Effective Legislative Reforms in Situations Calling for Social Change
MODULE THREE

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Facilitator’s Guide

Effective Legislative Reforms in Situations Calling for Social Change
"There are three regulatory mechanisms of individual behavior: legal norms, moral norms and social norms. The problem is the divorce between the three mechanisms or two of them, and specifically between Law and Morality, and between Law and Culture" (Mockus, 2010).

LEARNING OBJECTIVES

By the end of this module, participants will be able to:

→ Define the interaction between legislative reforms, and moral and social norms; understand how reforms that display excessive dissonance and lack of coherence with existing social norms might backfire.
→ Identify what roles legislative reforms can play in the abandonment of FGM and their relation with local beliefs and expectations in order to gradually pull local custom in the direction of the law.
→ Support the adoption and enforcement of effective legislative reforms for the acceleration of FGM abandonment and of the abandonment of other harmful practices, including those gender-biased practices that condone and even endorse violence against women.

TIME

4 hours and 15 minutes including:

→ Steps 1 to 9
→ Coffee break

LAYOUT

The FACILITATOR’S GUIDE is divided into:

→ Overview
→ Procedures, which describe the different steps of the training process
→ Notes to facilitators, which provide:
→ Additional explanatory inputs step by step
→ Presentations
The quasi-universality of FGM, and associated beliefs and expectations in practising communities, make elusive any solution that doesn’t result from a collective decision-making process.

To be effective, legislative reforms for FGM abandonment should:

- Convey a sense of “coherence” between basic local values consistent with human rights principles and legislative reform provisions.
- Avoid excessive “dissonance” with local customs in order to minimize resistance to reforms.
- Be judged as fair regarding procedures through which authorities design and enact reforms.
- Be aware of, confront and solve “collective action” problems.

Effective legislative reforms may:

- Change perceptions of what receives approval or disapproval, and create a new basis for shame.
- Reduce the social cost for those who oppose harmful social norms, making it easier for them to oppose harmful social norms in public.
- Introduce the perception that “social norms might be changed”.

KEY MESSAGES
### Handouts

- **Handout 3.1**: Describing the national legal framework in which actions to promote FGM abandonment will be situated
- **Handout 3.2**: Law enforcement issue: can the law be used to abandon FGM? Prosecuting a mother of five
- **Handout 3.3**: Good practices in legislative reforms: the case of Burkina Faso
- **Handout 3.4**: Three regulatory systems

### Presentations

- **Presentation 3.1**: Learning objectives and working group exercise: prosecuting a mother of five
- **Presentation 3.2**: Procedural justice: law and judgment of fairness
- **Presentation 3.3**: Good practices in legislative reforms: the case of Burkina Faso

### Readings/Resources

- **Reading 3.1**: Legislation as a tool for behavioural and social change
- **Reading 3.2**: Harmony and divorce between law, morality and culture
- **Reading 3.3**: Elusiveness of change in Bangladesh

Note: All readings are for facilitators.

### Video

- Legislative reforms in situations calling for social change²
Procedures

On the evening of Day 2, remind participants to complete (HANDOUT 3.1), “Describing the national legal framework in which actions to promote FGM abandonment will be situated,” shared before the training.

Remind participants to review chapter 3 “International and Regional Framework for the Elimination of Female Genital Mutilation” of of the UNFPA publication: Implementation of the International and Regional Framework for the Elimination of Female Genital Mutilation (2014).

Distribute the following handouts:

- **HANDOUT 3.2** “Law enforcement issue: can the law be used to abandon FGM? Prosecuting a mother of five”
- **HANDOUT 3.3** “Good practices In legislative reforms: the case of Burkina Faso”
- **HANDOUT 3.4** “Three regulatory systems”

Prepare a flip chart listing the Module 3 objectives.

**01 RECAP OF MODULE 2**

- **10 MINUTES**
  - Invite the participant assigned to report on Module 2 evaluations to present key points.
  - Allow questions for clarification and some comments

**02 VIDEO ANIMATION AND OBJECTIVES**

- **5 MINUTES**
  - Display the video: “Legislative reforms in situations calling for social change”, summarizing the main concepts of Module 3.
  - Introduce the module objectives from (PRESENTATION 3.1), “Learning objectives and working group exercise: prosecuting a mother of five”, and stick the flip chart listing the objectives on the wall.
03  
**PLENARY DISCUSSION ON NATIONAL LEGISLATIVE FRAMEWORKS IN WHICH ACTIONS TO PROMOTE FGM ABANDONMENT WILL BE SITUATED**

45 MINUTES  
This is a brainstorming exercise: Participants should have previously defined their country’s national legal framework using [HANDOUT 3](handout3).

### Part 1:

- Ask participants by table (four) to answer four different questions:
  1. Does your country have legal measures (laws/regulations/policies) for the abandonment of FGM? How are they contributing to the abandonment of FGM?
  2. What have been the effects of those measures?
  3. What are some challenges different stakeholders face?
  4. Was there a legislative attempt to convey a sense of coherence between basic local values consistent with human rights principles and legislative reforms?

Write participants’ answers on four different flip chart pages, one per question.

### WORKING GROUP EXERCISE: PROSECUTING A MOTHER OF FIVE

45 MINUTES  
Announce that the working group exercise will take 45 minutes.

- With specific reference to the case study (use [PRESENTATION 3](presentation3)), ask participants to reply to four different questions:
  1. What sentence should the judge impose?
  2. How should the judge seek to promote the "best interests of the child" involved? What about her siblings?
  3. Should the sentence be different if the perpetrator was a girl’s grandmother or non-custodial uncle/aunt?
  4. Given the local context, would it be helpful to detect the possible dissonance between legislation and the existing social norm of cutting, and the implication of discordance between legislation and custom?

Write participants’ answers on four different flip chart pages, one per question.

- Take five minutes to summarize answers and discussion.
05 PRESENTATION 3.2, “PROCEDURAL JUSTICE: LAW AND JUDGMENT OF FAIRNESS”

25 MINUTES

→ Announce the presentation will take 25 minutes, followed by a 20-minute discussion.

→ Run PRESENTATION 3.2, “Procedural justice: law and judgment of fairness”

→ Allow a discussion to ensure all participants understand and agree on the conclusions of the discussions. Note that this example comes from China, but some elements of it are consistent with the application of the law in every setting.

06 ALLOW 20 MINUTES OF DISCUSSION

20 MINUTES

→ Invite participants to come back to their answers in Step 4, and ask them to analyse HANDOUT 3.2, based on the definitions in the presentation.

07 WORKING GROUP EXERCISE ON GOOD PRACTICES IN LEGISLATIVE REFORMS: THE CASE OF BURKINA FASO

40 MINUTES

→ To introduce the step, ask a volunteer to run PRESENTATION 3.3, “Good practices in legislative reforms: the case of Burkina Faso”, for reference during group work.

→ Ask the volunteer to read the case study and questions out loud.

→ When discussion has started, walk around and listen to the group and quickly reply to questions.

→ Remind participants that Burkina Faso was one of the first countries to pioneer passing a law banning FGM, and is probably the African country with the highest number of convictions for violations.

Participants should answer the following questions:

1. According to this case study: “Communities stated that a critical mass ready to declare abandonment of the practice has already been reached.” However, even if the number of girls who have not been excised is increasing, this does not yet translate into a broader demographic impact. What would you infer from this situation? Would Module 1, Step 10, on pluralistic ignorance, help to understand what to do on the ground?
Legal and reinforcing strategies were concurrently implemented; an education campaign preceded the enforcement of the law in Burkina Faso. Enforcement is “strategically” mild. Would you recognize a strategic attempt to align the three regulatory systems of law, morality and culture?

A 2010 survey confirmed that the practice of FGM was gradually being abandoned in Burkina Faso. But enforcement was challenging. As a gendarme pointed out during a training session on social convention theory in Kombissiri in 2010: “Yes, this is a crime. However, it is a ‘special crime’. When we arrive to the site of the crime, we typically find the following situation: Parents are evidently in agreement with the exciser... (However) others, eight or nine siblings, might be around and an old grandmother who cannot care for herself may also be there, and the victim is wounded! What do we do? Do we arrest the parents?”

What does the gendarme clearly express with his words? Could you elaborate?

The law has an “expressive function” in “making statements” as opposed to controlling behaviour directly. Would you concur with the following statement: “Legal statements might be designed to change social norms?” (Sunstein, 1996).

When the discussions have started, facilitators may walk around and listen to the groups to ensure the participation of all, and to help if they are struggling.

At the end of the allocated time, ask the participants to come back to the plenary.

Allow five minutes of reporting time.

Summarize the main issues by emphasizing:

- When a contrary social norm exists, laws alone cannot change community and individual behaviour.
- The law has a function in making statements, an expressive function, in addition to controlling behaviour directly: Legal statements may be designed to change social norms.
- Excessive dissonance with existing social norms is a hindrance to effective legislative reforms. It generates a negative reaction or resistance that make practising populations find arguments against the reform. The legislator in Burkina Faso was aware of this hindrance and modulated the law accordingly.
WRAP-UP

15 MINUTES

→ Lead a brainstorming summarizing the major points of Module 3.
→ Distribute evaluation forms and ask participants to fill them out.
→ Ask for a volunteer to review the evaluations and present a summary at the start of Module 4.
GENERAL INSTRUCTIONS

→ Keep in mind that this module is about effective legislative reforms in situations calling for social change. Refer in particular to Handout 3.4, "Harmony and divorce between law, morality and culture". Mockus’ hypothesis, “the divorce between legal, moral and social norms”, will help to understand the persistence of FGM, and the way legal norms should be applied. Mockus postulates that there are three systems that regulate individual behaviour, and whose interaction can be aligned, in great part through pedagogy. The aim is to harmonize them to the greatest extent possible in order to modify behaviours that, like the "shortcut culture", are accepted morally and socially, but are illegal, and also collectively destructive.

→ Formal laws in situations calling for social change should be applied progressively; the departure from the existing custom should be “moderate”. Moderate change vis-à-vis custom seems more advisable: “Customary norms belong to the realm of slow-moving institutions in contrast to political institutions and, to a lesser extent, legal systems, which are fast-moving institutions. Far from being instantaneously modifiable or malleable at will, these norms stick. Attempts to graft new, ‘modern’, fast-moving institutions into social universes shaped by them, will fail to take root” (Roland, 2004).

→ In this context, it’s important to also remind how a law can make the difference: in a family where there is a disagreement on cutting or not the girls, the law may be a strong argument for parents who don’t want to cut their daughter and however they have the fear that somebody take their daughter against their will. Of course it’s used by the most educated families but it’s still a way to protect a number of girls. There are also some cases where the law had been applied even if the community were not really prepared for that. For example, there has been a situation in Guinea where a girl died in a FGM ceremony (due to bleeding) and the parents (who were against the practice due to their religion) went to police to pursue the traditional practitioner. In this situation, the response from police/justice services should be on the side of the plaintiff whatever the situation... The Ministry used this case to communicate on the law.
LIBERALLY ADAPTED FROM AIDOS/RAINBO, 2007

Reminder: On the evening before the discussion, remind participants:

→ To bring with them the completed HANDOUT 3.1: “Describing the national legal framework in which actions to promote FGM abandonment will be situated”

→ To review HANDOUT 3.2: “Law enforcement issue: can the law be used to abandon FGM? Prosecuting a mother of five”

→ To review HANDOUT 3.3: “Good practices in legislative reforms: the case of Burkina Faso”

→ To read HANDOUT 3.4: “Three regulatory systems”

Tell participants:

→ This is a brainstorming exercise (45 minutes) that starts with a discussion on national legal frameworks and continues with the scenario illustrated in HANDOUT 3.2.

→ The aim of the discussion on national legal frameworks is to share experiences and opinions on strategic choices on programme activities at the local level, in order to utilize the existing legal environment or provisions for accelerated FGM abandonment.

→ The aim of the discussion on the scenario in HANDOUT 3.2 is to provide participants with a practical illustration of the difficulty of applying a law that implies excessive dissonance with real life experience.

**TASK FOR PLENARY DISCUSSION: PART 1**

Ask each participant to answer four questions, with answers recorded on four flip charts:

1. Does your country have legal measures (laws/regulations/policies) for the abandonment of FGM? How are they contributing to the abandonment of FGM?

2. What have been the effects of those measures?

3. What are some challenges different stakeholders face?

4. Was there a legislative attempt to convey a sense of coherence between basic local values consistent with human rights principles and legislative reforms?
Disclose three initial questions

① What sentence should the judge impose?

② How should the judge seek to promote the “best interests of the child” involved? What about her siblings?

③ Should the sentence be different if the perpetrator was a girl’s grandmother or non-custodial uncle/aunt?

Add the following questions to facilitate the discussion:

④ Given the local context, would it be helpful to detect the possible dissonance between legislation and the existing social norm of cutting, and the implication of discordance between legislation and custom? Was there any attempt to use legislation as an advocacy tool in raising people’s consciousness about FGM and questioning their convictions about the practice?

Remind participants that the law addressing FGM in Burkina Faso was applied after two years of an educational campaign.

Point out that the case shows that effective legislative reforms to abandon FGM should:

→ Assume that harmful social norms might be “internalized” by communities and specifically by women, even when those norms have been shaped by patriarchy and legitimize an unequal system of authority and power relationships.

→ Use an appreciative approach to change people’s minds. Instead of individual solitary reasoning, make the context favourable to argumentation and deliberations that question people’s beliefs and convictions.
→ Take into consideration the local context when in a process of legislative reform. Encourage communities to participate in the process.

Draw attention to the following passage from (READING 3.2), “Legislation as a tool for behavioral and social change”:

**BOX 1: WOMEN’S “OWN” LOGIC**

“Women living in circumcising communities have ‘their’ own logic and rational reasons for not readily adopting our logic. For them living under a strong patriarchal social and economic regime with very few options for choices in livelihood, the room for negotiating a limited amount of power is extremely small. Circumcising your daughter and complying with other certain social norms, particularly around sexuality and its link to the economics of reproduction, is an essential requirement to these silent power negotiations. Women instinctively know this. We may scare them with all the possible risks of FC/FGM to health. We may bring religious leaders to persuade them that the practice is not a requirement. We can try to bring the wrath of the law to bear upon them. But in their desperate hold on the little negotiated power they have known for centuries, they are not willing to let go unless they see a benefit that is equal to or more than what they already have.”

→ Emphasize that:

- Excessive dissonance with existing social norms may be a hindrance to effective legislative reforms. It may generate resistance. As a result, people’s attitudes may move in a direction that will be opposite to the aim and content of reform (facilitators might anticipate some views from Module 4 on the two weights of persuasion, trust and argumentation).

→ Point out that:

- The multitude of experiences of the failure of legal reforms to bring about a decrease in the prevalence of FGM (and abandonment of other adverse social norms) calls for a note of caution when introducing reforms.
- The dynamics of FGM are not so different, for example, from the dynamics of child marriage and dowry in Bangladesh described in Module 2 and (READING 3.3), “Elusiveness of change in Bangladesh.”
Explain that the presentation aims to show the similarities in people’s perceptions of law and procedural justice in different contexts. The presentation explains and provides a rational for rural migrant entrepreneurs’ disobedience to the business license requirements in China.

Emphasize that:

→ People are more likely to comply with the law if they view the law as just, even though this contradicts their interests.

→ Procedural justice: views about the law and authority are strongly connected to judgment of the fairness of procedures through which authorities make decisions.

→ Ask participants to come back to their answers in Step 4, the working group exercise on prosecuting a mother of five, and ask them to analyse HANDOUT 3.2 taking into consideration these two concepts.

→ Make sure participants have read HANDOUT 3.3, “Good practices in legislative reforms: the case of Burkina Faso”.

→ Remind participants that the main aim of this case study is to define the elements of the process of adoption and implementation of legislation addressing FGM in Burkina Faso, with reference to Mockus’ hypothesis on the three regulatory systems, legal, moral and social.

→ Ask a volunteer to run PRESENTATION 3.2, “Good practices in legislative reforms: the case of Burkina Faso.”

→ When the discussions have started, walk around and listen to the groups to ensure the participation of all, and to help, if needed, by briefly referring to the possible answers to questions below.

Ask participants to elaborate on the following questions:

1. According to this case study: “Communities stated that a critical mass is ready to declare abandonment of the practice has already been reached” (Diop, Moreau and Benga, 2008). However, even if the number of girls who have not been excised is increasing, this does not yet translate into a broader demographic impact. What would you infer from this situation? Would Module 1, Step 10, on pluralistic ignorance, help to understand what to do on the ground?
Remind participants of PRESENTATION 1.4, “Pluralistic ignorance,” in Module 1. A situation of pluralistic ignorance can be described as one where, in a population, a significant proportion of individuals have private attitudes/preferences in conflict with the prevailing norm. Some or many individuals may incorrectly believe that most others in their social group support a specific social norm or set of norms, because they “see” others conforming to it. A survey could establish that most people dislike a norm, which would conflict with the observation that most people in fact follow the norm.

Ask participants to elaborate on the following questions:

② Legal and reinforcing strategies were concurrently implemented; an education campaign preceded the enforcement of the law in Burkina Faso. Enforcement is “strategically” mild. Would you recognize a strategic attempt to align the three regulatory systems, law, morality and culture?

③ A 2010 survey confirmed that the practice of FGM is gradually being abandoned in Burkina Faso. The facilitator can refer participants to UNICEF, 2013: “Female genital mutilation/cutting: a statistical overview and exploration of the dynamics of change”:

→ Page 104, Figure 8.9, “Data from Burkina Faso and the Central Africa Republic suggest major progress in reducing FGM in girls under age 15”

→ Page 101, Figure 8.7, “In most of the 29 countries, FGM/C is less common among adolescent girls than middle-aged women”

But enforcement is challenging. As a gendarme pointed out during a training session on social convention theory in Kombissiri in 2010: “Yes, this is a crime. However, it is a ‘special crime’. When we arrive to the site of the crime, we typically find the following situation: Parents are evidently in agreement with the exciser... (However) others, eight or nine siblings, might be around and an old grandmother who cannot care for herself may also be there, and the victim is wounded! What do we do? Do we arrest the parents?”

What does the gendarme clearly express with his words? What about the harmonization of legal, moral and social norms? Could you elaborate?

Note that the declaration of the gendarme clearly exemplifies a “divorce” between legal norms (do not cut your girl child!) and social norms (cut your girl child). Here it is important to understand whether:

→ Parents have “internalized” the social norm of cutting, so that they believe that girls ought to be cut, or

→ Parents’ true preference would be to abandon cutting, but they see others doing it and so they do it (pluralistic ignorance).

④ The law has an “expressive function” in “making statements” as opposed to controlling behaviour directly. Would you concur with the following: “Legal statements might be designed to change social norms?” (Sunstein, 1996).
1 Typical emotions in a norms violator are: fear (legal norms), guilt (moral norms) and shame (social norms). See READING 3.2, "Harmony and divorce between law, morality and culture," Table 1.

2 This video is available and can directly be received, by writing to JPendFGM@unfpa.org

3 This sentence is taken from Diop, Moreau and Benga, 2008. Experiences such as Tostan in many communities have introduced wording from social convention theory to FGM abandonment (see UNICEF, 2007).

4 According to Mockus, the "shortcut culture" may be observed when a society practices, accepts or even promotes actions rationalized in terms of short-term results, using little-regulated means that are sometimes unusual, sometimes immoral and sometimes even illegal (for example, giving bribes to a local administration to accelerate the release of needed documents).

5 See PRESENTATION 4.3, "Trust and argumentation", in Module 4.

6 Critical mass: a sufficient number of people among which the new practice (for example, not cutting) becomes sustainable (Mackey, 2007, p. 13).
Effective Legislative Reforms in Situations Calling for Social Change
Describing the national legal framework in which actions to promote FGM abandonment will be situated

A

Answer the following questions to describe the national legal framework (and when appropriate the “state” framework) in which actions to promote the abandonment of FGM will eventually be situated:

A Has your country ratified the:

1. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?
2. Convention against Torture and Other Inhuman or Degrading Treatment or Punishment (UNCAT)
3. Convention on the Rights of the Child (CRC)?
4. International Covenant on Civil and Political Rights (ICCPR)?
5. International Covenant on Economic, Social and Cultural Rights (ICESCR)?
6. African Charter on Human and People’s Rights?
7. African Charter on the Rights of the Child?

B Does your country have a constitutional provision ensuring women’s equal rights?
C Does the constitution say anything more explicit about FGM?

D Does a national reproductive law condemn FGM?

E Is there a criminal law (included in the penal code) prohibiting FGM?

F If yes, has this law been enforced?

G Is there a criminal law prohibiting assault or abuse of minors?

H Is there a criminal law prohibiting violence against women?

I Has any judge ever issued an order preventing a girl from undergoing FGM? Or requiring an FGM practitioner to pay compensation to a girl upon whom FGM was performed?

J Are medical providers prohibited from performing FGM by specific regulations?

K Are there any child protection laws that allow state authorities to intervene for the abandonment of FGM?

L Customary or religious laws can also be legal and their applicability might prevail on legal/statutory law (criminal law, for example, with an article prohibiting FGM). Is this the case in your country or the country where you currently live?

B

Then, given the legal situation above, explain what lines of actions you would take in programme activities at the local level to use the existing legal environment or law provisions for accelerating FGM abandonment.

Reminder: Human rights are normative entitlements of a person because they are a human being: individual or groups claims against a State or other duty bearer. Human rights protect against State actions, omissions and interferences with fundamental freedoms. They are reflected in international norms and standards, codified since 1948 in the Universal Declaration of Human Rights and other treaties. “The human rights-based approach (HRBA) to development is a conceptual framework for the process of sustainable development that is normatively based on international human rights standards and principles and operationally directed to promoting and protecting human rights. Under the HRBA, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political and social rights, and the right to development. HRBA requires human rights principles (equality and non-discrimination, participation, accountability) to guide UN development cooperation, and focus on capacity development of both “duty-bearers” to meet their obligations and “rights-holders” to claim their rights.
Handouts

Law enforcement issue: can the law be used to abandon FGM?

Prosecuting a mother of five

ADAPTED FROM AIDOS/RAINBO, 2007

BOX 1: PROSECUTING A MOTHER OF FIVE

Scenario
A 32-year-old woman is reported to the police for having arranged with a traditional FGM practitioner to have her 9-year-old daughter undergo FGM. The law provides that anyone who seeks to procure FGM for a girl under 18 can be sentenced from six months to three years in prison. The accused woman has one older daughter who has also been cut and three younger children under the age of 9; two are girls who have not been cut. The woman is put on trial and found guilty of conspiring to perform FGM, in violation of criminal law.

Questions to discuss

1. What sentence should the judge impose?
2. How should the judge seek to promote the “best interests of the child” involved? What about her siblings?
3. Should the sentence be different if the perpetrator was a girl’s grandmother or non-custodial uncle/aunt?
4. Given the local context, would it be helpful to detect the possible dissonance between legislation and the existing social norm of cutting, and the implication of discordance between legislation and custom?
Good practices in legislative reforms: the case of Burkina Faso

EXCERPTED FROM DIOP ET AL., 2008

CASE STUDY

[...] The qualitative survey carried out in five provinces confirms that the practice of FGM is gradually being abandoned in all the areas visited. The communities in all these areas have full knowledge of FGM, are able to draw distinctions between the different kinds of cutting and are well aware of the connection between excision and its consequences for health, including long-term consequences.

The information collected shows how significant the impact of the different strategies and activities has been in persuading people to abandon the practice, leading to widespread declarations of abandonment. Abandonment of FGM is not something recent, and mostly coincides with the time of adoption and application of the law. This period also corresponds with the beginning of a series of reinforcing strategies against excision. Some communities reported that an increasing number of young girls are no longer being excised and some of these are already reaching marriageable age. This is confirmed by agents of the Ministry of Health working in various health facilities reporting that they are seeing an increasing number of young pregnant women or new mothers who are not cut.

In terms of attitudes, communities8 stated “a critical mass ready to declare abandonment of the practice has already been reached”. In all regions, songs and dances celebrating the girl who has been excised seem to have disappeared. There is a widespread view among many people, however, that even if the number of girls who have not been excised is increasing, this does not yet translate into a broader demographic impact.

Factors that have contributed to the abandonment of excision

The anti-FGM law is well known to most people, especially the punishments for those found guilty. A strategy of denunciation carried out by CNLPE9 is equally well-known and continues to arouse fear among people. This strategy has been a significant force behind those who were involved in changing opinions. The restrictive and compulsory aspect of the law is extremely visible, and the setting up of mobile security teams for dissuasion and communicating information has also contributed to reducing the practice.

The involvement of certain traditional authorities in abandoning the practice of excision has received popular support. This has enabled a distinction to be drawn between justifications based on traditional custom for maintaining excision and other types of justification.
Questions to discuss

① According to this case study: “Communities stated that a critical mass ready to declare abandonment of the practice has already been reached.” However, even if the number of girls who have not been excised is increasing, this does not yet translate into a broader demographic impact. What would you infer from this situation? Would Module 1, Step 10, on pluralistic ignorance, help to understand what to do on the ground?

② Law and reinforcing strategies were concurrently implemented; an education campaign preceded the enforcement of the law in Burkina Faso. Enforcement is "strategically" mild. Would you recognize a strategic attempt to aligning the three regulatory systems, law, morality and culture?

③ A 2008 survey confirmed that the practice of FGM was gradually being abandoned in Burkina Faso. But enforcement was challenging. As a gendarme pointed out during a training session on social convention theory in Kombissiri in 2010: “Yes, this is a crime. However, it is a ‘special crime’. When we arrive to the site of the crime, we typically find the following situation: Parents are evidently in agreement with the exciser... (However) others, eight or nine siblings, might be around and an old grandmother who cannot care for herself may also be there, and the victim is wounded! What do we do? Do we arrest the parents?”

What does the gendarme clearly express with his words? What about harmonization of legal, moral and social norms? Could you elaborate?

④ The law has an “expressive function” in “making statements” as opposed to controlling behaviour directly. Would you concur with the following: “Legal statements might be designed to change social norms?” (Sunstein, 1996).

Continuous and diverse interventions, including the involvement of several sectors and of NGOs, as well as the media in the campaign, is a key element affecting people’s awareness and willingness to change.

Contacts with the outside world and with alternative values have also contributed to a change in behaviour. They have helped new ideas to be absorbed and have confirmed the decision to give up an old practice. It is widely accepted that the level of education and social status are major factors in the campaign against excision. A change in norms and values has thus resulted from contact with the outside world, with modern ideas being introduced and with education. This has led to the creation of an environment where FGM no longer has the traditional value it used to have.
Three regulatory systems

There is evidence that harmonization of social, moral and legal norms that is consistent with human rights and gender equality principles can lead to positive changes in individual and group behaviour across the social network, potentially on a large scale.

EXCERPTED FROM MOCKUS, 2004

See “Case study 4.1”, in Module 4.

THREE REGULATORY SYSTEMS

It is possible to make a distinction between three different types of rules or norms: legal, moral (or norms of conscience), and cultural (those informally shared by a community). The reasons to abide by a norm change depending on the type of norm in question. Thus, one way to explain each of the three regulatory systems is by considering the reasons why we obey their respective norms.

One can obey legal regulation because one considers it admirable, meaning one admires the way in which it was created, how it is applied, or the effects it produces. On the other hand, a very important factor in abidance by the law is fear of legal sanctions, fines or jail.

Moral regulation is closely linked to personal autonomy and the development of one’s judgment, what in the more classical Catholic tradition was deemed the age of reason: the emergence of judgment which translates into the voice of conscience, into the cricket in Pinocchio. Obedience to moral norms can come from the pleasure that doing so produces, or from the sense of duty. On the other hand, some people obey moral norms because by doing so they feel consistent with themselves, which in turn produces satisfaction. For example, if one has as a moral principle not to tell lies, then not doing so, even when one is very tempted to do so, is gratifying. In these cases one experiences a sensation of harmony with oneself. The opposite feeling, a sensation of discord or discrepancy with oneself, works as a moral punishment, and it generally receives the name of guilt. Fear of guilt can also be a cause of obedience to moral regulation.

Finally, there is cultural or social regulation. How to dress for the occasion, how to address someone depending on the degree of familiarity, what type of relationship to establish with colleagues, among others, are behaviors that are regulated by social norms. In contrast to moral norms, these don’t depend as much on each individual’s conscience, but on the group he or she belongs to. As in the case of legal and moral regulations, each individual may choose to a certain extent whether or not to follow social norms, by assessing the positive or negative consequences of her behavior. Table 1 shows the three regulatory systems summarized and the main reasons to obey each.
HARMONY AND DIVORCE

The three regulatory systems described above are relatively independent. There are many behaviors that are not contemplated in the law but that are so in social norms, such as manners at the table. There are also moral norms whose violation does not imply the violation of a law, such as lying about someone’s appearance. However, there are many behaviors that are regulated by two or even all three systems simultaneously. Stealing is forbidden by law, and it would be very convenient for society if it also generated guilt and social rejection. Likewise, paying taxes is a legal duty and doing so, in a society that understands the benefits of taxation, should produce personal satisfaction and social recognition. But there are contexts in which stealing is socially approved; for example, early in my first Administration, stealing water or electricity wasn’t only approved of in some neighborhoods, it was also frowned upon to legalize and pay for the service.

When the three regulatory systems are aligned, and when they coincide in the prohibition or encouragement of the same behaviours, then we can say that there is harmony between law, morality and culture. In the opposite case, we say that there is a divorce between them.
In reference to local administrative divisions/local governments such as the “states” in Nigeria.

Experiences such as Tostan have introduced wording from social convention theory to FGM abandonment (see UNICEF, 2007). This experience has been adapted by Mwangaza Action to the Burkinabé context.

National Committee to Fight the Practice of Excision (Comité National de Lutte Contre la Pratique de l’Excision), founded in 1988, Burkina Faso.

The gist of “three regulatory systems” is to recognize that moral and social norms may come to play in a human rights-based approach. In the context of the Manual, the three regulatory systems are in relation to a case study: Changing the city of Bogota”, a major experience within a city of 8 million in the 90’s. The major of Bogota, A. Mockus, a philosopher and mathematician, tried to change citizens’ mind by changing social norms of condoning corruption, stealing water and curbing the number of homicides in the city, mainly through the performing arts, in order to change perception of what was “normal”, and legislative reforms. The aim was harmonizing social norms with legal norms and moral norms according to human rights principles and standards. The main refrain was “life is sacred”.

The term legal norms may include also customary laws, which can be part of the national legal framework and considered “legal” or part of the national legislation (e.g., indigenous customary law, tribal courts, etc.).
MODULE THREE

Presentations

Effective Legislative Reforms in Situations Calling for Social Change
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Learning Objectives and Working Group Discussion:
Prosecuting a Mother of Five

Case Study adapted from Aidos/Rainbo, 2007
Learning Objectives

→ Define the interaction between legislative reforms and moral and social norms; understand how reforms that display excessive dissonance and lack of coherence with existing social norms might backfire.

→ Identify what roles legislative reforms can play in the abandonment of FGM and their relation with local beliefs and expectations in order to gradually pull local customs in the direction of the law.

→ Support the adoption and enforcement of effective legislative reforms for the acceleration of FGM abandonment and the abandonment of other practices, including those gender-biased harmful practices that condone and even endorse violence against women.
Prosecuting a Mother of Five

A 32-year-old woman is reported to the police for having arranged with a traditional FGM practitioner to have her 9-year-old daughter undergo FGM. The law provides that anyone who seeks to procure FGM for a girl under 18 can be sentenced from six months to three years in prison. The accused woman has one older daughter who has also been cut and three younger children under the age of 9; two are girls who have not been cut. The woman is put on trial and found guilty of conspiring to perform FGM, in violation of criminal law.
Question for discussion

① What sentence should the judge impose?

② How should the judge seek to promote the “best interests of the child” involved? What about her siblings?

③ Should the sentence be different if the perpetrator was a girl’s grandmother or non-custodial uncle/aunt?
Question for discussion

④ Given the local context, would it be helpful to detect the possible dissonance between legislation and the existing social norm of cutting, and the implication of discordance between legislation and custom?
Question for discussion

⑤ Was there any attempt to use legislation as an advocacy tool in raising people’s consciousness about FGM and questioning their convictions about the practice?
Procedural justice: law and judgment of fairness

This is a liberal rearrangement of the presentation “Incentive and Social Norms” by Erte Xiao, Carnegie Mellon University, at the Penn-UNICEF Program on Advances in Social Norms and Change, University of Pennsylvania, July 2010
Law and judgment of fairness

→ People are more likely to comply with the law if they view it as just, even though it contradicts their interests.

→ Procedural justice: views about the law and authority are strongly connected to judgment of the fairness of procedures through which authorities make decisions.
Law as just

Therefore, the issue is **NOT** about the law’s outcome but about the **WAY** the law is made.

The issue is:

- **HOW** the law *originates*
- **HOW** people *perceive* the law
- **HOW** they are more likely to see the law as **JUST**
Law as just

What might influence people’s judgment about the law?

What might influence people’s obedience or disobedience?
Disobedience by rural migrant entrepreneurs in China

Example: Rural migrant entrepreneurs disobey business licence requirements in China.

A considerable share rents licences from locals, which is illegal (He, 2005).
What might influence people’s judgment?

→ The law on business licences more or less represents the interests of local people, embodied by urban government.

→ The government never consulted migrants themselves. They live and work in the city, but have little say on laws and regulations.
What might influence people’s judgment?

→ Moreover, the law is not consistently enforced. For example, sporadic campaigns are launched during politically sensitive periods. People think that the law is not justified.

“I was walking in the street on my way to buy some daily items. All of a sudden, some guys in uniform appeared in front of me and asked for a temporary resident permit. I did not have one at that moment. They stuffed me into their car...” (interview on 15 December 2002).
What might influence people’s judgment?

→ **Corruption** in law enforcement may cause people to **disobey** a legal norm (as opposed to just reflecting disobedience).

More frequent punishment by corrupt officials in order to seek their own profit **may not reduce violations of the law**...
Law and the decision-making process

→ Views about the law/authority are very much about the way the law is made/originates, and the way it is enforced.

→ People should have an opportunity to take part in the decision-making process, be listened to and have their views considered by authorities. Enforcement should be seen as fair.
Why do we need moderate laws?

→ Social norms may freeze behaviour in place. Individual agents have little control over social norms even when they wish these to be different from what they are.

→ To change social norms, we face a collective action problem.
Why do we need moderate laws?

A “moderate” law may facilitate change by:

→ **Shifting perceptions** of what invokes disapproval and creating a new basis for shame...

→ Reducing the cost for **those who oppose the social norm**. They feel more comfortable opposing the norm in public.

→ Introducing a new element, **the belief** that the social norm **might be changed**.
Questions?
Good practices in legislative reforms: the case of Burkina Faso
Challenge

The quasi-universality of FGM and associated beliefs and expectations in practising communities make elusive any solution that does not result from collective decision-making.
Challenge

To be effective, legislative reforms may convey a sense of “coherence” between:

→ Basic local values consistent with human rights principles, and
→ Legislative reform provisions.

Legislators may avoid excessive “dissonance” with local customs in order to minimize resistance to effective reforms.
Challenge

The process may “show the way”, leading to the devaluation of FGM, recategorization of FGM and communities’ collective abandonment of FGM.
Burkina Faso Law 043/96/ADP

**Article 380.**
Any person who violates or attempts to violate the physical integrity of the female genital organ either in total or ablation, excision, infibulation, desensitization or by any other means will be imprisoned for 6 months to three years and a fine of 150,000-900,000 francs or by either punishment. If FGM results in death, the punishment shall be imprisonment for 5-10 years.

**Article 381.**
Imposes the maximum punishment for persons in the medical and paramedical field...

**Article 382.**
A person having knowledge of the acts outlined in article 380 and who fails to report to the proper authorities will be fined 50,000 to 100,000 francs...

Penal Code, Chapter on Crimes Against Family and Morality
Burkina Faso Law 043/96/ADP

The law was amended in 2018 – 2019

→ Now, prison sentences range from 1–10 years and fines range from 500,000 to 3 million francs CFA [845 to 5060 USD].

→ If a girl dies following the cutting, imprisonment ranges from 11– 21 years and the fine is 1 million to 5 million francs CFA [1687 to 8432 USD].

A new article (art. 513-9) was added to discourage public support of the practice of FGM/C:

“the penalty shall be imprisonment for a term of one to five years and a fine of two hundred fifty thousand (250 000) to one million (1 000 000) CFA francs [422 to 1687 USD], whoever through his public speech, public comments or writing, encourages female genital mutilation”

(Ministry of Justice, Human Rights and Civil Promotion, 2018: 148)
The challenge of enforcement

Contrary to experiences in many other countries, this law is applied and enforced.
The challenge of enforcement

A 2010 survey confirmed that FGM was gradually being abandoned in Burkina Faso.

But enforcement was challenging. As a gendarme pointed out during a training session in Kombissiri in 2010:
The challenge of enforcement

“Yes, this is a crime. However, it is ‘special crime’. When we arrive to the site of the crime, we typically find the following situation: Parents are evidently in agreement with the exciser... (However) others, eight or nine siblings, might be around and an old grandmother who cannot care for herself may also be there, and the victim is wounded! What do we do? Do we arrest the parents?”
Questions?