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Dear Lady,

29th July 2014

SERIOUS CRIME BILL: FEMALE GENITAL MUTILATION

During the debate in Committee on 15 July on amendment 40BA (Hansard, columns 545 to 552), I undertook to write to you about whether the provisions in Part 2 of the Serious Crime Act 2007 are sufficient to cover general encouragement, or promotion, of female genital mutilation (FGM) as opposed to the encouragement of a particular offence of female genital mutilation.

I know that the purpose of amendment 40BA was to give effect to a recommendation made by the Local Government Association (LGA), in a briefing paper to Peers, for a new offence of encouraging or promoting the practice of female genital mutilation. In support of their case for a new offence, the LGA said that:

- A. "It would be difficult to prosecute individuals who argue there are religious or cultural justifications for FGM under the 2007 Act but who do not specifically incite FGM to be performed on a particular girl or girls. In addition, to be guilty of an offence under the 2007 Act, the individual has to intend to encourage or assist the carrying out of FGM; mere foresight that FGM might be carried out as a result of their actions is not sufficient to establish intent. An individual charged under the 2007 Act could easily argue that, in setting out the religious or cultural justifications for FGM, there was no intention that FGM should be carried out, even where it was foreseeable that it could be a consequence. **The lack of prosecutions under the 2007 Act will not help bring about the long term change in practice and custom that experts state is needed to tackle FGM in the communities where it happens.**
- B. There is an argument for **bringing the offence of encouraging and assisting FGM within the 2003 Act so that it sits alongside the offence itself and is prominent and easy to locate for actors in the criminal justice system.** This would mean that a law enforcement officer or a legal practitioner with no prior experience of FGM would

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easily be able to locate the offence. The Modern Slavery Bill, published recently by the Government, consolidates the relevant legislation on human trafficking and forced labour with a similar aim.

- C. **The publicity generated by the creation of a new offence of this kind would raise awareness among law enforcement and the general public and hopefully encourage people to report the promotion of FGM to the police.** The fact that the CPS guidance on FGM does not cover prosecutions under the 2007 Act suggests that a great deal of awareness raising is needed. At the very least, this guidance should be amended to refer to sections 44 to 46 of the 2007 Act.”

I will address each of these arguments in turn.

A. Whether the general encouragement of FGM, as opposed to the encouragement of a specific act, would constitute an offence would depend on the facts of the case, and in particular what was in the mind of the encourager. The provisions in Part 2 of the Serious Crime Act 2007 are not, as the LGA briefing suggests, limited to *intentionally* encouraging or assisting an offence; they also cover encouraging or assisting an offence *believing* it will be committed; and encouraging or assisting offences *believing* one or more will be committed (belief is a different threshold than intention and suggests something less than knowledge). For a person to be convicted of encouraging or assisting an offence it is not necessary for the anticipated principal offence to take place.

The lack of prosecutions for FGM until very recently is a source of concern, but legislation alone will not bring about the long term change in practice and custom that, as the LGA say, is needed to tackle FGM in the communities where it happens. There is already a plethora of criminal offences in this area: in addition to the Female Genital Mutilation Act 2003 itself and inchoate offences in the Serious Crime Act 2007, there are secondary participation offences of aiding and abetting FGM, the offence of attempting to commit FGM and the offence of conspiring to commit FGM. Other more general offences, such as assault, actual bodily harm, grievous bodily harm and child cruelty could also be used to prosecute FGM. The Government is committed to preventing the unnecessary proliferation of new criminal offences so any proposal for a new encouragement of FGM offence would need to be based on clear evidence that there is a gap in the existing law that needs to be filled.

I note the LGA's assertion that their work to support community champions making the case against FGM is "constantly being undermined when community and faith leaders and others promote or encourage the practice of FGM". Beyond that assertion, however, I am not aware of any evidence to support the introduction of a new offence. If you, or the LGA, have any such evidence, we would naturally be ready to consider it further.

Moreover, as the Prime Minister announced at the Girl Summit on 22 July, over 200 faith leaders from all the major faiths have signed a declaration

condemning FGM, and making clear that it is not condoned by their religions. They have declared that FGM is not required by their religions and is a form of child abuse. The declaration makes clear that all religions will work together to end FGM for good. Many organisations have been very keen to promote the declaration, which remains open for additional signatures, and we intend to promote it widely across social media and online. At the Girl Summit, the Prime Minister also announced a new package of action and funding to protect millions of girls at home and abroad from FGM (and forced marriage). He said, "Abhorrent practices like these, no matter how deeply rooted in societies, violate the rights of girls and women across the world, including here in the UK." It seems to me that changing culture and attitudes will be better achieved through this programme of work, and the other community engagement projects that the Government is already supporting, than through the creation of another, arguably unnecessary, offence.

B. I am not persuaded that bringing the offence of encouraging or assisting FGM within the 2003 Act so that it is prominent and easy to locate for actors in the criminal justice system is a sound basis for creating a specific offence of encouraging or assisting. The same argument could apply equally to any other criminal offence. The provisions in Part 2 of the Serious Crime Act apply to all criminal offences precisely so that it is not necessary to create specific encouraging or assisting offences for every crime. Similarly, there is no need to create specific aiding or abetting, attempt or conspiracy offences as the general provisions apply to all criminal offences.

The Modern Slavery Bill does, as the LGA briefing suggests, consolidate the relevant legislation on human trafficking and forced labour. But it consolidates existing *primary* offences of slavery and human trafficking which are currently held in three different Acts of Parliament. It does not bring secondary participation, inchoate, attempt or conspiracy offences into that Bill.

C. Neither am I persuaded that awareness-raising is sufficient justification for creating a new offence. The Government is already taking forward a wide range of awareness-raising activities in communities and amongst relevant professionals, and the Girl Summit again contributed to this. The CPS guidance on FGM does in fact cover the inchoate offences in sections 44 to 46 of the Serious Crime Act (in the aide-memoire at Annex C). In addition, the CPS has published guidance on inchoate offences.

The Government wholeheartedly shares your and the LGA's desire to eradicate this abhorrent practice. We remain ready to legislate where there is a good case for doing so. Indeed, at the Girl Summit the Prime Minister and the Home Secretary announced further legislative measures to help stamp out the practice, including legislation to grant victims of FGM lifelong anonymity from the time an allegation is made and the introduction of a new offence, which will mean that parents can be prosecuted if they fail to prevent their daughter being cut. The Ministry of Justice has also launched a consultation on whether and how a new civil protection order could work alongside the criminal legislation to protect potential victims of FGM.

I am copying this letter to Baroness Smith of Basildon, Lord Rosser and Lord Laming. A copy will be sent to all Peers who have spoken during our debates

on this Bill, and I will place a copy in the Library of the House.

Yours ever,
Susan .

BARONESS WILLIAMS OF TRAFFORD