

TECHNICAL NOTE

Developing anti-FGM laws aligned with human rights

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UNFPA-UNICEF Joint Programme on the Elimination of
Female Genital Mutilation: Delivering the Global Promise



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SECTION I

Introduction

This technical note supports policymakers, parliamentarians and civil society actors in developing and/or amending laws to stop female genital mutilation (FGM). Little research or guidance exists on what makes a “good” anti-FGM law – in other words, the elements it should contain, particularly from a human rights perspective. This note offers guidance on good practices. It describes how to ground an anti-FGM law in standards defined by human rights conventions and mechanisms as well as political declarations made by States. The note could serve as a reference for countries developing new legislation criminalizing FGM or with plans to revise existing legislation. It does not discuss the enforcement of legislation, although it emphasizes that allocating sufficient budget to the implementation of the law is critical to translate laws into practice and uphold human rights.¹

FGM encompasses “all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons”.² According to the End FGM Network and Equality Now, FGM is practiced in at least 92 countries and on every continent except Antarctica.³ Beyond the 32 countries with nationally representative data on FGM, at least 60 other countries have documented the practice through indirect estimates, small-scale studies, or anecdotal evidence and media reports.⁴ In some countries, FGM is mainly practiced by diaspora communities.

The UNFPA-UNICEF Joint Programme on the Elimination of Female Genital Mutilation supports national initiatives to address FGM in 17 countries; 14 have legislation that criminalizes FGM.⁵ In July 2020, Sudan passed a new law criminalizing the practice.⁶

Only 55 per cent of the 92 countries in which FGM is reported to be practiced (51 countries in total) have national laws prohibiting it, either a specific anti-FGM law or an explicit criminal provision in other domestic laws such as the criminal code, child protection laws or general GBV laws.⁷ In countries with an explicit legal prohibition, laws diverge significantly in their normative content and punishments.⁸



SECTION II


Human rights dimensions of FGM

1. Applying a human rights framework to FGM

International human rights treaties provide an important framework for understanding FGM as a practice that violates human rights, especially those of women and girls. The treaties address the impact of FGM in hampering women's and girls' exercise and enjoyment of human rights and gender equality. They also provide guidance about appropriate measures to prevent and respond to FGM. This is particularly important in terms of the jurisprudence established in the general recommendations and comments of treaty monitoring bodies that track the implementation of international human rights treaties. International human rights norms and standards indicate governments' obligations at a legislative and policy level and specify appropriate actions that States should take.

2. Human rights violated by FGM

While mainly framed as a health issue in the past, it has long been recognized that FGM is a harmful practice and violation of human rights. A 2014 UNFPA publication, *Implementation of the International and Regional Human Rights Framework for the Elimination of Female Genital Mutilation*, provided a comprehensive overview of human rights violated by FGM. The publication lists relevant references in human rights conventions, general comments and general recommendations by human rights treaty bodies, reports by UN special rapporteurs as well as UN resolutions.⁹



In summary, FGM violates the following human rights:

- Right to be free from (gender) discrimination¹⁰
- Right to life¹¹
- Right to physical and mental integrity¹²
- Right to health¹³
- Right to not be subjected to torture or inhumane or degrading treatment¹⁴
- Right to privacy and family life¹⁵
- Rights of the child¹⁶

FGM violates the right to be free from (gender) discrimination because it is performed exclusively on women and girls and grounded in patriarchal beliefs about the roles of men and women in society. The right to life can be violated by FGM as many women and girls die as a result of FGM; the right to physical and mental integrity is violated since the practice mutilates women's and girls' bodies and often has an impact on psychological well-being.

FGM violates the right to the highest attainable standard of health given its undeniable and often severe negative health consequences, including scarring, chronic pain, infections, cysts, infertility. The intentional infliction of severe pain or suffering violates standards on the prohibition of torture and inhumane or degrading treatment. The practice violates the right to privacy and family life by interfering in women's and girls' most intimate private sphere and imposing often long-lasting effects on their sexual life, potentially also impacting their family life. As FGM is most commonly performed on girls from birth to age 15 years, it also violates children's rights as codified in specialized treaties that have the best interest of the child as a central concept.

3. Explicit references to States' obligation to prohibit and criminalize FGM in international human rights and consensus documents

In addition to FGM violating multiple human rights, an array of human rights documents and political declarations have also explicitly affirmed that States have an obligation to prohibit and criminalize FGM.

On the **international level**, these include, in chronological order:

- **The Programme of Action of the International Conference on Population and Development** (1994), stating that “[g]overnments are urged to prohibit female genital mutilation wherever it exists”.¹⁷
- **The Beijing Declaration and Platform for Action** (1995), declaring that one of the actions to be taken by States is to “[e]nact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation [...]”.¹⁸
- **The Committee on the Elimination of Discrimination against Women General Recommendation No. 24 on Women and Health** (1999), stating that States parties should ensure “the enactment and effective enforcement of laws that prohibit female genital mutilation [...]”.¹⁹
- **The Commission on the Status of Women resolution on ending female genital mutilation** (2010), urging States “to take all necessary measures, including enacting and enforcing legislation to prohibit female genital mutilation and to protect girls and women from this form of violence, and to end impunity”.²⁰

- **United Nations General Assembly resolutions on Intensifying Global Efforts for the Elimination of Female Genital Mutilations** (2012, 2014, 2016, 2018 and 2022) urging States “[...] to take all necessary measures, including enacting and enforcing legislation to prohibit female genital mutilations and to protect women and girls from this form of violence, and to end impunity”²¹ and “[...] to take all necessary measures in accordance with their obligations under applicable international human rights law, including legislative and policy measures, to prohibit female genital mutilation and to protect women and girls [...]”²²
- **The Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child Joint General Recommendation/Comment on Harmful Practices** (2014) calling on States parties to “explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offense and harm caused [...] and combat impunity for harmful practices”.²³
- **The Committee on Economic, Social and Cultural Rights General Comment No. 22** (2016) stating that States have core obligations in relation to sexual and reproductive health that include “[t]o enact and enforce the legal prohibition of harmful practices and gender-based violence, including female genital mutilation, child and forced marriage and domestic and sexual violence, including marital rape [...]”.²⁴
- **Human Rights Council resolutions** (2016, 2018, 2020 and 2022) urging States “to adopt national legislation prohibiting female genital mutilation, consistent with international human rights law, and to take steps to ensure its strict application” (2016 and 2018), “to take all necessary measures to prohibit female genital mutilation and to protect women and girls from this form of violence” (2020) and “to adopt and enforce regional and national legislation prohibiting female genital mutilation, in accordance with States’ obligations under applicable international human rights law [...]” (2022).²⁵

On the **regional level**, the following documents, for example, explicitly prescribe the prohibition and criminalization of FGM by national laws:

- **The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa** (Maputo Protocol), Article 5, requiring States parties to “*take all necessary legislative and other measures to eliminate such practices, including [...] prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them*”.²⁶
- **The Council of Europe Convention for Preventing and Combating Violence against Women and Domestic Violence** (Istanbul Convention), Article 38, obliging States parties “*to take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:* a) *excising, infibulation or performing any other mutilation to the whole or any part of a woman’s labia majora, labia minora or clitoris;* b) *coercing or procuring a woman to undergo any of the acts listed in point a;* c) *inciting, coercing or procuring a girl to undergo any of the acts listed in point a*”.²⁷
- **The Cairo Declaration on Legal Tools to Prevent Female Genital Mutilation adopted by member States of the Organisation of Islamic Co-operation** (2003) recommending that States should “*adopt specific legislation addressing FGM in order to affirm their commitment to stopping the practice and to ensure women’s and girl’s human rights*”.²⁸

On the **subregional level**, at least one specific legal document is dedicated to the prohibition of female genital mutilation, in particular cross-border FGM:

- **The East African Community Prohibition of Female Genital Mutilation Act by the East African Legislative Assembly** (2016) defines the criminal offence of FGM as well as modes of committing the offence (aiding, abetting, counselling or procuring) and specifically criminalizes cross-border FGM among the member States of the East African Community.²⁹

Among these human rights instruments obliging States to criminalize FGM, only Article 38 of the Istanbul Convention contains a definition of the practice, explicitly stating which acts should be criminalized. It is the only existing human rights treaty provision stipulating the types of action (inciting, coercing, procuring) that should be criminalized.

As regional human rights conventions,³⁰ both the Maputo Protocol and the Istanbul Convention are legally binding for their respective member States and the Prohibition of FGM Act is even directly applicable in the countries of the East African Community. Treaty body recommendations constitute “soft law” for States that have ratified the relevant treaty; declarations and resolutions are not legally binding, but declarations of political will of States that have agreed to them. While most relevant human rights documents in this overview are not legally binding, they can be used to hold States to account for their political commitments.





SECTION III

Extent of State obligations

Human rights standards explicitly prescribe the requirement for States to prohibit and criminalize FGM. States duties as derived from human rights instruments go beyond criminalization, however. Multiple responsibilities related to the elimination of FGM arise from the fact that the practice violates several human rights of women and girls. As a general principle of human rights law, States are required to respect, protect and fulfil the enjoyment of all human rights and therefore have a due diligence obligation to take necessary steps to enable every person to enjoy their human rights.

As elaborated by UNFPA,³¹ States have positive obligations to prevent and respond to FGM by taking appropriate legislative and/or policy measures in the following areas.

NATIONAL LAWS: In addition to criminalizing FGM, States have to ensure effective enforcement by all involved actors (police, public prosecutors, judges) and must actually prosecute perpetrators. Legal obstacles to prosecution need to be removed and legal protections for women and girls at risk of FGM should be introduced.³² Further, States are required to have laws and policies that address underlying root causes of violence against women, including FGM. These should remove legal and practical discrimination against women in all other legal areas (for example, labour law and nationality laws) and take measures to address harmful social and cultural roles ascribed to women.³³

POLICIES: States are called upon to have policies, regulations, protocols, standards and rules in place to ensure the effective implementation of national legislative frameworks on eliminating FGM. This may comprise developing national action plans and strategies to eradicate FGM. States should also develop policies to address the underlying root causes of FGM and foster social norms change around discriminatory gender roles in general.

FINANCIAL RESOURCES: States have been urged to allocate sufficient financial resources to implement policies and legislative frameworks aimed at eliminating FGM.

DATA COLLECTION: States must collect and disseminate basic data on FGM prevalence, trends, attitudes and behaviours as well as on reported cases and enforcement of legislation. Data should be disaggregated by sex, age, geographical location and disability status, and should be analysed systematically to inform laws and policies. Clear standards for collecting qualitative evidence should be in place.

EDUCATIONAL, TRAINING AND AWARENESS-RAISING PROGRAMMES: States should introduce appropriate educational and training programmes and awareness-raising campaigns on FGM to systematically reach the general public and relevant professionals. Such initiatives should aim at changing prevailing attitudes and stereotypes around gender roles towards ultimately transforming gender and social norms that lead to FGM.

TRAINING OF PROFESSIONALS: States should ensure gender-sensitive training for health-care workers at all levels (nurses, midwives, doctors and other relevant personnel) in order to prevent them from carrying out FGM (“medicalized FGM”) and to enable them to adequately respond to FGM and/or inform patients of its harms. Ideally, training should also sensitize and update the knowledge of professionals in other fields, particularly the justice sector (police, prosecutors, judges).³⁴

SUPPORT OF CIVIL SOCIETY ORGANIZATIONS: States should support national and local non-governmental and community organizations and religious, cultural and traditional institutions working to eliminate FGM, including local women’s groups.

SUPPORT SERVICES: States should ensure that multisectoral support services reach women and girls subjected to and at risk of FGM. Services include social, psychological and health care, including sexual and reproductive health. Where FGM leads to a disability, States have an obligation to ensure access to care to correct injuries and to provide psychosocial and other rehabilitation services.³⁵ States are also called upon to provide shelter services for those at risk of FGM.

INVOLVEMENT OF ALL ACTORS: States should ensure that key actors across all sectors, such as education, health, justice, social welfare, specialized women and child protection organizations, law enforcement, media, and immigration and asylum services, work together to eliminate FGM by taking a comprehensive, coordinated and systematic approach (horizontal coordination). An integrated strategy for the abandonment of FGM should involve multiple stakeholders at all levels (local, regional, national) and traditional and religious authorities (vertical coordination).³⁶

COUNTERING CROSS-BORDER FGM:³⁷ Countries should take actions to prevent and respond to the practice of cross-border FGM,³⁸ where girls are taken to a neighbouring country to have FGM performed on them. Countermeasures include developing transnational coordination and cooperation mechanisms with relevant neighbouring countries³⁹ and including clauses in national criminal laws that penalize cross-border FGM irrespective of whether the practice is illegal in the country in which it was performed.⁴⁰ Other steps may include the harmonization of national laws, such as through the development of regional model laws, based on using a victim- and survivor-centred approach.⁴¹



SECTION IV

Recommendations for a rights-based anti-FGM law

1. Introduction

A holistic, rights-based approach to preventing and responding to FGM hinges on criminalizing the practice. It also includes sustained efforts to address harmful social and gender norms through multiple channels of community mobilization engaging a wide range of community members. These encompass religious and community leaders, men and boys and women and girls, youth, and other key influencers. Support services for survivors and those at risk should be part of a multilayered approach along with adequate data collection and sufficient resources to implement laws and policy provisions. These elements are reflected in the human rights obligations outlined above. All can be included in one comprehensive anti-FGM law, covering criminal as well as other legal aspects of FGM prevention and response.

This technical note focuses on the criminalization of FGM, discussing in detail all relevant elements of the crime that should ideally be contained in a criminal statute as well as relevant provisions for criminal procedures in the following sub-chapter. Punitive measures, however, should never be the only response to stopping FGM. Criminalization should not be pursued in a vacuum, without further preventive and protective measures or without addressing social acceptance of the practice.⁴² Finally, there cannot be a one-size-fits-all anti-FGM law. Statutes must always take into account the local context, culture and legal systems. The procedural aspects of developing a context-specific anti-FGM law are discussed below.

2. Substantive elements of a rights-based anti-FGM law

2.1 Criminalization of FGM

As outlined above, States have a human rights obligation to prohibit and criminalize FGM. Very few human rights sources, however, elaborate which acts and forms of conduct should be criminalized, thus giving little guidance on what an FGM criminal provision should ideally look like. More general human rights standards as well as common principles of international and national criminal law(s) indicate the following elements as a minimum in a “good” FGM criminal provision.

» A clear and comprehensive definition of FGM

- As the definition of prohibited acts is the basis of a criminal offence, an FGM provision should contain such a definition, instead of simply referring to “female genital mutilation”, “female circumcision”.⁴³ The definition should encompass all possible forms of FGM, leaving no loopholes for so-called “lighter” forms.
- Some guidance can be drawn from the definition in Article 38 of the Istanbul Convention, which obliges States to criminalize “excising, infibulating or performing any other mutilation to the whole or any part of a woman’s labia majora, labia minora or clitoris”. This definition alone would not cover some local variations of FGM, however, such as the scraping of tissue surrounding the vagina and the cutting of the vaginal opening.⁴⁴ As the Istanbul Convention’s articles on substantive law only define the absolute minimum forms of conduct that States are obligated to criminalize, it is recommended that national criminal provisions contain a more comprehensive FGM definition.
- Another source of guidance on definitions is the World Health Organization (WHO) classification of FGM types.⁴⁵ This includes a wide variety of specifically defined acts without excluding any forms of FGM. Type 4 comprises a non-exhaustive list referring to “any other harmful procedures to the female genitalia for non-medical purposes”.⁴⁶
- If the definition includes a reference to “medical purposes” or “therapeutic reasons”, these possible medical/therapeutic purposes need to be clearly defined so they cannot be used as loopholes. Acceptable medical purposes for procedures that would otherwise technically fall under the definition of FGM may include, for example, sex reassignment surgery.⁴⁷



FROM NATIONAL LEGISLATION

The Gambia has included a detailed description of all prohibited acts in its criminal provision, including:

- *The excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);*
- *The partial or total excision of the labia minora;*
- *The partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;*
- *The stitching with thorns, straw, thread or by other means in order to connect the excision of the labia and the cutting of the vagina and the introduction of corrosive substances or herbs into the vagina for the purpose of narrowing it;*
- *Symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or*
- *Engaging in any other form of female genital mutilation and/or cutting.*⁴⁸

» Medicalized FGM is specifically criminalized

- An FGM criminal provision needs to apply to procedures in a medical setting as the “medicalization” of FGM is a growing trend.⁴⁹ This is partly due to this is partly due to perception that there will be less associated health complications when performed by health-care workers.
- Ideally, medicalized FGM should be explicitly criminalized instead of relying on general criminal law principles. This closes legal loopholes and sends a clear message that medicalized FGM is in no way fewer prohibited or condoned by the State.
- Considering the specific position of power of medical professionals, especially doctors, and the harm done by seemingly legitimizing the practice by medicalizing it, a higher penalty should be envisaged for medical professionals committing the offence of FGM.⁵⁰
- Formally, this could be done either through defining medicalized FGM as a separate offence or by defining FGM carried out by a doctor, midwife, or other parties as an aggravating circumstance.
- For specific penalties, including professional sanctions for health-care providers, see the section on penalties below.



FROM NATIONAL AND SUBREGIONAL LEGISLATION

Niger, The Penal Code, Law No. 2003-025

Section III bis. – Female Genital Mutilation

Article 232.3: The penalties under the previous article are increased to the maximum when the offender belongs to the medical or paramedic profession; a ban on practising one's profession may be imposed for a period of [...]⁵¹

East African Community Prohibition of Female Genital Mutilation Bill, 2016

Part II – Female Genital Mutilation and Related Offences

*4. (2) A person commits the offence of aggravated female genital mutilation where – [...]
(e) the female genital mutilation is done by a health worker.⁵²*

» FGM is criminalized when performed on women and girls of all ages

- Human rights law is unambiguous in relation to FGM violating women's and girls' rights irrespective of their age. An FGM criminal provision therefore needs to prohibit FGM not only for children but also for adult women.⁵³
- An FGM criminal provision, however, must not apply to the person on whom FGM was performed, even if this person is an adult and/or has allegedly consented to or requested the practice herself (see below on different types of conduct that should be criminalized).
- With regard to drafting the law, this can be achieved by including a neutral term, such as "person" in the criminal provision, or by referring explicitly to "women and girls" (if those terms are defined elsewhere within the criminal law).
- Additional protection of minors could be legally provided by integrating FGM-specific clauses into child protection laws.

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GOOD PRACTICE EXAMPLES

FROM NATIONAL AND SUBREGIONAL LEGISLATION

Egypt, Penal Code (Amendment 2016)

Article 242-bis

[...] whoever performs circumcision (khitan) on a female by removing any of her exterior genital organs, partially or totally, or inflicts an injury to these organs without any medical necessity will be punished by [...].⁵⁴

Cameroon, Penal Code 2016

Article 277.1: Genital Mutilations

Whoever mutilates the genital organ of a person [...]⁵⁵

» Consent to FGM is not a valid defense for the perpetrator under criminal law

- For young children, this will be obvious from general criminal law provisions in most countries, as children do not have the legal capacity to consent to any acts.
- An FGM criminal provision should, however, ensure that consent cannot be used as a defense when the procedure was performed on an adult woman or child who was legally able to consent.
- This could be achieved through an explicit statement in the criminal provision or by ensuring that other general criminal law provisions regulating consent as a defense do not apply to the FGM provision.

GOOD PRACTICE EXAMPLES

FROM NATIONAL LEGISLATION

Kenya, The Prohibition of Female Genital Mutilation Act, 2011

Part IV – Offences

19. Offence of female genital mutilation

(6) It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.⁵⁶

Uganda, The Prohibition of Female Genital Mutilation Act, 2010

Part II – The Offence of Female Genital Mutilation

9. Consent of the victim to female genital mutilation.

Consent of the victim to female genital mutilation shall not be a defence under this Act.⁵⁷

» **The types of conduct criminalized should not only refer to performing FGM but also to coercing someone to undergo the procedure, procuring the procedure, aiding or abetting it, and, in some instances, encouraging it.**

- FGM is usually carried out by several collaborating actors, including a family member requesting/procuring the procedure from a traditional cutter or a medical professional, the person performing the actual procedure, and potentially others (family members or apprentices of the cutter) taking part in the procedure by, for instance, physically restraining the woman/girl or assisting the cutter.
- It is not enough to criminalize the cutter's conduct alone. An FGM criminal provision should apply to all involved actors except the survivor (see above), as all have the intent to carry out FGM and contribute to its actual realization.
- Most forms of conduct by other actors can be captured by the criminal law concepts of aiding and abetting a crime.
- Regarding the criminalization of the procurement of FGM and the practical implications when parents or family members request FGM, see the discussion below.
- Where FGM has been requested or procured by an adult woman for herself, her conduct must not be criminalized. Women choosing to undergo FGM will most likely do so under immense societal pressure to conform to gender norms and/or might be trying to mitigate the repercussions of not being cut in an FGM-practising community. The criminal provision should be formulated to explicitly refer to requesting or procuring FGM to be carried out on *another* person.
- Encouraging FGM could be criminalized under certain circumstances, including where it amounts to incitement by persons in a certain leadership position and/or those holding public offices, such as religious leaders, community leaders, public officials, teachers, police officers, health-care professionals and elected politicians. As a general principle of criminal law, public encouragement to commit a criminal offence should be criminalized, in particular when coming from a public official.
- Human rights guidance on which types of conduct should be criminalized can be drawn from Article 38 of the Istanbul Convention. It requires States parties to criminalize, in addition to the actual act of cutting, "*coercing or procuring a woman*" and "*inciting, coercing or procuring a girl to undergo*" any of the acts listed in the provision. In a separate article, the Convention requires States to criminalize aiding and abetting for the actual act of cutting or mutilating a woman or girl.

FROM NATIONAL LEGISLATION

Most countries with FGM laws criminalize at least some forms of procuring, arranging and assisting FGM. Some also explicitly criminalize incitement, for example:

Nigeria, Violence Against Persons Prohibition Act 2015

Section 6 – Prohibition of female circumcision or genital mutilation

(4) A person who incites, aids, abets, or counsels another person to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to [...].⁵⁸

Ethiopia, Proclamation No. 414/2004 – The Criminal Code

Article 570 – Incitement Against the Enforcement of Provisions Prohibiting Harmful Traditional Practices

Any person who publicly or otherwise incites or provokes another to disregard the provisions of this Code prohibiting harmful traditional practices, or organizes a movement to promote such end, or takes part in such a movement, or subscribes to its schemes, is punishable with [...].⁵⁹

COMPLEXITIES IN CRIMINALIZING THE REQUEST FOR OR PROCUREMENT OF FGM

Including requests for FGM in criminal provisions raises complex challenges in practice, particularly when applied to parents of a minor. Civil society organizations in several countries have flagged concerns about the potential effects of criminalizing parents.

Imposing sentences on one or both parents of a child survivor of FGM can have unintended adverse effects, especially when prison sentences are imposed. This might leave the child without a guardian, further traumatize the child, and/or adversely affect the child's economic situation. In this regard, sentencing family members, parents in particular, might not be in the best interest of the child.

Another consideration could be that in societies, where women's decision-making powers are severely limited and mothers might be under considerable pressure to conform to social norms, their decision to have their daughters cut may not be freely formed. In many cases, they will be under immense pressure from other family members or their communities and will act with the intention to avoid possible negative societal consequences for the child. In certain situations, where pressure is concrete enough to amount to coercion, this could even raise legal questions around criminal accountability.

On the other hand, exempting parents from liability in the criminal provision itself might send a wrong message that the State condones requesting FGM, with the law then not serving its intended purpose as a deterrent. Exempting certain categories of perpetrators such as parents from criminal prosecution is further difficult to reconcile with general principles of criminal law that require prosecuting any perpetrator, with the relationship between the perpetrator and victim usually considered only as an alleviating or aggravating factor, if at all. The Istanbul Convention,

the only human rights instrument explicitly stating which types of conduct should be criminalized, also provides for criminalizing “procuring a woman or girl to undergo FGM”.

A look into different national FGM laws reveals that most criminalize requesting or procuring FGM (which in practice will most often be done by parents or other close family members). Some even explicitly mention this group of potential perpetrators:

“Anyone who helps, assists, or requests the services of an FGM practitioner...” (Benin); “Anyone who requests, incites or promotes FGM...” (Eritrea and The Gambia); “Whoever requests [circumcision] for a female and the [circumcision] took place based on his or her request...” (Egypt); “Anyone who commissions FGM...” (Ethiopia); “Anyone procuring, aiding and abetting FGM...” (Kenya); “Anyone who procures FGM...” (Senegal and Tanzania); “Anyone who procures or promotes FGM...” (Togo); “Anyone procuring, aiding and abetting FGM...” (Uganda); “Parents and relatives of victims (up to the fourth degree) for procuring FGM...” (Côte d’Ivoire).

One possible way to address this legal dilemma is to suspend sentences for parents in judicial practice while not exempting them from criminal accountability in the legal provision. In any case, the criminalization of parents as perpetrators should only be the last resort. The legal framework should put a strong emphasis on protective measures for children, such as helplines.⁶⁰

» Attempts to carry out FGM are also criminalized

- As a general principle of criminal law, the attempt to commit an offence should also be criminalized, albeit with a less severe penalty.
- FGM criminal provisions should contain a reference to attempts to carry out FGM or ensure that general criminal law provisions stipulating rules related to attempt also apply to FGM.



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FROM NATIONAL LEGISLATION

Burkina Faso, Law N°025-2018/AN of 31 May 31 2018 on the (revised) Penal Code

Section 2: Female Genital Mutilation

Article 513-7

Anyone who infringes or attempts to infringe the integrity of the female genital organ by ablation, by excision, by infibulation, by desensitization or by any other means, shall be punished with a prison sentence of one to ten years and a fine of [...],

If death is the result, the penalty is imprisonment for 11 to 21 years and a fine of [...].⁶¹

Uganda, The Prohibition of Female Genital Mutilation Act, 2010

Part II – The Offence of Female Genital Mutilation

5. Attempt to carry out female genital mutilation.

A person who attempts to carry out female genital mutilation commits an offence and is liable on conviction to [...].⁶²

» Cross-border FGM is criminalized

- As cross-border FGM is an increasing concern, criminal provisions should also apply to situations where women and girls are taken to another country where FGM is not criminalized or provisions are not enforced in order to undergo the procedure.
- This can be done in two ways. The first is to establish extraterritorial jurisdiction over the offence, in other words, by legally providing for the application of the criminal offence to situations where FGM was performed in another State but by nationals or on nationals of the legislating State.⁶³ The second entails criminalizing the act of taking a woman or girl to another country in order to have FGM performed per se. Ideally, a combination of both approaches should be included in a criminal provision.
- When criminalizing the actions of nationals (or against nationals) in another State, double criminalization must not be a requirement for prosecution in the legislating State. In other words, whether or not FGM is criminalized in the State where it was performed must be irrelevant.⁶⁴
- Human rights guidance can be drawn from the Istanbul Convention, which requires member States to criminalize FGM when committed by or against one of their nationals or a person who has their habitual residence in their country and to take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalized in the territory where they were committed.⁶⁵ The Joint General Recommendation/Comment by the Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child on harmful practices requires States to criminalize cross-border FGM.⁶⁶

FROM NATIONAL AND SUBREGIONAL LEGISLATION

Kenya, The Prohibition of Female Genital Mutilation Act, 2011

Part IV – Offences

21. Procuring a person to perform female genital mutilation in another country

A person commits an offence if the person takes another person from Kenya to another country, or arranges for another person to be brought into Kenya from another country, with the intention of having that other person subjected to female genital mutilation.

28. Extra-territorial jurisdiction

(1) *A person who, while being a citizen of, or permanently residing in, Kenya, commits an act outside Kenya which act would constitute an offence under section 19 [Offence of female genital mutilation] had it been committed in Kenya, is guilty of such an offence under this Act.*

(2) *A person may not be convicted of an offence contemplated in subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.⁶⁷*

East African Community Prohibition of Female Genital Mutilation Bill, 2016

Part II – Female Genital Mutilation and Related Offences

6. *A person commits an offence if the person takes another person from a Partner State to another Partner State or another country, or arranges for another person to be brought into a Partner State from another country with the intention of having that other person subjected to female genital mutilation.⁶⁸*

» The penalties for FGM are commensurate with the gravity of the offence

- States should create penalties in line with those imposed for similarly grave offences related to causing bodily harm, while also considering the implications of imposing prison or financial sentences on perpetrators on whom the survivor depends, such as the parents of a minor.
- Penalties should take into account aggravating factors, such as the harm caused by the procedure (e.g., death or disability of the victim, HIV and other infections) and the personal characteristics of the perpetrator (e.g., whether they are health-care professionals and/or repeat offenders).
- Penalties should also include professional sanctions, such as disbarment or suspension from practice, where health-care providers or persons holding public offices are involved.
- States should consider including the possibility for survivors of FGM to claim (financial) compensation from the perpetrators, which could be adjudicated as part of the criminal trial (in addition to and not instead of the punishment imposed by the court).⁶⁹ Human rights guidance on survivors' rights to compensation or remedy can be drawn from both the Istanbul Convention (Article 30) and the Maputo Protocol (Article 25).

FROM NATIONAL AND SUBREGIONAL LEGISLATION

Egypt, Penal Code (Amendment 2021)

- *Under the new law, doctors and nurses engaging in FGM are punishable by 10 years of imprisonment, as opposed to five to seven years for other persons engaging in FGM.*
- *If a victim dies from undergoing FGM, the perpetrator is punishable by 10 years of imprisonment if the perpetrator is not a medical practitioner, and 10 to 20 years if the perpetrator is a doctor or nurse.*
- *In addition to the criminal penalties, the draft law requires that the private medical clinic where the FGM procedure took place be closed for up to five years.*
- *It also mandates that an ad be placed in two widely circulated newspapers and on websites determined by the court in order to publicize the name of the clinic and the reasons for its closure.*
- *Further, it authorizes the court to suspend the medical professionals who took part in the procedure for up to five years.⁷⁰*

East African Community Prohibition of Female Genital Mutilation Bill, 2016

Part II – Female Genital Mutilation and Related Offences

- 4 (2) A person commits the offence of aggravated female genital mutilation where
- a. death occurs as a result of female genital mutilation;
 - b. the offender is a parent, guardian or person having authority or control over the victim;
 - c. *the victim suffers disability as a result of the mutilation;*
 - d. *the victim is infected with HIV as a result of the act of female genital mutilation; or*
 - e. *the female genital mutilation is done by a health worker.⁷¹*

» Protection orders can be issued by courts to protect women and girls at risk of FGM

- There should be a legal possibility (either stipulated in the criminal law or as part of other laws, e.g., civil laws) to apply for protection orders at competent courts.
- Protection orders should be issued to prevent FGM where a risk is imminent.
- Ideally, protection orders should be combined with support measures for women and girls applying for them (see below).
- Human rights guidance can be drawn from the general recommendations of the Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child referring to the requirement for States to introduce the legal possibility of protection orders for survivors of gender-based violence in general and harmful practices in particular.⁷²

FROM NATIONAL AND SUBREGIONAL LEGISLATION

Uganda (Common Law), The Prohibition of Female Genital Mutilation Act, 2010

Part III – Court Orders and Jurisdiction

14. Special powers of court

- (1) A magistrate's court may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order.
- (2) Where the protection order is issued in respect of a child, the Family and Children Court may issue appropriate orders for the child as it deems necessary.⁷³

East African Community Prohibition of Female Genital Mutilation Bill, 2016

Part II – Female Genital Mutilation and Related Offences

13. A court in a Partner State may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order.⁷⁴

» **Criminal procedures need to be gender- and child-responsive**

- Criminal procedural law has to ensure the protection of the safety of survivors and witnesses during trials, such as by allowing them to testify without the perpetrator present.
- Criminal procedural law should also provide for protecting the anonymity of survivors and witnesses; this might involve excluding the public from oral hearings and/or deleting the survivor's personal details from court files.
- For criminal investigations, the criminal procedural law should define gender- and child-sensitive procedures for interviewing survivors and evidence gathering. On the policy level, the establishment of specialized investigation units within the police may be warranted.⁷⁵
- Criminal procedural law should provide for free legal aid for survivors of FGM.⁷⁶ Human rights guidance on free legal assistance can be drawn from the general recommendations and comments of the Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child⁷⁷ and the Istanbul Convention (Article 57).
- The statute of limitation for initiating legal proceedings should be sufficiently long to allow for reporting after the survivor has reached the age of majority. Human rights guidance can be drawn from the Istanbul Convention (Article 58).⁷⁸



Many elements outlined here are in the 2020 FGM Model Law developed by a private legal consultancy firm, the Thomson Reuters Foundation, in collaboration with a British NGO, 28TooMany.⁷⁹ No model law or guidance on rights-based anti-FGM laws has been developed by any international or regional intergovernmental organization.

While States are obligated to prohibit and criminalize FGM, criminalization is not an end in itself but a means to deter the practice. As such, it is one of several prevention measures. Successfully eliminating FGM requires taking many other measures to prevent and respond to the practice.

2.2 Beyond criminalization: multilayered approaches to FGM prevention and response

As emphasized throughout this technical note, FGM criminalization alone is insufficient to eliminate the practice. States have human rights obligations that go beyond prohibiting and criminalizing the practice, as outlined by different human rights documents and mechanisms. An FGM legal framework should, in addition to criminalizing the practice, address the State's further human rights duties to prevent and respond to the practice.

When drafting or amending an anti-FGM law, States should consider one comprehensive piece of legislation integrating some or all of the aspects related to financial resources, data collection, training and awareness programmes, support for civil society organizations and support services. This could follow good practice examples of general gender-based violence laws, such as in Tunisia.

TUNISIA'S COMPREHENSIVE APPROACH TO ELIMINATING VIOLENCE AGAINST WOMEN

The Tunisian Law on Eliminating Violence against Women contains four pillars: prevention of violence, protection of women victims of violence, the penalization of perpetrators, and procedures, services and institutions that support women victims of violence.⁸⁰

In addition to criminal provisions, the law contains far-reaching obligations for the State to: introduce national policies and action plans; establish partnerships and support civil society organizations working in the field; carry out educational programmes and trainings for relevant professionals, such as health workers, social workers and police officers; provide health services and urgent protection measures, such as barring orders; ensure access to psychosocial and legal support as well as safe shelters for survivors; and safeguard victims' rights during criminal procedures.⁸¹

The law is framed with a recognition that violence against women is a form of discrimination and a human rights abuse. It therefore also calls for taking multiple measures to eliminate discriminatory practices, especially in wages and social protection.⁸²

Similarly, an FGM legal framework should, in addition to criminalizing the practice, address the state's further human rights duties to prevent and respond to FGM outlined above. Introducing one homogeneous dedicated FGM law that addresses all aspects of prevention and response as in the example of Tunisia's GBV Law is, however, only one possible approach. Including provisions in different laws as appropriate as well as introducing policies, strategies and/or regulations to cover different aspects of prevention and response can also be a suitable way forward, as long as it ensures complementarity and linkages among different laws and by-laws.

Where a comprehensive legal framework for gender-based violence, e.g. for domestic violence, already exists, States could consider integrating FGM into these laws. This would mean that already established State obligations, such as to conduct awareness-raising activities, develop action plans, offer health services to survivors, and other actions, would also apply to FGM. This could help legally ensure that survivors of FGM can access support services that might already exist for survivors of gender-based violence, such as counselling, health services and legal aid.

3. Procedural aspects of a rights-based anti-FGM law

While the points outlined above are recommendations for substantive elements in an anti-FGM law, on a procedural level, such a law should not be imposed from the top down. Instead, following a human rights-based approach, it should ideally be created through a participatory process involving civil society organizations and the public – in other words, individual rights-holders. This approach is in line with recommendations from human rights mechanisms calling for legislative drafting processes to be fully inclusive and participatory⁸³ as well as with recommendations developed by the 2020 United Nations High Commissioner for Human Rights' Expert Group Meeting on the Elimination of FGM.⁸⁴

It also reflects UNFPA's human rights-based approach to programming. This is outlined in a 2020 guidance note,⁸⁵ which emphasizes the importance of civil society and public participation at all levels of decision-making on issues that affect them.

When applied to drafting or amending an anti-FGM Law, this approach means that governments should seek contributions and feedback from survivors of FGM as well as specialized civil society organizations on the substantive content of the law. Targeted awareness-raising and social mobilization measures should generate broad public knowledge of FGM⁸⁶ both to feed into the drafting process and to garner support for the legislation. One survivor-centric practice is to conduct public inquiries on FGM, as outlined in UNFPA's 2020 primer, *Conducting Public Inquiries to Eliminate Female Genital Mutilation*.⁸⁷



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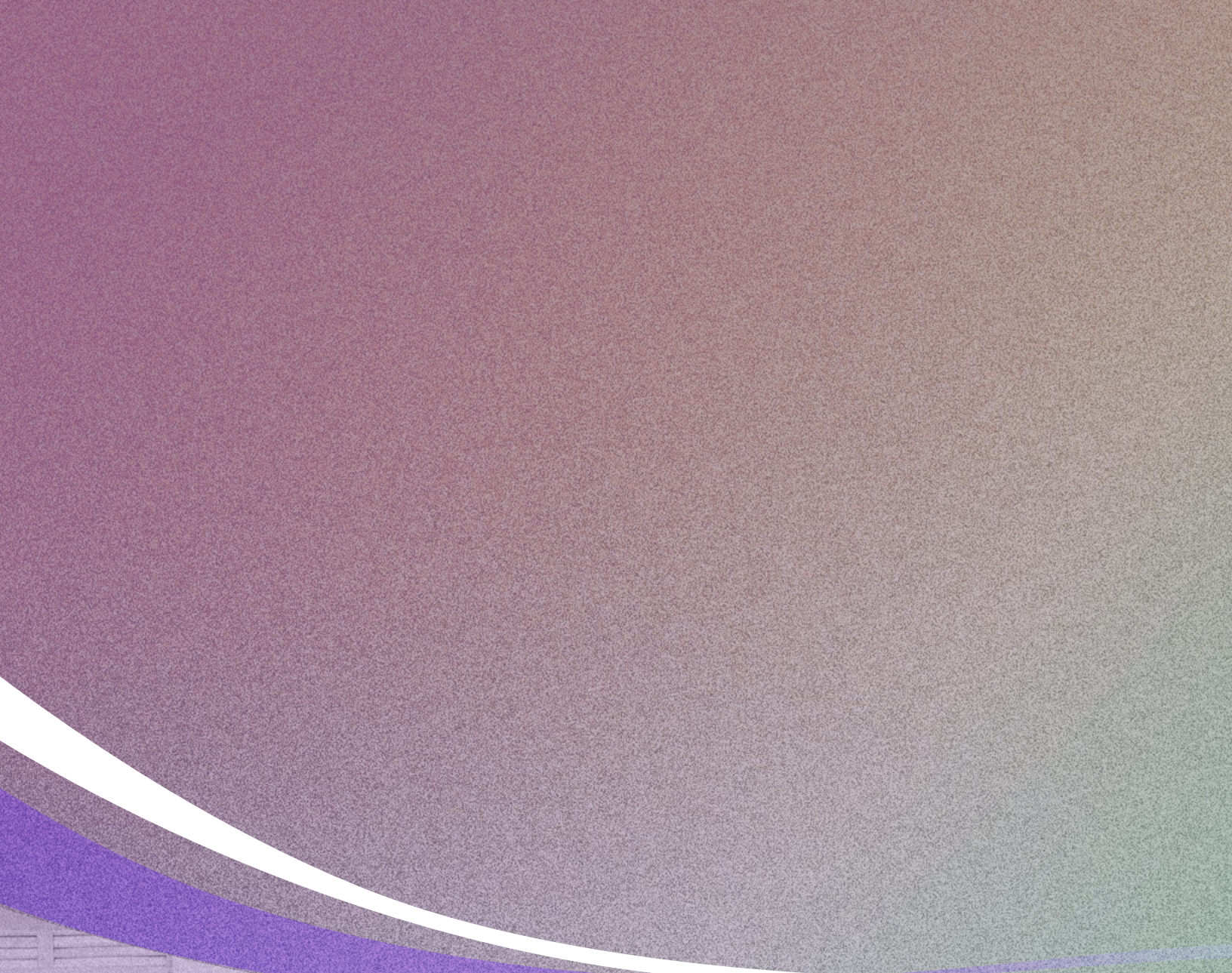
Endnotes

1. For guidance on implementing sexual and reproductive health laws, please see the forthcoming UNFPA publication, *From Paper to Practice: How to maximize the potential of supportive sexual and reproductive health laws*.
2. WHO, 2008.
3. End FGM Network and Equality Now, 2020. See also UNFPA and UNICEF, 2020, p. 6.
4. End FGM Network and Equality Now, 2020, p. 11
5. UNFPA and UNICEF, 2020, pp. 13–15
6. Ibid.
7. End FGM Network and Equality Now, 2020, p. 18
8. See World Bank, 2020, and the national reports by 28TooMany at <https://www.28toomany.org/thematic/law-and-fgm/>.
9. See UNFPA, 2014, with extensive references to relevant human rights treaty body jurisprudence.
10. The right to be free from gender discrimination is laid down in the following international and regional documents. International level: Article 2 of the Universal Declaration of Human Rights; Articles 2, 3 and 26 of the International Covenant on Civil and Political Rights; Article 2 of the International Covenant on Economic, Social and Cultural Rights; Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 2 of the Convention on the Rights of the Child. Regional level: Article 14 of the European Convention on Human Rights; Article 1 of the European Convention on Human Rights Protocol No. 12; Article 4(2) of the Istanbul Convention; Articles 1 and 24 of the American Convention on Human Rights; Article 6(a) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para); Articles 2, 18(3) and 28 of the African Charter on Human and Peoples' Rights (Banjul Charter); Article II of the Maputo Protocol; Article 3 of the African Charter on the Rights and Welfare of the Child; Article 3 of the Arab Charter on Human Rights (Arab Charter).
11. See UNFPA, 2014. International level: Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights; Article 6 of the Convention on the Rights of the Child. Regional level: Article 2 of the European Convention on Human Rights; Article 4 of the American Convention on Human Rights; Article 4(a) of the Convention of Belem do Para; Article 4 of the Banjul Charter; Article IV(1) of the Maputo Protocol; Article 5 of the African Charter on the Rights and Welfare of the Child; Article 5 of the Arab Charter.
12. See UNFPA, 2014. International level: Article 1 of the Universal Declaration of Human Rights; Article 9 of the International Covenant on Civil and Political Rights; Article 19 of the Convention on the Rights of the Child. Regional level: Article 5 of the European Convention on Human Rights; the Istanbul Convention in general; Article 7 of the American Convention on Human Rights; Article 4(b) of the Convention of Belem do Para; Article 4 of the Banjul Charter, Article IV(1) of the Maputo Protocol; Article 16(1) of the African Charter on the Rights and Welfare of the Child; Article 14 of the Arab Charter.
13. See UNFPA, 2014. International level: Article 12 of the International Covenant on Economic, Social and Cultural Rights; Article 24 of the Convention on the Rights of the Child. Regional level: Article 11 of the European Social Charter; Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador); Article 16 of the Banjul Charter; Article XIV of the Maputo Protocol; Article 14 of the African Charter on the Rights and Welfare of the Child; Article 39 of the Arab Charter.
14. See UNFPA, 2014. International level: Article 5 of the Universal Declaration of Human Rights; Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the International Covenant on Civil and Political Rights; Article 37 of the Convention on the Rights of the Child. Regional level: Article 3 of the European Convention on Human Rights; Article 5 of the American Convention on Human Rights; Article 4(d) of the Convention of Belem do Para; Article 5 of the Banjul Charter; Article IV(1) of the Maputo Protocol; Article 16(1) of the African Charter on the Rights and Welfare of the Child; Article 8 of the Arab Charter.

15. This is the only human right not mentioned or discussed in the above cited UNFPA publication. It is added here for completeness. The effect of FGM on women's sexual life in particular is often overlooked in literature and policy guidance. See UNFPA, 2014. International level: Article 12 of the Universal Declaration of Human Rights; Article 17 of the International Covenant on Civil and Political Rights; Article 16 of the Convention on the Rights of the Child. Regional level: Article 8 of the European Convention on Human Rights; Article 11 of the American Convention on Human Rights; Article 18 of the Banjul Charter; Article 10 of the African Charter on the Rights and Welfare of the Child; Article 21 of the Arab Charter.
16. See UNFPA, 2014. International level: Convention on the Rights of the Child, in particular, Article 24. Regional level: African Charter on the Rights and Welfare of the Child, in particular, Article 21.
17. The Programme of Action of the International Conference on Population and Development in Cairo, Egypt, in 1994, para. 4.22.
18. The Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in Beijing, China, in 1995, para. 125(i).
19. UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev., para. 15(d).
20. Committee on the Status of Women, resolution 54/7, E/CN.6/2010/11, para. 6.
21. United Nations General Assembly resolution A/RES/67/146 (2012), para. 4; reiterated in A/RES/69/150 (2014), para. 4; A/RES/71/168, (2016), para. 4; A/RES/73/149 (2018), para. 6; A/RES/75/160 (2020), para. 6 (reiterated in a slightly different wording).
22. United Nations General Assembly resolution A/C.3/77/L.18/Rev.1 (2022), para. 2.
23. Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, 4 November 2014, para. 12.
24. Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 2016, E/C.12/GC/22, para. 49(d).
25. Human Rights Council Resolutions A/HRC/RES/32/21, 1 July 2016, para. 3; A/HRC/38/L.9, 2 July 2018, para. 9 (e); A/HRC/44/L.20, 14 July 2020, para. 2; A/HRC/50/L.15/Rev.1, 6 July 2022, para. 4.
26. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the African Union in 2003 (entered into force in 2005).
27. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (entered into force in 2014).
28. The Cairo Declaration on Legal Tools to Prevent Female Genital Mutilation, following the Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation held in Cairo, contained in A/C.3/58/3, para. 1. Note that although this statement does not explicitly refer to criminal legislation, it is clear from the rest of the declaration that this is what para. 1 is referring to. The Declaration was adopted by: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Sudan, Tanzania, Togo and Uganda.
29. See The East African Community's Prohibition of Female Genital Mutilation Bill, Articles 4 to 6, available at <http://www.eala.org/documents/view/the-eac-prohibition-of-female-genital-mutilation-bill2016>. The member States of the community are: Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania.
30. Asia and the Pacific does not have any regional human rights convention or mechanism.
31. See UNFPA, 2014.
32. Compare with the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, para. 54.
33. Compare with Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women's General Recommendation No. 35 on gender-based violence against women, updating General Comment No. 19 (CEDAW/c/GC/35), paras. 29–33.
34. This is an extension of what was elaborated in the above-mentioned 2014 UNFPA publication regarding the training of professionals, which focused on the training of healthcare professionals. Regarding the training of other professionals see, for example, United Nations General Assembly resolution A/C.3/77/L.18/Rev.1 (2022), paras. 3, 16 and 18, and Human Rights Council resolution A/HRC/50/L.15/Rev.1, 6 July 2022, para. 9(b).

35. In addition to sources referenced in UNFPA, 2014, the Convention on the Rights of Persons with Disabilities contains an article establishing a right to habilitation and rehabilitation (Article 26, para. 1). Thus, where FGM leads to a disability, survivors have a right to medical and psychosocial rehabilitation services.
36. See also the United Nations High Commissioner for Human Rights, 2020, para. 7.
37. This section is an addition to the State obligations elaborated in the 2014 UNFPA publication, based on new developments in the 2022 United Nations General Assembly and Human Rights Council resolutions.
38. UN General Assembly resolution A/C.3/77/L.18/Rev.1 (2022), para. 2; Human Rights Council resolution A/HRC/50/L.15/Rev.1, 6 July 2022, para. 4.
39. Human Rights Council resolution A/HRC/50/L.15/Rev.1, 6 July 2022, paras. 4(c) and (d) and para. 8.
40. Human Rights Council resolution A/HRC/50/L.15/Rev.1, 6 July 2022, para. 4(b); Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, 4 November 2014, para. 55(l); Istanbul Convention, Article 44.
41. Human Rights Council resolution A/HRC/50/L.15/Rev.1, 6 July 2022, para. 4(a).
42. See UNICEF (United Nations Children's Fund), 2010. *Legislative Reform to Support the Abandonment of FGM/C*.
43. Currently, several countries' FGM criminal provisions do not contain a definition of FGM, e.g., Nigeria and Tanzania. See 28TooMany, 2018, p. 35.
44. These local variations are known to be practiced, e.g., in Nigeria. See Thomson Reuters Foundation and 28TooMany, 2020, p. 22.
45. WHO, 2020.
46. Using the WHO definition of FGM as a basis for a definition in a criminal provision has been suggested by the Cairo Declaration on Legal Tools to Prevent FGM (para. 4).
47. Thomson Reuters Foundation and 28TooMany, 2020, p. 35.
48. Section 32A(3) of the Gambian Women's (Amendment) Act 2015. See World Bank, 2020, p. 36.
49. The most recent United Nations General Assembly Resolution on FGM calls on States to address medicalization. See A/C.3/77/L.18/Rev.1, para. 9.
50. WHO, 2010, p.14
51. See World Bank, 2020, p. 47
52. The East African Community's Prohibition of Female Genital Mutilation Bill, p. 6
53. This is currently not the case in several FGM laws, e.g., in Mauritania and Tanzania. See World Bank, 2020, pp. 47 and 53.
54. Law No. 78 for 2016 amending Article 242-bis of the Penal Code and introducing a new Article 242-bis(a). See World Bank, 2020, p. 121.
55. Loi no. 2016/007 du 12 juillet 2016 portant Code Pénal. See World Bank, 2020, p. 32.
56. Prohibition of Female Genital Mutilation Act No. 32 of 2011. See World Bank, 2020, p. 42.
57. *Ibid.*, p. 53.
58. World Bank, 2020, p. 48.
59. *Ibid.*, p. 36.
60. UNICEF (United Nations Children's Fund), 2010. *Legislative Reform to Support the Abandonment of FGM/C*, p. 29.
61. Law No. 025-2018 of 31 May 2018 on the (revised) Penal Code of Burkina Faso, available at <http://www.justice.gov.bf/index.php/2021/05/26/loi-n2018-025-an-portant-code-penal/>. Please note that this is an unofficial translation by the author.
62. World Bank, 2020, pp. 53–54.
63. This has been recommended as one of the key elements of any potential legislation on FGM by the Expert Group Meeting on the Elimination of Female Genital Mutilation. See the United Nations High Commissioner for Human Rights, 2020, para. 13. If extraterritorial application is not already provided for in national legislations as a general principle of criminal law, it can be stipulated for the offence of FGM, specifically.
64. Compare with the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, para. 54(l).
65. See Article 44 of the Istanbul Convention
66. See footnote 70.
67. World Bank, 2020, p. 42.
68. The East African Community's Prohibition of Female Genital Mutilation Bill, p. 6

69. See also UNICEF (United Nations Children's Fund), 2010. *Legislative Reform to Support the Abandonment of FGM/C.*, p. 32.
70. The text of the amended provision has not been published in English. Information on the new law is taken from media reports, in particular: <https://www.loc.gov/item/global-legal-monitor/2021-02-24/egypt-draft-law-enhancing-criminal-penalties-against-female-genital-mutilation-approved/>, accessed on 13 October 2021.
71. The East African Community's Prohibition of Female Genital Mutilation Bill, p. 6.
72. See the Committee on the Elimination of Discrimination against Women General Recommendation No. 35, para. 40 (b) and the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, para. 54(p).
73. World Bank, 2020, p. 53
74. The East African Community's Prohibition of Female Genital Mutilation Bill, p. 7
75. See UNICEF (United Nations Children's Fund), 2010. *Legislative Reform to Support the Abandonment of FGM/C.*, p. 30.
76. *Ibid.*, p. 27.
77. Committee on the Elimination of Discrimination against Women General Recommendation No. 35, para. 40 (c) (with further references to other general recommendations) and the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, para. 81.
78. Note that the United Nations High Commissioner for Human Rights, 2020 recommends "no time limitation for reporting" (para. 13d).
79. Thomson Reuters Foundation and 28TooMany, 2020.
80. UNFPA, UN Women, UNDP et al., 2018, p. 12.
81. *Ibid.*, pp. 12–15.
82. *Ibid.*, p. 12.
83. See, e.g., the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, para. 54(a).
84. United Nations High Commissioner for Human Rights, 2020, paras. 12 and 35(b).
85. UNFPA, 2020b, pp. 26–27.
86. See the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, para. 54(a).
87. UNFPA, 2020a.
88. See World Bank, 2020, p. 47
89. The East African Community's Prohibition of Female Genital Mutilation Bill, p. 6





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