

Prevention Programme

for broad protection from

Female Genital Mutilation

on girls in Germany



TaskForce

**for effective prevention
of female genital mutilation**



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Female Genital Mutilation in Germany – Prevention Programme

I. Review – Current situation

„Families from countries in which female genital mutilation is practised, came to Germany through migration. Many of them hold on to this practice in Germany, too.“ The German government acknowledges this in its reply to the question of several representatives and of the factions of the Social Democratic Party (SPD) and the Green Party¹.

According to the latest information from the Federal Statistic Service (from Dec. 31, 2005), there are currently 60,000 girls and women living in Germany who come from those 28 African countries that practice FGM. Additionally, there are girls and women whose origin is in these countries and who have become German citizens². In the last years, more than 30,000 girls have been born in Germany with at least one parent of which originates in an African country where girls and women are mutilated on their genitals. Those girls have not yet reached their full legal age³.

Furthermore, the girls with migration background whose parents accepted the German citizenship are endangered of becoming victims of FGM. This danger confronts not only those girls with African background but also the approx. 12,000 Iraqi girls under the age of 20 living in Germany. Female genital mutilation is widespread in Kurdistan/Iraq and there is no sign that the practice is stopped to be performed on them here⁴.

From these numbers, one can estimate the dimension with which the problem of genital mutilation directly affects the Federal Republic of Germany⁵.

The following indications support the statement of the Federal Government that FGM is being kept in this country:

1. Document 14/6682, 2001
2. An exact number will be available as soon as the respective statistics are submitted by the Federal Statistic Service. The statistics have already been asked for.
3. This number is based on the evaluation of statistics by the Federal Statistic Service from the last six years and the projection of the average to the past 17 years.
4. The organization WADI e.V. found out about the spread of genital mutilations in North Iraq in 2004 and it had to determine that in this region, approx. 60% of the girls and women were mutilated by clitoridectomy. (cf. www.wadinet.de)
5. The fact that until now there are no concrete numbers about the actual spread of genital mutilations in this country is due to the missing of exact and overall surveys and not due to the fact that there are no mutilations here. With the implementation of the program described in chapter IV., those exact numbers automatically become available.



1. Information from experts:

In 2005, UNICEF and Terre des Femmes published the result of a survey which was distributed to gynaecologist working in Germany. 83 out of 493 doctors stated that they have obtained information about the mutilation of girls who are living here. Information were given that the practice of mutilation is evenly divided: in Africa (e.g. on vacation) as well as in Germany. Human rights organizations (e.g. Terre des Femmes and INTACT) get concrete information from the population on planned or already practised mutilations on girls living in Germany⁶.

2. Statements from affected women:

Women living in Germany who themselves were victims of FGM when they were children, report about huge familiar and social pressure, in which the mothers are forced to continue the mutilation practice on their daughters in Germany as well⁷. Furthermore, first hand information were obtained from women who have direct access to the African communities living in Germany because of their ethnic background. They report that FGM is predominantly planned and practised during vacation.

3. Experiences from neighbouring European countries:

In seven European countries (Belgium, Denmark, Great Britain, Italy, Spain, Sweden, and Norway), the act of female genital mutilation has expressively been declared as a crime. This fact shows the acknowledgement of the relevance of FGM in these countries.

The conviction of mutilators and parents by the dozens in France (following the laws being in force there) speaks for itself.

An extensive study on FGM in Austria⁸ concretely confirms the practice of female genital mutilation in Austria. Two results should be mentioned here: More than a third of the daughters of the participants already were mutilated. More are to come because people partly said that their daughters were „too young“ for it at the time of the study.

Almost 10 percent of the mutilations among the girls that live in Austria identified in this study were conducted in Germany or Holland.

In Great Britain, the British Medical Association estimates that approx. 3,000 girls living in England are mutilated each year⁹.

6. cf. press release of INTACT from Nov 21, 2006.

7. cf. Tagesthemen (news broadcast by German public television channel ARD) from Dec 10, 2006.

8. published by the „African Womens' Organization“ in Vienna in 2000.

9. stated by Patrick Trousson of the DaphneProgram of the European Commission in his speech in Addis Abbeba, Feb 4-6, 2003.



To put in a record, the practice of genital mutilation on girls and women living in Germany /Europe is obvious.

However, not a single European country reacted adequately on this reality yet, i.e. introduced measures that would extensively protect the girls at risk.

Concerning the legal situation, there is presently an ongoing discussion whether FGM should be taken as independent offence into the German penal code.

But the creation of a specific offence or even the application of effective laws (like in France) leading to the conviction of already practised mutilations, is not relevant as a measure in the sense of prevention – because it comes only into effect when the permanent damage on the girls has already been inflicted.

Therefore, the Federal government needs to introduce measures that focus on effective prevention.



II. The need for the focus on sustainable Prevention

The assumption that the creation of an independent offence related to FGM could guarantee a better protection for the girls, is based on a serious mistake with regards to the effectiveness of the criminal law.

In Germany, it is unnecessary to create an independent offence in order to prosecute practised mutilations. Even more with the intention to protect potential victims¹⁰!

Since end of the 1990th, The Federal Government has been confirming that in Germany, FGM is conducted as a crime; recently by Perdita Kröger¹¹ at the GTZ-conference „End Female Genital Mutilation“ at Dec 12-13, 2006.

This means that genital mutilations can, in every case, be prosecuted as bodily harm (§223 StGB) and as dangerous bodily harm (§224 StGB; sentence 6 months to 10 years). It is also possible that parents who initiate the mutilations can be sentenced due to §225 StGB (assault and battery of charges, sentence 6 months to 10 years).

In how far the offence of grievous harm (§226 Abs. 2 StGB, sentence 3 to 15 years) would in principal be fulfilled has so far been subject of juristic discussions. The clitoris, which is the main concern in mutilation, is not seen as an „important organ“ according to legal definition. Thus the precondition of the offence „grievous bodily harm“ is not fulfilled. In their current petition to the Federal government¹², the faction of the Green Party demands for the expressive laying down of genital mutilation as grievous bodily harm in §226 of the StGB. Since the sentence in case of a conviction because of this offence (§226) is not under 3 years, this would lead to the deportation of the offender according to the law of foreigners – and thus to the deportation of the parents of the respective victim, depending on them being convicted as offender, accomplice, instigator, or as aiding offender.

With regard to the prevention measures in chapter IV., this would have far-reaching consequences, i.e. it could lead to a real wave of deportations. In how far this is required, wished for, or needs to be accepted, requires a thorough argument and discussion and should not simply be accepted.

A further demand that has been proposed in the last years is the creation of possibilities to also prosecute genital mutilations that were practised in Africa on girls living in Germany. Actually, in these „cases“ the prosecution is only possible without restrictions when FGM is also prosecutable in the country where it is carried out.

10. Useful, however, is the suggestion of Heike Rudat (Association of German Detectives) that she put forward at the BMZ/GTZ-Conference „Stop Genital Mutilations“ (Nov 12-13, 2006): to explicitly mention genital mutilations next to other clearly defined offences in the StGB in order to give more security to the detectives.

11. Head of Chamber on the Penal Code / Federal Department of Justice.

12. Document 16/3542, Nov 22, 2006.



Otherwise, the parents as the initiators of the mutilation (respectively those who allow their child to travel to the relevant country and accept a possibility for the child to be mutilated) would at least be made responsible as aiding offenders.

In practice, this means that it is only possible to prosecute a part of the committed offences because about half the African countries in question do not have laws against FGM in place. Nevertheless, the efforts aiming at the extension of mutilations practised abroad do not make sense because of the following reason: Even an unrestricted prosecution for FGM carried out in Africa can not lead to protection for the affected girls. This is because the law would only take effect when is already “too late” for the girls, when they have been harmed already.

In the end, it has to be the aim to guarantee this protection and to prevent the mutilation of the girls in the first place, so that a prosecution does not become necessary.

Something else is so fundamentally important that it can no longer be ignored, and that needs a new perspective: In every European country, including Germany, both the prosecution as well as the possible urgent prevention measures (for example the loss of child custody and custody of residence permit) depend on the more or less on the accidentally discovery of the plan and the act by individual people.

For Germany, this precisely means the following:

- a.) In not a single case, an already practised mutilation has been prosecuted yet. This contradicts both the solid information of the numerous presence of under-aged victims of FGM in our country as well as of concrete „cases“. And: FGM as offence can be 100 percent proven; the offenders (parents or other family members) can easily be identified (due to the special systematics of FGM).
- b.) With regard to the taking of acute prevention measures, the picture is not different: so far, only one sentence has been passed on through which the danger of being mutilated for a girl living in Germany (with Gambian citizenship) has been averted by the prohibition of the planned journey of the girl to Gambia through the partly deprivation of the mother’s “right to determine the place of residence” of the girl¹³.

Apart from this single exception, the mutilation of girls living in Germany has so far been tolerated by the Federal government and other authorities, by looking away and adopting a non-interference policy.

13. Resolution of the Federal Supreme Court on Dec 15, 2004, XII ZB 166/03.



The policy of tolerance

This policy directly contradicts with the declarations as per which „Germany, according to the Federal government, commits itself – in connection with the EU – uncompromisingly for the banning of genital mutilations“¹⁴.

It also contradicts with the unanimous assessment of this practice as grave human rights violation, as well as „specific, persistent and adverse excess of violence against women,“¹⁵ like what the government has always drafted in the past years.

Last but not least, the tolerance of FGM contradicts with the validation of genital mutilations as grave offence according to the criminal law, as mentioned above.

The physical and psychological consequences of any form of FGM are so grave for the victims that they alone demand the sizing of measures to prevent this torture.

The most important reason, to direct a new, extensive perspective in the direction of prevention and to establish it as base for prevention is the following:

The prevention of FGM on girls living in Germany presents a new and specific demand on the prevention of crimes in our country. This arises from the concrete foresee ability of the act – in contrast with other crimes. This is based on the possibility of the exact identification of all potential victims due to their belonging to a risk group that is precisely definable¹⁶.

This makes it possible to adapt an extensive protection program for this risk group and to cover each and every girl whose body intactness could be violated through genital mutilation.

The protection program basically consists of two measures that on the one hand prevent mutilations in the countries of origin on the other hand, help to prevent the mutilation in Germany and its neighbouring European countries.

Its implementation could offer real and sustained protection for all girls living in Germany.

14. German Bundestag, hib-press release 159/2006, May 23, 2006.

15. German Bundestag, Document 16/1391, May 8, 2006.

16. This risk group needs to include all girls whose parents originate from a country in which girls are mutilated as well as girls whose parents originate from those countries and are by now German citizens. Countries in which genital mutilations are practiced are: Egypt, Ethiopia, Benin, Burkina Faso, Djibuti, Ivory Coast, Eritrea, Gambia, Ghana, Kenya, Liberia, Mali, Mauretania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Chad, Uganda, Zaire, Central African Republic, as well as Kurdistan/Iraq. The widespread assumption that the shift from Africa to Germany would be a reason for people to ban genital mutilations is completely unfounded and is proven absurd by concrete information about mutilations of girls living in Germany. As long as the European governments can not deliver serious proofs that in their countries definitely no more genital mutilations take place, the danger for each girls of the risk group must be considered high.



III. Extensive protection of minor girls living in Germany against genital mutilation in the countries of their parent's origin

This measure results from the arguments of the German Federal Supreme Court¹⁷, in which the partial loss of the "right to determine the place of residence" was confirmed as a suitable protection measure for a girl living in Germany (without German citizenship), in order to avert the risk of FGM by bringing the girl in the African home country (Gambia).

The judges do clearly focus on the well-being of the child, which they saw considerably threatened by the probable genital mutilation.

Already in the run-up to this sentence, the responsible regional court in Dresden justified the deprivation of the "right to determine the place of residence" with the child's well-being, too: „The practice of circumcision¹⁸ presents a considerable damage to the child's well-being." The court judges genital mutilation as a severe human rights violation, which in its intensity is "in no way inferior to serious forms of persecution, like torture, which are reasons for asylum."

Furthermore, the regional court in Dresden sees the huge probability of the mutilation of the girl's genitals „as soon as she stays in Gambia."

The court sees this danger even if the mother does not explicitly express the intention of letting the girl get mutilated there because „traditionally, the extended family decides if a mutilation is going to be done."

Finally, the court grants highest priority to the child's right to protection of its human dignity and of its unharmed body. The parental right of the mother as well as the girl's right of seeing the family in her home country are of secondary importance – due to the „extent of the imminent danger."

The „ideas of culture, tradition, religion, and upbringing" have also to step back because „the imminent harm is not tolerable under any aspect."

The ruling by the Federal Supreme Court (BGH) confirms the decision of the court in Dresden, referring to the following:

1. the judging of the mutilations:

„In the view of the Senate, female genital mutilation is a major invasion. The resulting consequences are lasting physical and mental damages." In fact, even if the act would be committed by doctors: „It remains as a fundamental invasion on the integrity and mental condition of a woman." „Regardless the different types of FGM, it is in any case a cruel, grave, and non-justifiable maltreatment."

17. Resolution of Dec 15, 2004 (XII ZB 166/03).

18. The term „circumcision" does not correctly describe the practice. It makes a connection to male circumcision, playing the female form down. African activists, like the IAC, have demanded for years to use the term Female Genital Mutilation only.



2. the high possibility of impending danger:

The Federal Supreme Court agrees with the view of the Higher regional court which „assumed that there is a high possibility the girl is to be mutilated when she stays in Gambia.“ The Court doubts that the grandmother would be able to protect the girl and considers the fact that „traditionally, the extended family is also appointed“ to make a decision concerning FGM.

3. the comparativeness of the measure:

The highest priority is granted to the well-being of the child. „The ordered partial deprivation of “the right to determine the place of residence” represents a necessary and a comparative intervention in the parental right in order to protect the child from an irreparable damage of its physical and mental intactness.“ The possible interest of the child „to visit the relatives in Gambia or the desire to be connected with its native culture and tradition have to step back.“

In practice, that danger results for all minor girls of the risk-group if they are brought to their home countries (even without the explicit intention to let them being mutilated, although this intention needs to be acknowledged as motive). It is as high as the danger stated in the case mentioned above. This would be the result of a thorough examination of the situation in every single country of those 28 ones where FGM is still practised. Until now, even the most intensive efforts of African activists did not lead to an overall stop of FGM in any country.

Following the right of equal treatment (UN-convention about the rights of children Art.2, Declaration of Common Human Rights Art.7), all girls have the right to the same protection that the Gambian girl was granted by giving highest priority to her bodily intactness.

A continued denial of this right would mean an unacceptable discrimination of those girls by tolerating the violation of their right to bodily intactness.

As the Federal Supreme Court stated the comparativeness of the measure, and acknowledges that FGM is as cruel, grave, and non-justifiable maltreatment, a general prohibition needs to be implemented for minor girls belonging to the risk group.

This prohibition would prevent the girls from being brought to their home countries and so protect them from being mutilated there.

This measure would also put an end to the discussions about the punishability of FGM in African countries as the practice would be avoided at the outset.

The enforcement of this prohibition only leads to the prevention of mutilations in home countries.

So, the danger for girls to get mutilated here in Germany still exists. To offer a broad protection here, more specific steps need to be taken:



IV. Broad protection for minor girls living in Germany against genital mutilation in Germany (or neighbouring European countries)

The details of those steps have been worked out in 2004 by the Dutch party VVD and, at that time, were supported by the majority of the Dutch parliament thanks to the PvdA.

Prior to its ratification, the program had been overruled by the Dutch cabinet. All the more, there is the necessity to implement such a program in Germany because so many girls are acutely in danger of being mutilated.

Furthermore, the programme makes it possible to get wide protection for all girls of the risk group. It comes up to the responsibility that each government has to the guarantee fundamental human rights to its people.

Once again, it needs to be alluded that FGM has to be distinguished from all other offences and breaches: the potential victims as well as the potential offenders are exactly definable before the act is committed!

That means that the government has the responsibility to react to this special condition in order to effectively prevent the practice.

This leads to the second concrete measure of the prevention program:

a) A survey (medical screening) needs to be conducted for all under-aged girls from the risk group. List A is for girls who are diagnosed with a genital mutilation in this first checkup. List B lists the names of the girls whose genitals are intact. New born daughters (approx. 2,000 per year in Germany) automatically enter List B.

This survey will provide information on the existing dimension of genital mutilations in Germany and in all those countries that implement it.

b) The girls of List A are medically and psychologically cared for if they need it.

c) The parents of the girls of List B are asked in regular intervals (until the girls are of full age) to present their daughters at a compulsory checkup that is exercised by local public health officers. In case that one girl is diagnosed with a genital mutilation, the local district attorney needs to be notified who then has to institute an adequate procedure. Those further measurements will make the success of the program directly gaugeable.

d) New immigrants from risk countries automatically get a citation for the medical survey.



To assure the optimal effectivity of the program, appropriate frame conditions need to be created:

The responsibility for the management of the lists and of the checkup results should be delegated to the local social assistance offices that care for the families.

Since it is a compulsory checkup, proper sanctions need to be established in order to secure that the obligation is actually met. Those sanctions could for example be the following:

After the expiration of a period of three months, the local social assistance offices are requested to reduce or cancel possible benefits until the obligation is fulfilled. The social assistance office notifies the local youth welfare office which on its part works towards the fulfillment of the obligation.

In case that none of these measures are successful, one needs to suspect that by the refusal of the medical checkup, a practised genital mutilation should be covered up. This supposition needs to be clarified in preliminary proceedings that need to be initiated.

This implies the implementation of a notification requirement which has to be followed by medical personnel that diagnoses genital mutilations. This notification requirement does not exist yet. Until now, it is just optional to abandon professional secrecy. That means that so far, it has been up to the personal decision of doctors and medical personnel to report a mutilation. In practice, this personal decision seems to result in the line of least resistance since, as far as it is known, there have not been any reports about genital mutilations by German health personnel yet.

On which legal basis the introduction of such a specific control procedure to protect girls against genital mutilation is justified?

The answer to this question can be found in the German Basic Law as well as in the European Convention of Human Rights (ECHR), that both commit to inviolable and inalienable human rights.

Exactly those articles of the Basic Law/the ECHR justify the protection programme which the Federal government clearly violates by its toleration policy so far:

a) article 2, paragraph 2 of the Basic Law (or article 2, paragraph 1 of the ECHR respectively) codifies the universal right to life. All forms of female genital mutilation hold an acute danger to the victims' lives due to the gravity of the injuries that are caused by the mutilation of the girls' clitoris and labia. Even if girls survive the mutilation, the grave medium- and long-term physical and mental consequences could lead to an earlier death.



To tolerate FGM contains an indirect denial of the right to life for the affected girls. By the consequent prevention of genital mutilations through extensive protection, the Federal government will ensure the right to life for those girls as it is adequate to its possibilities and responsibilities.

b) article 3 of the ECHR provides that no one should be subjected to torture or inhuman or degrading punishment or treatment. That all forms of genital mutilation are inhuman and degrading treatments and torture is not put under question anymore. This means that a government is obliged to prevent this according to its possibilities and thus provide prevention from these practices.

c) article 3, paragraph 3 of the Basic Law as well as article 14 of the ECHR guarantee a prohibition of discrimination, i.e. no one should be disadvantaged or preferred due to his or her sex, ancestry, skin colour, home and origin, faith, etc. This article has a special importance with regard to genital mutilations since it is relevant in several ways:

The practice of genital mutilation is – in all countries and independent of all other reasons and justifications given – based upon an extensive, massive, and affecting discrimination and suppression of female human-beings due to their sex.

At the same time, FGM itself enhances the level of discrimination. This means that with regard to the global discriminating and suppressing character of FGM, the Federal government must not tolerate the practice but stop it.

Not doing so violates this article in another way: It is provided that no one should be disadvantaged or preferred due to his or her ancestry, skin colour, or origin. The victims of genital mutilations mostly are African, Kurdish, and sometimes Asian girls. These girls are subjected to violence and discrimination under the cover of their respective culture/tradition that would be rejected as treatment for German girls. If the Federal government tolerates this through the neglect of preventive measures, a clear disadvantage of the girls due to their origin/skin colour has to be stated, that is not reasonable.

This means that the Federal government has – in appreciation of the girls at risk as „risk group“ – to take effective protection measures such as the control procedure in order to prevent discrimination and to guarantee them the right to physical inviolability as to every other girl in Germany too.

And: to conduct the checkups only to the girls of the risk group is justified (compulsory) as highest priority to the right of bodily integrity needs to be granted.

What rights of the Basic Law and the ECHR could the consequent implementation of this control procedure collide with?



a) First, one could assume that the demand for compulsory medical checkups is not compatible with article 6 of the Basic Law and article 8 of the ECHR. Those articles provide the protection of the family, so to say the right to respect for private and family life and the right to self-determination (affiliated from art. 2 para.1 with art.1 para.1 of the Basic Law).

However, article 8, paragraph 2, of the ECHR exactly determines the conditions to allow administrative bodies to interfere with this right. Interference is necessary – in a democratic society – for the prevention of offences, for the protection of health, or for the protection of the rights and freedoms of others. Since with the practice of genital mutilations, a crime is committed, the health of the victims is threatened, and the victims are robbed of basic rights and freedoms, the possibility of interfering is not only justified but there is a duty to interfere.

b) Genital mutilations are legitimized and forced in practice by Islam through the hint to the Hadithe of Prophet Mohammed. It is a fact that genital mutilations are also practised by Christians and people of other faiths, but that they are persistently justified with no other religion than Islam. Parents that let or want to mutilate their daughters because of religious justifications might see violated their right to the freedom of thought, of conscience, and of religion.

Those rights are guaranteed in article 4 of the Basic Law and in article 9 of the ECHR by granting the freedom to profess one's religion or ideology publicly or privately, either singly or commonly, through services or the practice of customs. Since the free profession of religion can be seen as part of the free development of personality, article 2, paragraph 1, of the Basic Law restricts those two insofar as the right to the free development of personality is only valid as there are no violations of others' rights by it. The ECHR depicts in article 9, paragraph 2, under what circumstances the freedom of religion can be put under restriction, namely when those restrictions become necessary in a democratic society in order to protect public order and health or to protect the rights and freedoms of others. Since – as already stated – the practice of female genital mutilation violates the basic rights of the victims, the justification for measures aiming at the comprehensive banning of these practices can be derived from law.



V. Final remarks

Not only the legal justification but also the ethical duty to this protection programme can be found in the German Basic Law, in the ECHR, in the Convention for the Rights of Children of the UN, and in the Declaration of Human Rights.

The implementation of this programme will instantly guarantee sustained, extensive, and real protection for all girls at risk.

It is transparent for all persons involved.

It provides the possibility to publicize material and to educate and inform people during the medical checkups. This will support the essential process of changing attitudes, imaginations, and actions.

This programme provides - for the first time - a suitable frame in which all practitioners can be convinced of the necessity to stop these practices.

Furthermore, increased attention needs to be paid to the victims of genital mutilations, so that they can be provided with treatment and rehabilitation – including operations to reconstruct their genitals and psychological care to deal with their traumas – in the best way possible.

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personal facts: in 1995, Ines Laufer has been founder member of the first FGM-working-group in Germany (within TERRE DES FEMMES e.V.). She has been leading that group for many years; in January 2007, she has been founding the „TaskForce“ for effective prevention of FGM - that is working on the implementation of the prevention program
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