes to normal genitals – or due to the fact that the family had moved to another country at the time when investigation was opened;

• **No possibility to decide whether FGM had been performed in violation with the FGM law** – for instance, when the parents claimed the girl had been circumcised before arrival in Sweden, and there was no way to prove this wrong;

• **Rumours, no specific suspect.**

• **Two cases in court**, which lead to custodial sentences. Below these two court cases will be described further.

"Hearsay cases" I call the suspected cases that have been discussed among professionals, but never reached the police. I accessed them through interviews with for instance hospital legal experts, child protection officers, school nurses and so on. I found about fifteen such cases in 2004. They can be sorted into these categories:

• **No FGM had been performed,** and it could be proven;

• **Fear that FGM might be performed in the future,** and measures were taken to prevent it;

• Girls who leave Sweden and do not return.

Reports to the police have come from all sectors of the society: the social authorities, the public, the Somali community (our largest immigrant group from a country where FC is practiced are the Somalis), the pre-school and school sectors, the health care sectors and so on.

In summary, it is safe to say that the level of alertness is high in Sweden, as well as the willingness to report suspicions. One indication of this is the fact that reports of suspicion have lead to incidents of enforced genital examinations without consent.

The court cases

The two existing FGM court cases in Sweden both went to trial in 2006.

One of them cases concerned a Swedish Somali mother aged 43. She was charged with FGM and serious violation of bodily integrity, and sentenced to three years in prison. Through medical examination it was shown that her daughter had been subjected to circumcision. This case was initiated by the girl herself, when she sixteen years old turned to her school welfare officer. The girl, who I will call Amina, told the school welfare officer that she had been physically abused by her mother for several years, her mother using various objects during the beating of her daughter. Now she feared for her life, since her mother had tried to hit her with a frying pan while she was asleep. Her sister had stopped their mother. Amina also said that her mother had repeatedly checked her genitals trying to find out if she had had sexual intercourse. Her mother had had her circumcised at a stay in Somalia when she was eleven years old. Certificates from experts in forensic medicine supported that Amina had been circumcised (type II) and physically abused. Additionally, records showed that during the years Amina's mother had reported to the police six times that her children had been raped. Obviously this woman had serious issues with her psychological well-being and is in no way a 'typical' Somali woman.

The other case involves a Somali man aged 41. He was sentenced to two years in prison for FGM of his daughter (here called Muna). The background was that Muna, then aged 14, ran away from her father's home in Mogadishu after having lived there with him, her brother and her father's new wife for four years. She ran away with a man and showed up with him at the Swedish embassy in Abbis Ababa a couple of months later. There she stated that her father had beaten her and abused her psychologically for years, that he had threatened her with a gun; that he had sent her to jail for some time, that he planned to marry her away by

force, and that he had had her circumcised. Further, she was not allowed to socialize with friends or to watch TV. Later police interrogations with her younger brother Adam, twelve years old, contradicted this description of their life in Somalia. For instance, he could easily name several of Muna's friends that she used to spend time with. Another circumstance worth attention is that this process took place during a dispute over custody between Amina's father and birth mother. In addition, her father claims that there was a conflict between him and his daughter; since he had refused to let her marry the man she was in love with, arguing that she was too young.

In court, word stood against word. Medical examination showed that Muna had gone through a milder procedure, type II, "loss of tissue of parts of the inner labia, in the area around the clitoris, and loss of clitoral hood." It was not possible to establish when the circumcision had taken place. The only evidence to prove Ali's guilt was his daughter's statement that her father was involved when she was circumcised. Ali denied. In the first interrogation Muna said that the circumcision took place in January 2005, and that her father and her father's sister (here she will be called Meriam) were present with the circumciser in the room during circumcision. Ali's sister Meriam went to Sweden in July 2006 to support her brother's testimony. She turned herself in to the police in Gothenburg, knowing that she too was accused of FGM. She was detained immediately and stayed detained for six months. She was released some time after a later interrogation Muna, when took back the statement that her aunt Meriam had been present during circumcision. Her reason for blaming her aunt was that Muna hated her – she said her aunt had called her a 'whore'.

Muna was obviously circumcised at some point, medical examination shows that – but it does not show by whom. I discuss this case in a book in Swedish (Johnsdotter 2008a) and an article in English (Johnsdotter 2008b) and argue that this man is most probably innocent of the FGM charge, and that he for political reasons was not offered a fair trial.

In November 2008 a Swedish Somali man aged 54 was detained in Malmö, suspected of being indirectly involved in the circumcision (type III) of his teenaged daughter in Somalia. Since he was in Sweden at the time of the crime – he had left his daughter in his mother's home in the Somali countryside – the prosecutor needed to find evidence that he had known of and encouraged circumcision to take place. No such evidence could be found and the man was released from detention within a month.

Enforced genital examinations without consent

During the years at least five enforced genital examinations without consent have taken place in Sweden (Johnsdotter, forthcoming). The most discussed one – since the parents of the girl reported the incident to the Ombudsman against Discrimination – concerned a Swedish Somali girl aged 11. A nurse at a children's care unit, checking a small girl, became suspicious when the father mentioned that her older sister a girl would spend her holidays in East Africa. The nurse reported suspected planned FGM to the social authorities. When the trip was over, the parents were summoned to a meeting with the social authorities. They were asked to consent to a genital examination of their daughter. They refused. The police was involved and a prosecutor had a 'special representative of a child' appointed to make the decision to have the girl examined without consent from her parents. She was collected in school by the police and taken to hospital for examination against her own will. The examination showed that no circumcision had been performed. I have documentation of at least five such cases in Sweden, there might be more. None of these enforced examinations have revealed any FGM.

The FGM legislation versus the Discrimination Act

According to legislation, any suspicion that a child does not fare well should be reported to the social authorities. A professional like a school physician has an absolute obligation to act and report when faced with information that can imply a need for the social welfare committee to intervene for the protection of the child – for instance, in case of performed or pending FGM. But where is the limit where it is possible to conclude with some certainty that there is reason to report? Where draw the line between a passing thought of suspicion and information enough to feel the urge to report?

According to the *Discrimination Act* a professional or official must not take action regarding a person on the sole basis of ethnic background. Hence, suspicion that arises only because a family is originating from e.g. Somalia may not be enough for reporting since such a measure is discriminatory.

However, nobody really knows where to draw this line between, on one side, the duty to report suspicion of FGM and, on the other side, *not* to act in a way that violates the Discrimination Act.

The risk of discrimination

If we return to the case of enforced genital examination mentioned above, it is obvious that the suspicions and the actions taken were based on the ethnic background of the family, not in factual circumstances.

According to legal praxis, no suspect is expected to prove his innocence. The onus of proof is placed on the party suspecting crime. In this case, the burden of proof seems to have moved from the authorities to the Somali family, who was urged to accept a genital examination to prove that their daughter still was uncircumcised. When they refused to prove their innocence by letting their daughter go through an examination, it seems that the suspicions toward them increased.

A too strong focus on implementation of the FGM legislation may also work discriminatory in other ways. The care and support these girls have a right to according to legislation (the *Social Services Act*; the right to access to care on equal terms according to the *Health and Medical Services Act*) may be jeopardized if professionals meeting these girls focus too strongly on the issue of FGM. Other social evils that the girl suffers from, or other problems she has, may be overlooked by social workers trying the find out if she has been subjected to FGM or not. The same goes for medical professionals focusing too hard on FGM. The following case is known from Sweden:

> A gynaecologist reports that a Somali woman, 16 years old, came to the clinic to undergo an abortion. Health care staff at the clinic (who had recently watched the televised documentary "The Forgotten Girls" about FGM) were concerned about her being circumcised and wondered if it had been performed illegally. The young woman stated that she was already circumcised when she arrived in Sweden, at the age of five. The gynaecologist points out that due to the worries about the circumcision, the health care staff failed to complete the care plan suggested, e.g., giving the woman sufficient pain-relief drugs during her abortion.
> [Johnsdotter 2004:32.]

In this case it is obvious that the care needs of this young woman were not met, as stated in the *Health and Medical Services Act*.

The risk of arbitrariness

If any professional who meets a Somali parent starts thinking about the risk of FGM, we have a hypothetical situation where practically all Somali parents risk being reported to the social authorities (or to the police). This is not the current situation: few cases of suspicion are

reported. Therefore, we can draw the conclusion that there is a big risk of arbitrariness in this field. Parents are not reported because there is substantial information to support suspicion; parents are reported because they have happened to meet professionals who, for some reason or another, have come to think about the possibility of FGM. There is evidently a large amount of hazard here, regarding which families that become objects for investigation.

There seems to be an increased risk of arbitrariness if professionals are sensitized about FGM wile not at the same time offered relevant guidelines or protocols on the best way to handle suspected cases. Therefore, FGM sensitizing campaigns directed toward professionals must always be accompanied by relevant knowledge and proper guidelines.

The cases of enforced genital examinations that have taken place in Sweden illustrate that the protocols have not been followed, or at least not in a satisfactory way. This opens up for a situation where prejudice and racist attitudes (in certain persons or at a structural level) are given space – which, in turn, leads to increased risk of arbitrariness and discrimination.

One possible solution is that the Swedish Board of Health and Welfare formulates a clear protocol on how to deal with suspected cases in different kinds of situation, including a more profound discussion on the level of suspicion before a case is reported to the police.

It also needs to be clarified from the governmental bodies that the suspected cases of FGM need to be handled in the same way as other suspected abuse or maltreatment of children. Singling out FGM as a particularly reckless child abuse may have the effect that ordinary protocols are abandoned and the cases are handled in imperfect ways.

If FGM is treated as a special case of child abuse, very distinct from other ways of maltreating children, this may create a breeding ground for stigmatization of specific ethnic groups. It needs to be discussed whether a perspective condemning all kinds of violence toward a child is preferable to a special emphasis on FGM.

The risk of stigmatization of entire ethnic groups

The Ombudsman against Discrimination office has been contacted by many Swedish Somalis who claim that they are discriminated against for being Somalis, especially in relation to the social authorities and in the health care sector. FGM is a part of a bigger picture.

It has been discussed whether having a specific criminal law on FGM enhances the possibilities to have cases taken to court. There are specific criminal laws banning FGM in e.g. the Scandinavian countries, Spain and the UK. In other countries, among them France, the act is punishable under general criminal law. France is the country where most FGM cases have ended up in prosecutions and sentences (Leye et al. 2007). In Finland there is an ongoing debate on whether or not a specific criminal law on FGM should be introduced in order to sensitize professionals about FGM (personal communication, Janneke Johansen, special advisor at the Finnish League for Human Rights). The overall conclusion in a study comparing implementation and outcome of FGM-related legislation in Europe is that a specific criminal law banning FGM does not necessarily enhance to possibilities to have cases taken to court (Leye et al. 2007).

There is reason to discuss whether introducing a specific criminal law works stigmatizing. If it works well to prosecute and sentence offenders using general criminal law banning bodily harm and mutilation, then the existence of a specific legislation (in reality concerning only certain ethnic groups) may be redundant and, in effect, unnecessarily stigmatizing.

Professionalism vs. emotionality

Emotionality may have played an important role in the court proceedings where Ali Elmi was accused of and sentenced to prison for alleged FGM of his daughter. It seems that the usual standards of the legal system – like giving the defendant the benefit of a doubt (*in dubio, pro reo*) – were downplayed in this case. When we, as human beings, are deeply emotionally involved, our cognitive faculties are affected. FGC is experienced by most people in Sweden as a hideous crime, and there is reason to believe that emotional turmoil made the court members abandon reason and their sense of fairness. They sentenced Ali, because someone had to pay for the fact that this young girl had been circumcised (Johnsdotter 2008a, 2008b).

The emotionally charged atmosphere surrounding FGM may give rise to rushed decisions and abandonment of usual routines also when professionals meet Africans from countries where FGM is traditionally practiced. It seems crucial that cases of suspected FGM are not handled as exceptional cases or in ‘sidetracks’ running beside usual routines. If such cases are treated as if they were routine and comparable to other cases where children may have been subjected to crime, violence or other abuse, faulty decisions due to emotionality can be avoided.

As long as we can not see and acknowledge attitude change among immigrants (Johnsdotter 2002, Johnsdotter & Essen 2005), as long as we expect that the girls of practically every family from an FGM practicing country are at risk of being subjected to FGM, we will act in a less than professional way. We will lose the true child perspective. And instead of protecting young girls we may risk violating their integrity and dignity.

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