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28 TOO MANY
FGM... let's end it.

# THE LAW AND FGM

## AN OVERVIEW OF 28 AFRICAN COUNTRIES

**September 2018**

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# About 28 Too Many

28 Too Many is an international research organisation created to end female genital mutilation (*FGM*) in the 28 African countries where it is practised and in other countries across the world where members of those communities have migrated. Founded in 2010 by Dr Ann-Marie Wilson and registered as a charity in the UK in 2012, 28 Too Many aims to provide a strategic framework where evidence-based knowledge and tools enable both policy-makers and in-country anti-FGM campaigners to be successful and make a sustainable change to end FGM.

**The vision of 28 Too Many is a world where every woman and girl is safe, healthy and lives free from FGM and other human-rights violations.**

28 Too Many carries out all its work thanks to donations and is an independent, objective voice unaffiliated with any government or large organisation. We are grateful to the TrustLaw service, the Thomson Reuters Foundation's legal pro bono service, which has enabled this research to take place, and to the many teams of international lawyers and local counsel in the countries covered who supported us with their insight into the laws relating to FGM in their respective jurisdictions.

28 Too Many would also like to thank the many individuals and international and local non-governmental organisations (*NGOs*) whose assistance and collaboration have been invaluable to this research.

All reports and resources published by 28 Too Many are available to download for free at **www.28toomany.org**.

# About TrustLaw

**The Thomson Reuters Foundation** stands for free, independent journalism, human rights, women's empowerment and the rule of law. We use the skills, values and expertise of Thomson Reuters to run programmes that trigger real change and empower people around the world, including free legal assistance, journalism and media training, coverage of the world's underreported stories, and the **Trust Conference**.

**TrustLaw** is the Thomson Reuters Foundation's global pro bono legal programme, connecting the best law firms and corporate legal teams around the world with high-impact non-governmental organisations and social enterprises working to create social and environmental change. We produce ground-breaking legal research and offer innovative training courses worldwide.

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On a global scale, we have supported legal-reform activities to protect the rights of millions of domestic workers, changed legislation to support victims of violence, produced guides to protect people who experience street harassment and crafted tools to support the prosecution of trafficking offenders.

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Our resource library can be found at **http://www.trust.org/publications/?show=LegalAndProBono**.

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Driving progress
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Tostan (Guinea/Guinea Bissau/Mali/Senegal)
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Danica Issell
Lead Editor, 28 Too Many

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# A Note on Data

Statistics on the prevalence of FGM are compiled through large-scale household surveys in developing countries known as the Demographic and Health Survey (*DHS*) and the Multiple Indicator Cluster Survey (*MICS*).

UNICEF emphasises that self-reported data on FGM 'needs to be treated with caution' since women 'may be unwilling to disclose having undergone the procedure because of the sensitivity of the topic or the illegal status of the practice.'[1] Women may also be unaware that they have been cut, or the extent to which they have been cut, especially if FGM was carried out at a young age.

Surveys that record the FGM status of girls under the age of 15, the cohort that has most recently undergone FGM or is at most imminent risk of undergoing it, may provide an indication of the impact of current efforts to end FGM. Alternatively, these survey results may indicate the effect of laws criminalising the practice, which make it harder for mothers to report that FGM was carried out on their daughters, as they may fear incriminating themselves. Additionally, unless figures are adjusted, these survey reports do not take into account the fact that girls may still be vulnerable to FGM after the age of 15.[2]

It is important to note that survey results may be based on relatively small numbers of women, particularly when they are further broken down by location, religion, ethnicity, etc. Therefore, in some cases, statistically significant conclusions cannot be drawn. This does not mean that the data is not useful; it simply means that one should be careful about drawing 'hard and fast' conclusions from it.

The estimate in this report that 55 million girls under 15 years of age in the 28 African countries have experienced or are at risk of experiencing FGM is based on 2017 World Bank population estimates[3] and data on the prevalence of FGM among 15–19-year-olds from the latest DHS and MICS surveys for the 28 African countries included in this report.

For the purposes of this report, the Federal Republic of Somalia is taken to comprise five federal states, including Puntland. Somaliland, which declared independence from Somalia in 1991, although still unrecognised by the United Nations, has been researched separately as part of this project. 28 Too Many has also produced separate country reports and reference is made to each as appropriate.

# Use of This Report



References and links to each national law referred to or quoted from in this report can be found in the individual country reports at **https://www.28toomany.org/Law**.

When referencing this report, please use: 28 Too Many (2018) *The Law and FGM: An Overview of 28 African Countries (September 2018)*. Available at **https://www.28toomany.org/Law**.

# Acronyms and Abbreviations

| | |
|---|---|
| AU | African Union |
| CDEFGM | Cairo Declaration on the Elimination of FGM |
| CEDAW | Convention on the Elimination of Discrimination Against Women |
| CSO | civil-society organisation |
| DHS | Demographic and Health Surveys Program |
| EAC Act | East African Community Prohibition of Female Genital Mutilation Act |
| ECOWAS | The Economic Community of West African States |
| FGC | female genital cutting |
| FGM | female genital mutilation |
| GBV | gender-based violence |
| GNI | gross national income |
| HRC | Human Rights Council |
| IGAD | Intergovernmental Authority on Development |
| MICS | Multiple Indicator Cluster Survey |
| NGO | non-governmental organisation |
| OIC | The Organisation of Islamic Co-operation |
| PPP | purchasing power parity |
| SDGs | Sustainable Development Goals 2015–2030 |
| UN | United Nations |
| UNFPA | United Nations Population Fund |
| UNICEF | United Nations Children's Fund |
| UNJP | UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation |
| US | United States of America |
| VAW | violence against women |
| WHO | World Health Organization |

# Contents

# Foreword

Female genital mutilation (*FGM*) is a practice that has caused irreparable harm to the physical and mental health of over 200 million women and girls. In 2012, the United Nations passed a resolution banning the practice and nations agreed to intensify efforts to eliminate it. Years later, we still find countries that have not done enough to tackle the problem. Some countries have not even passed legislation to outlaw FGM, and others have laws that are inadequate or simply not enforced.

One of the goals of the Thomson Reuters Foundation is to strengthen women's rights through the rule of law. Our annual Trust Conference is a forum that is committed to finding solutions to empower women, fight slavery and advance human rights worldwide. In 2012, conference participants called on governments and the UN to live up to their commitments to eliminate FGM, and at last year's conference we discussed the issue with the formidable lawyer Fatuma Abdulkadir Adan, who uses football to empower girls and raise awareness about FGM in northern Kenya. This under-reported issue has been covered in story after story, over the years, by our journalists around the world, giving activists and survivors a chance to tell their stories.

We also support women's rights through TrustLaw, our global pro bono service that connects leading law firms and corporate legal teams with NGOs and social enterprises in need of free legal assistance. This legal report is the result of a close collaboration between TrustLaw, 28 Too Many and a huge team of over 125 lawyers from around the world.

This summary report and the individual country reports cover the anti-FGM laws of the African countries where the practice is most endemic, as well as others where it continues. It analyses the legal framework and status of FGM, offers useful statistics and highlights examples of good and bad practice that local activists can use in their advocacy efforts.

There is no other research that covers the legalities of FGM so comprehensively and at this scale. The easy-to-read format of the report that the lawyers and 28 Too Many have worked so hard to produce means that the law is now accessible and a powerful tool for those who need it most.

We are incredibly grateful to Latham & Watkins, who played a leading role in producing this report, together with Reed Smith LLP, Shearman & Sterling, Cleary Gottlieb Steen & Hamilton, Udo Udoma & Belo-Osagie, Omer Abdelati Law Firm, Sharkawy & Sarhan, and the many other local lawyers and activists who committed an immense amount of time to make this report possible.

We will do our utmost for this report to be used widely by activists around the world in order to eradicate FGM once and for all.

**Monique Villa**
**CEO, Thomson Reuters Foundation**

# Executive Summary: The Impact of Laws Against FGM

**28 Too Many estimates that 55 million girls** who are under the age of 15, across 28 African countries, have experienced FGM or are at risk of FGM.

**This study shows that, of these 28 countries:**

- 22 have national legislation criminalising FGM.
- 6 are currently without laws, meaning FGM is effectively still legal.

**In most countries with anti-FGM laws, the legislation is failing to protect women and girls from FGM. Laws are rarely enforced and there is an absence of prosecutions.**

**Significantly,** of the 55 million girls (aged 0–14) who have experienced or are at risk of FGM across the 28 countries:

- 50% of them are in 3 countries that have anti-FGM laws (**Egypt**, **Ethiopia** and **Nigeria**); and
- 30% of them are in the 6 countries without current anti-FGM laws (**Chad**, **Liberia**, **Mali**, **Sierra Leone**, **Somalia** and **Sudan**).

5 out of 6 countries that do not have a law against FGM in place have either draft legislation waiting to be passed or have expressed an intention to pass a law to ban FGM.

**This research therefore suggests that** all countries need to fully protect women and girls from FGM through their national legislative frameworks. In particular, if three countries tighten and fully implement their existing anti-FGM laws and six countries introduce national legislation, this will potentially have an impact on 80% (44 million) of girls under the age of 15 in FGM-practising countries across Africa.

# 1. Introduction

> *It is now widely acknowledged that [FGM] functions as a self-enforcing social convention or social norm. In societies where it is practiced it is a socially upheld behavioural rule. Families and individuals uphold the practice because they believe that their group or society expects them to do so. Abandonment of the practice requires a process of social change that results in new expectations on families.*
>
> ~ UN General Assembly[4]

Female genital mutilation (*FGM*), sometimes called female genital cutting (*FGC*), female genital mutilation/cutting (*FGM/C*) or female circumcision, is defined by the World Health Organization (*WHO*) as comprising 'all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.'[5] FGM is a form of gender-based violence (*GBV*) and has been recognised by various international organisations, including the United Nations (*UN*), as a harmful practice and a violation of the human rights of girls and women. At least 200 million girls and women alive today have had FGM in the 28 African countries where FGM is practised as well as in parts of Asia.[6]

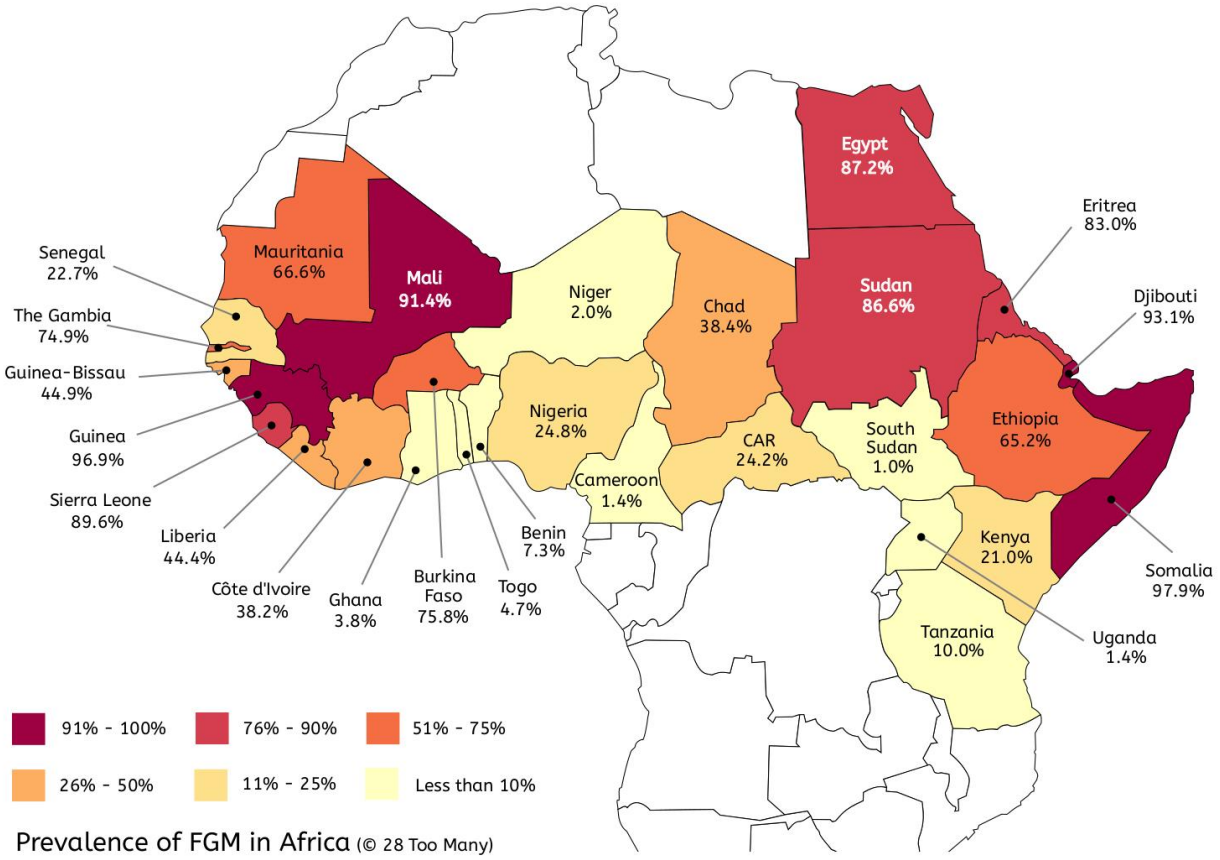
## History of FGM

FGM has been practised for over 2,000 years.[7] Although some communities practising FGM believe it is a religious requirement, research shows that FGM pre-dates Islam and Christianity. Some anthropologists trace the practice to 5th century BC Egypt, where infibulation was referred to as 'Pharaonic circumcision'. Today, FGM continues to be practised across a wide range of cultures and religions.[8]

## Global Prevalence and Practices

FGM has been reported in at least 28 countries in Africa and occurs mainly in countries along a belt stretching from Senegal in West Africa, to Egypt in North Africa, to Somalia in East Africa, and parts of central Africa. It also occurs in some countries in Asia and the Middle East and among certain diaspora communities in North and South America, Australasia and Europe.

As with many ancient practices, FGM is carried out by communities as a heritage of the past and is often associated with ethnic identity. Communities may not even question the practice or may have long forgotten the reasons why it is practised.




Prevalence of FGM in Africa (© 28 Too Many)

**The WHO classifies four types of FGM:**

- **Type 1:** often referred to as clitoridectomy, this is the partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals), and, in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).
- **Type 2:** often referred to as 'excision', this is the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia majora (the outer folds of skin of the vulva).
- **Type 3:** often referred to as 'infibulation', this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris ('clitoridectomy').
- **Type 4:** this includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.

De-infibulation refers to the practice of cutting open the sealed vaginal opening of a woman who has been infibulated, which is often necessary for improving health and wellbeing as well as to allow intercourse or facilitate childbirth.[9]

FGM is often motivated by beliefs about what is considered appropriate sexual behaviour. Some communities consider that it ensures and preserves virginity and marital faithfulness and prevents promiscuity/prostitution. There is a strong link between FGM and marriageability, with FGM often being a prerequisite to marriage. FGM is sometimes a rite of passage into womanhood and required for a girl to become a responsible adult member of society. FGM is also considered to make girls 'clean' and aesthetically beautiful. Although no religious texts require the practice, practitioners often believe it has religious support. Girls and women will usually be under strong social pressure, including pressure from their peers, and risk victimisation and stigma if they refuse to undergo FGM.

FGM is always traumatic. Immediate complications can include severe pain, shock, haemorrhage (bleeding), tetanus or sepsis (bacterial infection), urine retention, open sores in the genital region and injury to nearby genital tissue. Long-term consequences can include recurrent bladder and urinary tract infections, incontinence, cysts, infertility, an increased risk of new-born deaths and childbirth complications including fistula, and the need for later surgeries. For example, a woman with Type 3 infibulation will likely need to be cut open later to allow for sexual intercourse and childbirth.[10]

# 2. Methodology

The purpose of this research is to identify current legislation relating to FGM in each of the 28 African countries where the practice continues and to consider how their content, implementation and enforcement might be improved to contribute to a decrease, and eventual elimination, of the practice. It is recognised throughout, however, that laws banning FGM are only one piece of the puzzle in the challenge to end the practice.

> *Laws alone cannot end FGM; they need to be applied alongside education on the rights of women and girls and form part of the community engagement around changing cultural and social norms.*

Having a law and enforcing it is important, however, as it shows government commitment to eradicating the practice. In the short term, it is recognised that criminalising FGM could lead to an increase in prosecutions, but in the long-term the prosecution and reporting of cases should become a deterrent. Indeed, ***preventing*** **FGM by broadening knowledge of the law is a key message of this report**. By researching the current national legislation of the 28 countries practising FGM, 28 Too Many has endeavoured to simplify and explain the content of laws and thus identify examples of good practice in the hope that they be taken up by community advocates and adapted by governments to apply in their programmes and policies to end FGM.

This research was carried out through 2017 and 2018 by 28 Too Many with the pro bono support of international teams of lawyers, including local counsel in many of the featured countries, in association with the TrustLaw service. A comprehensive questionnaire was used as the basis for the research, which collected information on the following: the international treaties to which each country has signed up, what national laws are currently in place (or not) to criminalise FGM, their content and associated penalties, and the relevant government authorities and strategies. A review of case law was undertaken, where the information was publicly available, and the research was complemented with contributions from local activists and civil society (including international and national NGOs) to help understand how the law is applied in practice, the challenges to its implementation, and how the law and its enforcement could be improved.

Alongside this report, **28 Too Many has published 29 individual country reports**[i] for the focus countries, each of which include a detailed analysis of current legislation, its implementation to date and suggestions on tightening and effectively enforcing laws in future to support the work being done to end FGM in that country. These individual country reports are listed in Appendix 1 of this report, and are all available to download for free at **https://www.28toomany.org/thematic/law-and-fgm/**.

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i *For the purposes of this research, Somalia and Somaliland are considered together in this summary report. However, 28 Too Many has produced separate country reports for each to provide a clearer understanding of the differing legislative frameworks currently in place. The Democratic Republic of Congo was not included in this study due to an absence of reliable and publicly available data.*

This research assesses the domestic legislative framework for each country against the following criteria:

- **Does the constitution explicitly prohibit:**
  - violence against women and girls;
  - harmful practices; and
  - female genital mutilation?
- **Is national legislation in place that:**
  - provides a clear definition of FGM;
  - criminalises the performance of FGM;
  - criminalises procuring, arranging and/or assisting acts of FGM;
  - criminalises the failure to report incidents of FGM;
  - criminalises the participation of medical professionals in acts of FGM; and
  - criminalises the practice of cross-border FGM?
- **Does the government have a national strategy in place to end FGM?**

28 Too Many considers each feature listed above as essential to encouraging robust prevention and prosecution of FGM. Together they provide a clear approach to ensuring all parties engaged in any form of FGM are liable to prosecution, including those who are aware of FGM in the community and fail in their duties to report that the crime has taken place or is planned; medical professionals who undertake FGM either within or outside of health facilities; and those who move across national borders for FGM and/or procure practitioners from other areas or countries to perform FGM.

This study also looked at international treaties that refer to the elimination of FGM and which of those treaties each country has signed and ratified. Each individual country report contains details of its treaty obligations, together with a full analysis of the features above. This report brings together the key findings in relation to all 28 practising African countries.[ii]

It is hoped that this report and the individual country reports will be useful guides to both policy- and decision-makers, anti-FGM campaigners and NGOs in developing laws and implementation strategies relevant to each unique social and cultural context. It is also hoped that international agencies involved in funding anti-FGM programmes and academic, medical and research institutions will have better understandings of the legal challenges to ending FGM in the countries where they are working.

Based on the findings of this research, 28 Too Many and the teams involved in this study will be looking to further explore the details of what a 'Model Law' would/should include, based on the above criteria and key findings from the information collected to date. This will be made available on the 28 Too Many website.

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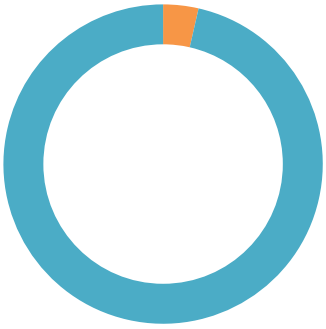
ii *The legal frameworks relating to FGM in the UK and the US were also reviewed as part of this research study. In these countries, as elsewhere in Europe, FGM continues in some diaspora communities, principally those from Africa and Asia. It was decided, therefore, not to include the findings from these two countries in this report focusing on legal frameworks across Africa, but to follow up the issue of FGM among the diaspora in a future research project that will look at its occurrence and legal context across a wider range of countries that have large diaspora communities.*

# 3. International and Regional Treaties

This research has identified key international and regional treaties relevant to FGM, and each individual report produced by 28 Too Many sets out whether each country has signed, ratified or acceded to those treaties (see Appendix 2 for an overview table). This section summarises the background and relevance of some of these treaties.

The following three treaties in particular recommend that countries legislate against FGM:

- Convention on the Elimination of Discrimination Against Women (*CEDAW*);
- African Charter on Human and Peoples' Rights on the Rights of Women in Africa (*ACHPRRWA*) – also known as the *Maputo Protocol*; and
- The Organisation of Islamic Co-operation (*OIC*) – Cairo Declaration on the Elimination of FGM (*CDEFGM*).



27 out of the 28 countries have signed, or signed and ratified, one or more of the treaties that recommend they legislate against FGM – CEDAW, the Maputo Protocol and CDEFGM.

## International Treaties and Mechanisms

Concern about FGM at the international level dates from 1990, when the **UN Convention on the Elimination of Discrimination Against Women** adopted **General Recommendation No. 14** calling on states 'to take appropriate and effective measures with a view to eradicating the practice of female circumcision.'[11]

Subsequent recommendations and statements have been issued by CEDAW and the Office of the UN High Commissioner for Human Rights, reminding member governments of their obligations to eliminate FGM and other harmful practices. In 2014 signatory states to CEDAW and the **Convention on the Rights of the Child** passed a **Joint General Recommendation on Harmful Practices** confirming their obligations 'to ensure full compliance . . . to eliminate harmful practices.'[12] In 2016 the **UN Human Rights Council** (*HRC*) adopted a resolution recognising FGM as an act of violence against women and girls. It urged countries to put in place national legislation prohibiting FGM and develop strategies for its enforcement.[13]

In March 2018 the **UN Commission on the Status of Women**, at its meeting to discuss 'Challenges and opportunities in achieving gender equality and the empowerment of rural women and girls', agreed to:

> Eliminate harmful practices, such as female genital mutilation and child, early and forced marriage, which affect women and girls in rural areas disproportionately and may have long-term effects on girls' and women's lives, health and bodies, and which continue to persist in all regions of the world despite the increase in national, regional and international efforts, including by empowering all women and girls, working with local communities to combat negative social norms which condone such practices and empowering parents and communities to abandon them.[14]

In July 2018, the **HRC**, at its 38th Session, passed **Resolution No. 38/6**[15], which affirmed all previous international treaties and commitments to the elimination of FGM, and urged states at **Recommendation 2**:

> to adopt, implement, harmonize and enforce laws and policies to prevent and put an end to female genital mutilation, protect those at risk and support women and girls who have been subjected to the practice.

It also urges them at **Recommendation 4**:

> to ensure the national implementation of international and regional obligations that they have undertaken under the various international instruments that protect the full enjoyment of all human rights and fundamental freedoms of women and girls.

In addition to the formal international treaties, the globally accepted **Sustainable Development Goals** (*SDGs*) that were put in place for 2015–2030 make specific reference to the elimination of FGM at **Goal 5.3** (see below). It is hoped that this will strengthen the hands of governments, NGOs and multi-lateral organisations when implementing anti-FGM policies and legislation.


**Sustainable Development Goal 5:**
**Achieve gender equality and empower all women and girls**

Goal 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

In May 2018 the **UN Economic and Social Council** reported on positive progress being made towards SDG Goal 5.3 as follows:

> Female genital mutilation . . . is a human rights violation affecting girls and women worldwide, but especially in communities where it persists as a social norm. On average, around one in three girls aged 15 to 19 have been subjected to FGM in the 30 countries where the practice is concentrated around 2017, compared to nearly one in two around 2000.[16]

This followed the UN's SDG 5 report for 2017, which also warned that:

> The harmful practice of female genital mutilation/cutting has declined by 24 per cent since around 2000. Nevertheless, prevalence remains high in some of the 30 countries with representative data.[17]

States that have signed, ratified or acceded to[iii] an international treaty are monitored on implementation of that treaty by its respective Treaty Body, which comprises independent experts from other countries. Most treaties require a three- or five-year review of a country's progress towards achievement of its obligations. The monitoring team reports on progress and makes recommendations for each country's government to follow up.

Some countries signed these treaties but stipulated reservations against certain clauses or conditions contained in them; an indication of whether reservations were made is included in the individual country reports produced by 28 Too Many to accompany this report.

## Regional Treaties and Mechanisms

On a regional level, the **African Union** (*AU*) has been calling on member states to eliminate FGM since 1990, when it adopted the **African Charter on the Rights and Welfare of the Child**. In 2003 the AU adopted the Maputo Protocol, in which **Article 5** specifically requires members to prohibit 'by legislative measures backed by sanctions all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.'[18]

In addition, the AU has declared the years 2010 to 2020 to be the African Women's Decade. Again, it is hoped that this declaration will assist in promoting gender equality and the eradication of FGM and other forms of violence against women and girls.[19]

## Sub-Regional Commitments to End FGM

An ongoing challenge for the work to end FGM is cross-border FGM, when women and girls are taken to neighbouring countries to undergo the practice, usually to avoid prosecution under domestic laws (for further information, see Chapter 10 on Cross-Border FGM). To combat this in East Africa, in 2016 the **East African Legislative Assembly** (including Kenya, South Sudan,

iii ***Signed:*** *A treaty is signed by countries following negotiation and agreement of its contents.*
***Ratified:*** *Once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.*
***Acceded:*** *When a country ratifies a treaty that has already been negotiated by other states.*

Tanzania and Uganda) enacted the **East African Community Prohibition of Female Genital Mutilation Act** (*EAC Act*)[20] to promote cooperation in the prosecution of perpetrators of FGM through harmonisation of laws, policies and strategies to end FGM across the region. The EAC Act aims to raise awareness about the dangers of FGMs and provide for the sharing of information, research and data.

A similar law still remains to be put in place by the **Economic Community of West African States** (*ECOWAS*), although, at a conference in October 2017 in Niger, it was discussed by the first ladies of member states, who urged all ECOWAS states to put in place measures and resources for the elimination of FGM.[21]

Another important regional organisation of states, which has the potential in future to address wider gender issues such as violence against women (*VAW*), harmful practices and cross-border FGM, is the **Intergovernmental Authority on Development** (*IGAD*).[22] Founded in 1996 with the aim of collaborating on drought and other cross-border environmental issues, it has more recently become a community of countries concerned with the general development of the region. Currently, IGAD comprises eight member states: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda.

## Other International Mechanisms Concerned with Eliminating FGM

Some FGM-practising countries, such as **Somalia** and **Sudan**, have not signed CEDAW or other treaties that include references to the elimination of FGM. Others, such as **Egypt**, have signed them but given reservations, some of which effectively exempt these states from complying with a legislative framework criminalising FGM. One of the main reasons given for making these reservations has been that some provisions of CEDAW and the Maputo Protocol are not regarded as being in line with Sharia law. Most of these countries, however, are members of the **Organisation of Islamic Co-operation** and, in 2003, following the Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation held in Cairo, adopted the **Cairo Declaration on the Elimination of FGM** (*CDEFGM*).[23]

Of the six countries that do not have a national anti-FGM law, five have signed the CDEFGM.

The **CDEFGM** comprises 17 recommendations for governments to follow with the aim of preventing and prohibiting FGM. Importantly, these include the enactment of specific legislation addressing FGM and working with NGOs to develop strategies to change social perceptions of the practice. Of particular relevance to this study, the CDEFGM was adopted by the following countries: **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**.

**Somalia** has not signed the CDEFGM and has only signed the Maputo Protocol (but not ratified it).

**Sudan** has signed the CDEFGM, but has not signed CEDAW or ratified the Maputo Protocol.

## The Relevance of Treaties to the Elimination of FGM

Countries that have signed up to the international and regional treaties referred to above are obliged to put in place legislation and implementation measures to assist in the eradication of FGM. This research, however, has not found any instance to date of a state formally being challenged for failing to adopt and enforce national anti-FGM legislation under these obligations, whether by the international or African regional communities, or by citizens of that state.

Of the six countries in this study that still have no national legislation against FGM in place, five have signed the CDEFGM, four are bound by CEDAW and three are bound by the Maputo Protocol (see Table 1 below).

**Table 1 – The six countries with no national anti-FGM law in place and their commitments to international treaties that oblige them to adopt legislation against FGM:**

| Country | CEDAW | | | Maputo Protocol | | | CDEFGM |
|---|---|---|---|---|---|---|---|
| | Signed | Ratified | Acceded | Signed | Ratified | Acceded | Signed |
| Chad | | | ✓ | ✓ | | | ✓ |
| Liberia | | | ✓ | ✓ | ✓ | | ✓ |
| Mali | ✓ | ✓ | | ✓ | ✓ | | ✓ |
| Sierra Leone[iv] | ✓ | ✓ | | ✓ | ✓ | | ✓ |
| Somalia | | | | ✓ | | | |
| Sudan | | | | ✓ | | | ✓ |

iv *In Sierra Leone there are significant factual reservations on the adoption of legislation aimed at eradicating FGM (such as Article 5, Elimination of Harmful Practices, of the Maputo Protocol).*

While **Sudan** has signed the CDEFGM, it has not signed CEDAW or ratified the Maputo Protocol. **Somalia** has the least protection for women and girls under the various treaties as it has not signed the CDEFGM and has only signed the Maputo Protocol (but not ratified it).

No case has yet been brought against any of these six countries, however, for their failures to enact laws banning FGM, although it may be possible for individuals in **Liberia**, **Mali** and **Sierra Leone** (who are all members of ECOWAS) to take their governments to court for these failures as suggested in the example below from Nigeria.

### ECOWAS and the Maputo Protocol

In 2017 an international case was brought by four Nigerian women against the Federal Republic of Nigeria, during which the ECOWAS court made its first pronouncement on the Maputo Protocol. The case centred on the violent, cruel, inhuman, degrading and discriminatory treatment the plaintiffs suffered at the hands of law-enforcement agents in Abuja, the Federal Capital of Nigeria. ECOWAS ruled in favour of the female plaintiffs.[24]

Although the case is not directly related to FGM, it suggests that international and regional organisations such as ECOWAS are beginning to place obligations on member states to enforce laws on violence against women and girls.

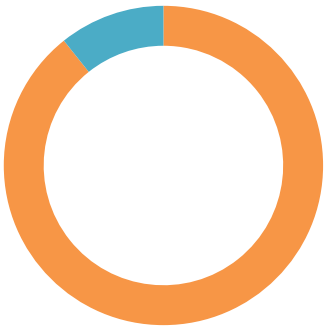
For further information on and analyses of how FGM was introduced into the various international treaties, see Analysis of Legal Frameworks on Female Genital Mutilation (2017) by the UNFPA Regional Office for West and Central Africa.[25]

## Call to action:

- The UN, the AU and the OIC should call upon all signatory states to comply with the treaties they have signed that oblige them to enact laws prohibiting FGM.

# 4. Constitutions

Most constitutions of the 28 countries contain references to equality between women and men and state that no one shall be subject to torture or to cruel, inhuman or degrading treatment, and that everyone has the right to bodily integrity. Six contain specific references to prohibition of violence against women and girls.



Of the 28 countries in this study, only three constitutions explicitly prohibit FGM: **Côte d'Ivoire**, **Senegal** and **Somalia**.

The Constitution of **Somalia** (2012) prohibits female circumcision but it does not have national legislation in place criminalising the practice.

FGM is recognised internationally as a **harmful practice**, along with child and forced marriage, breast ironing, labia stretching and other forms of genital mutilation.[26] For the purposes of this study, seven of the national constitutions that contain references to the prohibition of harmful practices could also therefore be considered to prohibit FGM: **Ethiopia**, **Ghana**, **Kenya**, **Somaliland**[v], **South Sudan**, **Sudan** and **Uganda**. Table 2 below summarises these provisions within each of the 28 constitutions (plus Somaliland).

References to harmful practices and/or FGM within a constitution provide another form of protection for women and girls and could, in theory, be used to challenge any person who attempts to perform FGM or to challenge a government on the basis that it failed to provide protection from the practice. However, our research did not find any instances of such legal challenges being made in any of the 28 countries.

v ***Somaliland*** *passed its own constitution in 2001, although it is still not recognised by the international community as a separate nation state and the area continues to be regarded by the Government of Somalia as a federal member state of Somalia. Somaliland's constitution does not specifically refer to FGM, but* ***Article 36(2)*** *refers to 'the right of women to be free of practices which are contrary to Sharia and which are injurious to their person and dignity.' The Constitution of* ***Somalia*** *was passed in 2012, and* ***Article 15(4)*** *states, 'Circumcision of girls is a cruel and degrading practice, and is tantamount to torture. The circumcision of girls is prohibited.'*

## Table 2 – Constitution explicitly prohibits:

| Country | Violence Against Women and Girls | Harmful Practices | Female Genital Mutilation |
|---|---|---|---|
| Benin | ✓* | X | X |
| Burkina Faso | X | X | X |
| Cameroon | X | X | X |
| CAR | ✓ | X | X |
| Chad | ✓ | X | X |
| Côte d'Ivoire | X | X | ✓ |
| Djibouti | X | X | X |
| Egypt | ✓ | X | X |
| Eritrea | X* | X | X |
| Ethiopia | X | ✓ | X |
| The Gambia | X | X | X |
| Ghana | X | ✓ | X |
| Guinea | X | X | X |
| Guinea Bissau | X | X | X |
| Kenya | ✓ | ✓ | X |
| Liberia | X | X | X |
| Mali | X | X | X |
| Mauritania | X | X | X |
| Niger | ✓ | X | X |
| Nigeria | X | X | X |
| Senegal | X | X | ✓* |
| Sierra Leone | X | X | X |
| Somalia | X | X | ✓ |
| Somaliland | X | ✓ | X |
| South Sudan | X | ✓ | X |
| Sudan | X | ✓ | X |
| Tanzania | X | X | X |
| Togo | X | X | X |
| Uganda | ✓ | ✓ | X |

**Benin: specifically, 'The State shall protect the family and particularly the mother and child'; Eritrea: specifically refers to violation of the 'human rights of women'; Senegal: defined as 'physical mutilations'.*

Some national constitutions also make references to a country's obligations under international and regional treaties; for example, **Article 171 of Niger's Constitution (2010)** states that treaties or agreements that are regularly ratified shall supersede domestic laws. 28 Too Many notes that if a country with such constitutional commitments has also signed up to any of the treaties listed in this report, its government could, in theory, be challenged for not having complied with its constitution and for failing to put in place legislation criminalising FGM, supported by a strategy to ensure its enforcement.

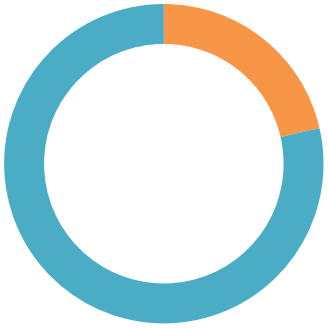
## Call to action:

- **Somalia** should comply with its own constitution and work to implement legislative changes based on its content.

# 5. Domestic Legal Frameworks

As outlined in Chapter 3, 27 out of the 28 countries have signed, or signed and ratified, one or more of the treaties that oblige them to adopt anti-FGM laws. Most of these countries have some form of national legislation against FGM in place, but not all.

22 out of the 28 focus countries have national legislation in place criminalising FGM.



Six countries are currently without laws criminalising FGM, and therefore the practice is still effectively legal (see map on page 30).

For governments to take up the challenge of introducing strong laws against FGM that will gain support across the political spectrum, the arguments in their favour must be grounded in facts and logic. Legislation alone cannot change behaviour. Governments need to show commitment to laws by supporting their introduction with adequately funded and resourced strategies to ensure communities understand why FGM is harmful and being criminalised and that ending the practice is in the best interest of all members of society.

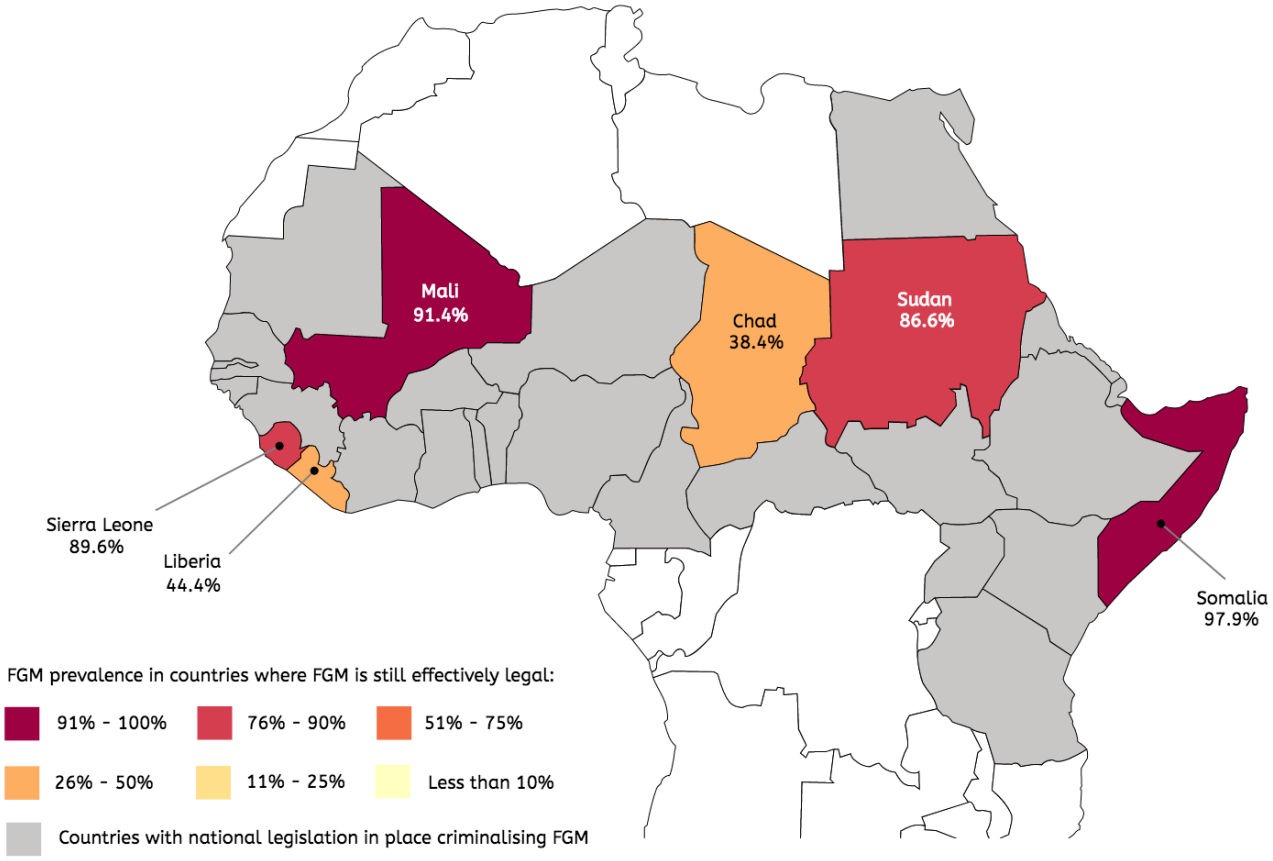
This study suggests that the successful introduction of any new law should be underpinned by three basic tenets:

- the law should 'work' (i.e. be understood, accepted by the communities it will affect and practically enforceable);
- it should conform to the imperatives of the 'Rule of Law'; and
- it should advance the 'public interest'.

Legal systems vary widely across countries in Africa: some are based upon the former colonial system (for example, English common law or the French Civil Code); others upon Islamic religious law (Sharia); others upon customary or tribal law. Most countries have a mixture of two or more of these systems. Among the 22 countries that criminalise the act of FGM, there is a mix of those that have a specific national law against FGM and those that refer to FGM and/or harmful traditional practices within their criminal or penal codes and/or address the practice through other forms of legislation, such as laws covering the rights and welfare of children, violence against women, reproductive health or domestic violence (see Table 3 below).

## Table 3 – Summary of how FGM is incorporated into national legislative frameworks:

| Country | Specific National Anti-FGM Law in Place | Prohibits FGM Within Another Domestic Law | Type of Law |
|---|---|---|---|
| **Benin** | ✓ | ✓ | Child/VAW |
| **Burkina Faso** | | ✓ | Penal Code |
| **Cameroon** | | ✓ | Penal Code |
| **CAR** | | ✓ | VAW/Penal Code |
| **Chad** | – | – | – |
| **Côte d'Ivoire** | | ✓ | VAW |
| **Djibouti** | | ✓ | Penal Code |
| **Egypt** | | ✓ | Penal Code |
| **Eritrea** | ✓ | | |
| **Ethiopia** | | ✓ | Criminal Code |
| **The Gambia** | | ✓ | Women's Act |
| **Ghana** | | ✓ | Criminal Code |
| **Guinea** | | ✓ | Child/Criminal Code |
| **Guinea Bissau** | ✓ | | |
| **Kenya** | ✓ | ✓ | Child/Domestic Violence |
| **Liberia** | – | – | – |
| **Mali** | – | – | – |
| **Mauritania** | | ✓ | Child |
| **Niger** | | ✓ | Penal Code |
| **Nigeria** | | ✓ | Violence Against Persons |
| **Senegal** | | ✓ | Penal Code |
| **Sierra Leone** | – | – | – |
| **Somalia** | – | – | – |
| **Somaliland** | – | – | – |
| **South Sudan** | | ✓ | Penal Code/Child |
| **Sudan** | – | – | – |
| **Tanzania** | | ✓ | Sexual Offences/ Penal Code |
| **Togo** | ✓ | ✓ | Penal Code |
| **Uganda** | ✓ | ✓ | Child |




Six countries currently without national anti-FGM legislation (© 28 Too Many)

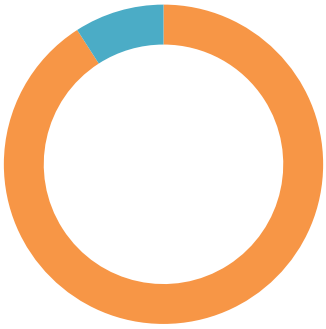
## Features of 'Best Practice' Law to End FGM

In our view a national law targeted at ending FGM needs to **at least** cover the following aspects:

- provide a clear definition of FGM;
- criminalise the performance of FGM;
- criminalise procuring, arranging and/or assisting in acts of FGM;
- criminalise the failure to report incidents of FGM;
- criminalise the participation of medical professionals in acts of FGM; and
- criminalise the practice of cross-border FGM.

These key legislative features are essential to encourage robust prevention and prosecution of FGM, and each of these criteria were used during this study to assess existing laws in the 28 practising countries.

Appendix 3 presents a summary of which key legislative features each country includes within its national anti-FGM laws, and the individual country reports produced by 28 Too Many provide more detailed information about how the laws in each country measure up against these critical features (see Appendix 1).



Of the 22 countries with anti-FGM laws in place, only two – **Kenya** and **Uganda** – directly criminalise and punish FGM and fulfil all criteria considered essential by this study to encourage robust prevention and prosecution of FGM.

Of the countries that currently do not prohibit FGM within their domestic legal frameworks, most have either draft laws waiting to be passed or have expressed an intention to draft a law as set out below:

**Table 4 – Current legislative status of countries without anti-FGM laws:**

| Country | FGM Prevalence Among Women Aged 15–49 | Current Status of National Legislation |
|---|---|---|
| **Chad** | 38.4% | Law drafted in 2002; still awaiting implementation |
| **Liberia** | Unknown; 44.4% membership in *Sande*, initiation for which includes FGM | Amendment to law proposed in 2016, but references to FGM removed since under political pressure; Executive Order banning FGM for one year put in place from January 2018 to January 2019 |
| **Mali** | 91.4% | Law drafted in 2017; still awaiting implementation |
| **Sierra Leone** | 89.6% | Proposed amendments to national laws to date have removed all references to FGM; Memorandum of Understanding in place, but has no legal standing |
| **Somalia** | 97.9% | Willingness shown in 2015 to introduce a law; no draft bill proposed to date |
| **Somaliland** | 99.1% | A proposed bill was due to be drafted and put before parliament in 2018 |
| **Sudan** | 86.6% | Proposed amendment in 2016 to include FGM in national law (currently only banned in some states) |

Commentary on each of the legislative features outlined above can be found in the following Chapters 6–10 of this report, and other key features can be found in Chapter 11 of this report.

**Call to action:**

- With the exception of **Kenya** and **Uganda**, the 22 countries with national legislation prohibiting FGM should review and tighten their laws to ensure all criteria are fully criminalised and punished.
- The six countries currently without national anti-FGM laws should urgently pass legislation that has already been drafted or put into action their intentions to draft and pass laws banning FGM. They should ensure that laws enacted include the key legislative features set out above.

# 6. Definitions

Although a clear definition of all relevant types of FGM should be a fundamental feature of a national legislative framework, this research has shown that laws vary in respect of this key detail.

Of the 22 countries with anti-FGM laws in place, 18 provide a clear definition of FGM.

Four countries lack any real definition of FGM in their current legislation: **Cameroon**, **Ethiopia**, **Nigeria** and **Tanzania**.

A few countries give fully comprehensive definitions of all types of FGM, in particular **Eritrea**, **The Gambia**, **Ghana** and **Kenya**.

**Eritrea** and **The Gambia**:

- 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.

**Ghana**:

> Whoever carries out female genital mutilation and excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person commits an offence . . . For the purposes of this section:
>
> - 'excise' means to remove the prepuce, the clitoris and all or part of the labia minora;

- 'infibulate' includes excision and the additional removal of external genitalia and stitching or narrowing of the vaginal opening;
- 'mutilate' includes any other injury caused to the female genital organ for cultural or other non-therapeutic reasons.[27]

**Kenya:**

> '[F]emale genital mutilation' comprises all procedures involving partial or total removal of the female genitalia or other injury to the female genital organs, or any harmful procedure to the female genitalia, for non-medical reasons, and includes—
>
> (a) clitoridectomy, which is the partial or total removal of the clitoris or the prepuce;
>
> (b) excision, which is the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;
>
> (c) infibulation, which is the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris,
>
> but does not include a sexual reassignment procedure[vi] or a medical procedure that has a genuine therapeutic purpose . . .

Most countries give more general, shorter definitions, which are less detailed and may not cover all types of FGM; for example:

**Burkina Faso**: 'harms or attempts to harm the female genital organ by total ablation, excision, infibulation, by desensitisation or any other means.'

**Egypt**: 'acts of female genital mutilation, by removing any of the external female genital organs, whether in part or in whole, or by inflicting any injuries to these organs without medical justification.'

**Senegal**: 'total or partial excision of one or more of its elements, infibulation, anaesthetisation, or any other means.'

**Uganda**: '"female genital mutilation" refers to all procedures involving partial or total removal of the external female genitalia for non-therapeutic reasons.'

Finally, some countries' laws do not include a definition of FGM at all; for example, **Nigeria** simply prohibits 'circumcision or genital mutilation of the girl child or woman', and **Tanzania** 'female genital mutilation'.

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vi *'Sexual reassignment procedure' is further defined in Kenyan law as 'any surgical procedure that is performed for the purposes of altering (whether wholly or partly) the genital appearance of a person to the genital appearance (as nearly as practicable) of a person of the opposite sex . . .'*

## Therapeutic and Medical 'Justifications' for FGM

Many countries make references in their FGM laws and accompanying definitions to 'therapeutic' and 'medical' reasons as limitations or justifications for the offence. In the absence of clear definitions of these terms, there is a danger of such terminology being used as a loophole to justify FGM.

28 Too Many has identified in its individual country reports where definitions of FGM need tightening and potential loopholes closed; for example, in the **Central African Republic** and **Djibouti**.

**Egypt** is of particular concern, given its high rate of medicalised FGM (see Chapter 9). Its law defines FGM as 'acts of female genital mutilation, by removing any of the external female genital organs, whether in part or in whole, or by inflicting any injuries to these organs without medical justification.' This law does not, however, define what constitutes 'medical justification'.

### Call to action:

- Every country should ensure that it includes a clear definition of all types of FGM in its national laws, upon reference to the internationally recognised definitions set out by the World Health Organization (see the Introduction to this report).
- Every country should also include any FGM types specific to its jurisdiction; for example, **Nigeria**, in which FGM also takes the forms of *angurya* (scraping of tissue surrounding the opening of the vagina) and *gishiri* (cutting of the vagina).
- There is a need to close potential loopholes that exists in the laws of some countries that make reference to, but do not define, 'therapeutic' or 'medical' reasons for FGM.

# 7. Performing FGM and Aiding and Abetting FGM

The priorities of the 22 countries that either have a specific law prohibiting FGM or make reference to FGM in another law have been to target those who directly perform the physical act of FGM.

Most countries protect women and girls of all ages, and some commit the state to providing extra protection for minors through additional clauses or child-protection measures (including **Cameroon**, **Egypt**, **Guinea**, **Guinea Bissau**, **The Gambia** and **Togo**). Two countries – **Mauritania** and **Tanzania** – only criminalise FGM performed on girls under 18 years of age; these laws are therefore not providing adequate protection for adult women.

All 22 countries with national anti-FGM laws in place criminalise and punish those who perform FGM.

**Mauritania** and **Tanzania** only prohibit the performance of FGM on girls under 18 years of age.

As well as the actual practitioners of FGM, other perpetrators need to be addressed by laws, including:

- Those responsible for **requesting and arranging (procuring)** the act of FGM. These may be family members of the victims or others in the community such as local community or religious leaders.
- Those who **assist, aid and abet** the practice. The practitioner who performs the FGM is often accompanied by one or more assistants or younger trainees who may be family members or members of the local community (their actions often include holding down the victim of FGM during the procedure). Members of the wider community may also take actions that fall into this category (for example, allowing their premises to be used for acts of FGM or providing cutting tools – see Chapter 12 for further information).

Of the 22 countries with anti-FGM laws in place, 18 specifically criminalise and punish those who procure, arrange and assist FGM.

Four countries do not explicitly address procuring, aiding and abetting in their anti-FGM laws: **Burkina Faso**[vii], **Cameroon**, **Egypt**[viii] and **Mauritania**.

Laws vary considerably from country to country in respect of these other perpetrators of FGM: **Ghana**, **Kenya** and **Uganda**, for example, give lengthy and comprehensive descriptions of all those punishable for their involvement in the crime, whereas other countries provide less detail (see Table 5 below).

**Table 5 – Other perpetrators included in anti-FGM laws:**

| Country | In addition to those who perform FGM, the laws in 18 countries specifically criminalise and punish: |
|---|---|
| **Benin** | *Anyone who helps, assists, or requests the services of an FGM practitioner, or gives them instructions or the means to perform a genital mutilation.* |
| **CAR** | *Anyone practising, planning or promoting FGM.* |
| **Côte d'Ivoire** | *Parents and relatives of victims (up to the fourth degree) for procuring FGM.* |
| **Djibouti** | *'Instigators and Accomplices' of FGM.* |
| **Eritrea** | *Anyone who requests, incites or promotes FGM by providing tools or by any other means.* |
| **Ethiopia** | *Anyone who commissions FGM, encourages someone to disregard the legislation prohibiting harmful traditional practices, or organises or takes part in any movement that promotes FGM.* |
| **The Gambia** | *Anyone who requests, incites or promotes FGM by providing tools or by any other means.* |
| **Ghana** | *Anyone who participates or assists in FGM.* |
| **Guinea** | *Anyone promoting or participating in FGM.* |
| **Guinea Bissau** | *Anyone who assists, facilitates, incentivises or contributes in any way to FGM.* |
| **Kenya** | *Anyone procuring, aiding and abetting FGM.* |
| **Niger** | *Anyone who assists in the practice of FGM.* |

vii *While Burkina Faso's legislation does not specifically mention aiding and abetting, there are many cases of those assisting FGM being arrested and prosecuted alongside traditional practitioners.*

viii *The law in Egypt is not specific; it makes reference only to those 'requesting' FGM.*

| Country | In addition to those who perform FGM, the laws in 18 countries specifically criminalise and punish: |
|---|---|
| **Nigeria** | *Anyone who incites, aids, abets or counsels another to perform or attempt to perform FGM.* |
| **Senegal** | *Anyone who procures FGM.* |
| **South Sudan** | *Anyone who 'makes or causes' FGM.* |
| **Tanzania** | *Anyone who procures FGM.* |
| **Togo** | *Anyone who procures or promotes FGM.* |
| **Uganda** | *Anyone procuring, aiding and abetting FGM.* |

## Consent and the Punishment of Victims of FGM

The challenges of **consent** and **culture/custom/tradition/religion** being used as defences for the crime of FGM are not generally addressed in current laws. There is an underlying implication that, if consent is given by a woman or girl herself, FGM is not a criminal offence (as she has 'chosen' to be cut). This is a weakness and should be tackled, as should the use of culture/custom/tradition or religion as reasons for disregarding the law. Women and girls are put under considerable societal pressure to undergo FGM by their families, friends and communities. Consent and choice should never be permitted as a defence for FGM.

> Laws should specifically state that 'consent' and culture/custom/tradition/religion shall not be defences for conducting FGM.

Anyone who is involved in the performance or procurement of FGM should be punished regardless of consent (or assumed consent where the girl is unable to give consent; for example, because she is a minor). Both **Kenya** and **Uganda** clearly address these points in their anti-FGM laws.

**Kenya** – FGM Act 2011, Section 19(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.

**Uganda** – FGM Act 2010, Sections 9 and 10:

> Consent of the victim to female genital mutilation shall not be a defence under this Act.
>
> Any culture, custom, ritual, tradition, religion or any other non-therapeutic reason shall not be a defence under this Act.

It is often the case that, by the time law-enforcement officers reach the scene of a crime, the main perpetrators (i.e. the cutters and their accomplices) have already fled, leaving the woman or girl (and her family) to face arrest. Anti-FGM laws should not be prosecuting the victims of FGM, who invariably have submitted to the practice under pressure, may have suffered ridicule and isolation from their community for not being cut and may have been accused of being 'unclean'. Women and girls who have been subjected to FGM need health support services, rather than being further victimised by facing arrest and possible prosecution.

Women and girls who have been subjected to FGM should not be punished further under the law

Further to this, the use of derogatory and shaming language against women and girls who have not been cut, as well as actions that exclude them from the community, should not be acceptable under any circumstances. It is essential that these practices are also addressed in national anti-FGM laws. This is discussed further in Chapter 11 of this report.

**Call to action:**

- Ensure women and girls of **all** ages are protected from FGM by national legislation.
- Enforce national laws and punish all those responsible for FGM, **in particular** cutters, their assistants, promoters of FGM, and leaders, elders and all others who gain status and/or income from the practice.
- Do **not** prosecute women and girls who have been subjected to FGM.
- Use the law as a tool for **prevention** in preference to prosecuting family members (particularly parents who are under considerable social pressure to have their daughter cut).
- 'Consent' or 'choice' should **not** be permitted as a defence. Those who perform, procure, aid and abet FGM should still be punished.

# 8. Failure to Report FGM

Of the 22 countries that have anti-FGM laws, 11 require anyone who is aware of FGM being carried out to report it to the relevant public authorities: **Benin**, **Burkina Faso**, **Central African Republic**, **Djibouti**, **Eritrea**, **Guinea Bissau**, **Kenya**, **The Gambia**, **South Sudan**[ix], **Togo** and **Uganda**.

Many of the countries that do not specifically criminalise the failure to report FGM do set out punishments in other legislation (often their Penal or Criminal Codes) for failing to report any crime. While, in theory, this ought to cover FGM, in practice there are no identifiable cases of these general clauses being used to prosecute those who fail to report the practice.

Of the 22 countries with anti-FGM laws in place, half have a specific requirement to report FGM.

In **Uganda**, it is a crime to threaten or prevent anyone from reporting FGM.

In relation to the responsibility to report FGM, 28 Too Many recognises a distinction between:

- **Collective responsibility** – the general responsibility of a community to protect women and girls and report if they are at risk. Those who know that an act of FGM has taken place, is taking place or is planned may include a woman's or girl's family, friends and other members of her community.
- **Positional responsibility** – the specific responsibility of those in positions of authority, including those who carry a duty of care such as health professionals, social workers, teachers, youth workers, and community and religious leaders.

Those working in the health sector may be presented with cases of FGM, either because the woman or girl needs treatment following the practice, or because a survivor is having ongoing health problems as a result of the practice or is expecting a baby, which would require maternal healthcare services (and, in some cases, de-infibulation to give birth). See Chapter 9 for further details on the responsibilities of health professionals.

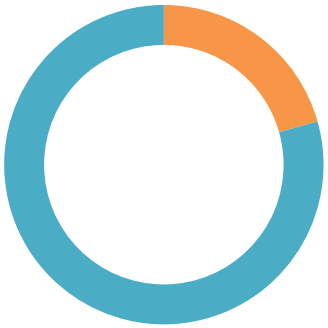
ix *South Sudan: specifically, the failure to report an infringement of a child's rights (i.e. persons under 18 years).*

**Call to action:**

- All countries should widen the responsibility to report FGM – laws should include provisions to prosecute all those who fail to report FGM that has taken place, is currently taking place or is planned.

# 9. Medicalised FGM

One of the significant challenges to the current worldwide campaign to end FGM is the trend towards medicalised FGM in some countries. Supporters of medicalisation argue that the health risks associated with FGM will be minimised if the procedure is performed by doctors, nurses or other healthcare workers, either inside or outside a healthcare facility. Medicalised FGM remains a very risky procedure, however, and does nothing to mitigate the fact that this is a severe form of violence against women and girls, is a violation of their human rights and has life-long physical, emotional and sexual implications for survivors. Not only does medicalised FGM still constitute a threat to the health and wellbeing of women and girls, but also it contradicts medical professionals' commitments to 'do no harm' and enables a practice that represents a deeply-rooted form of gender inequality.



The medicalisation of FGM is a growing concern. It is estimated that 15 million women, or 26% of women who have undergone FGM, were cut by a health professional.[28]

For further information on the medicalisation of FGM, including training materials, see the 28 Too Many website at **https://www.28toomany.org/thematic/medicalisation/.**

This study has looked into the provision of specific penalties in national legislation for those members of the health profession who perform or assist in FGM. Of the 22 countries with anti-FGM laws currently in place, only nine specifically address medicalised FGM and set out associated penalties for FGM performed by members of the medical or paramedical profession: **Burkina Faso**, **Côte d'Ivoire**, **Eritrea**, **Guinea**, **Kenya**, **Mauritania**, **Niger**, **Senegal** and **Uganda**.

Of the 22 countries with anti-FGM laws in place, only 9 specifically criminalise and punish medicalised FGM.

In these nine countries, the laws specifically increase penalties for health professionals taking part in FGM by doubling prison sentences, applying maximum penalties and/or suspending licences to practise for a specified period (see Table 6 below and individual country reports for further details). The law in **Uganda** specifically states that FGM carried out by a health worker is classified as aggravated FGM and the perpetrator is liable on conviction to life imprisonment.

**Table 6 – Countries that specifically criminalise and punish medicalised FGM:**

| Country | Penalties Applied | Suspension of Licence to Practice |
|---|---|---|
| **Burkina Faso** | Maximum | Up to five years |
| **Côte d'Ivoire** | Doubled | Up to five years |
| **Eritrea** | 'Aggravated' | Up to two years |
| **Guinea** | Maximum | |
| **Kenya** | Same for all perpetrators | |
| **Mauritania** | 'Higher' sentence | |
| **Niger** | Maximum | Up to five years |
| **Senegal** | Maximum | |
| **Uganda** | 'Aggravated' | |

Medicalised FGM is particularly prevalent in five countries: **Egypt**, **Guinea**, **Nigeria**, **Kenya** and **Sudan**. Of these, only two – **Guinea** and **Kenya** – specifically criminalise and set out penalties for medicalised FGM in their national laws. The laws of **Egypt**, **Nigeria** and **Sudan** do not clearly address medicalised FGM, and 99% of women and girls who have been cut by a health professional live in these three countries; 51% live in **Egypt** alone.[29]

The HRC, at its 38th Session in July 2018[30], discussed medicalised FGM and made the following **Recommendation 6** calling upon states to

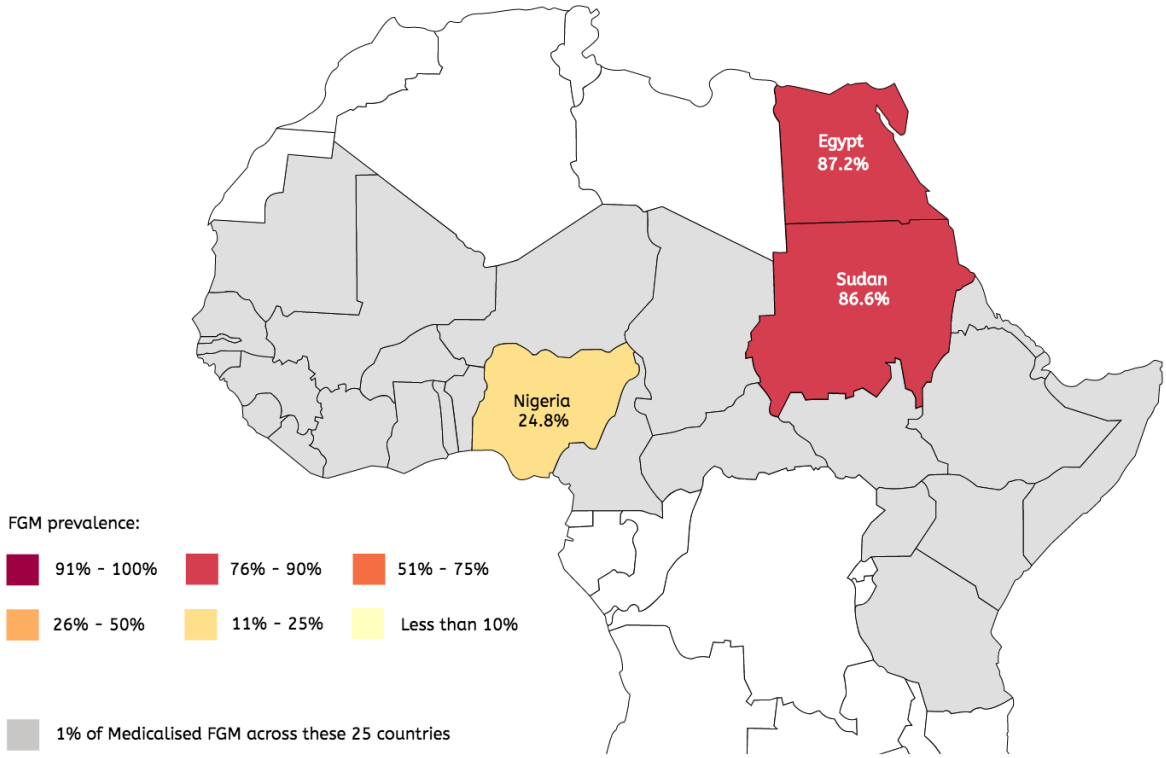
> stop the medicalization of female genital mutilation, which implies drawing up and disseminating guidance and legal provisions for medical personnel and traditional birth attendants so as to provide an adequate response to the chronic mental and physical health problems of the millions of women and girls who have undergone female genital mutilation, as these problems hinder progress in the field of health in general and in the protection of human rights, including the right to the enjoyment of the highest attainable standard of physical and mental health . . .

and to take the following immediate and effective measure in **Recommendation 9(g)** regarding medicalised FGM:

> Assist professional associations and trade unions of health service providers in adopting internal disciplinary rules prohibiting their members from engaging in the harmful practice of female genital mutilation . . .

99% of women and girls who have been cut by a health professional live in three countries – **Egypt**, **Nigeria** and **Sudan** – and these do not yet clearly address medicalised FGM in their laws.

More than half of these women and girls live in **Egypt**.




FGM prevalence in the three countries which account for 99% of medicalised FGM

(© 28 Too Many)

## Mandatory Reporting of FGM by Health Professionals

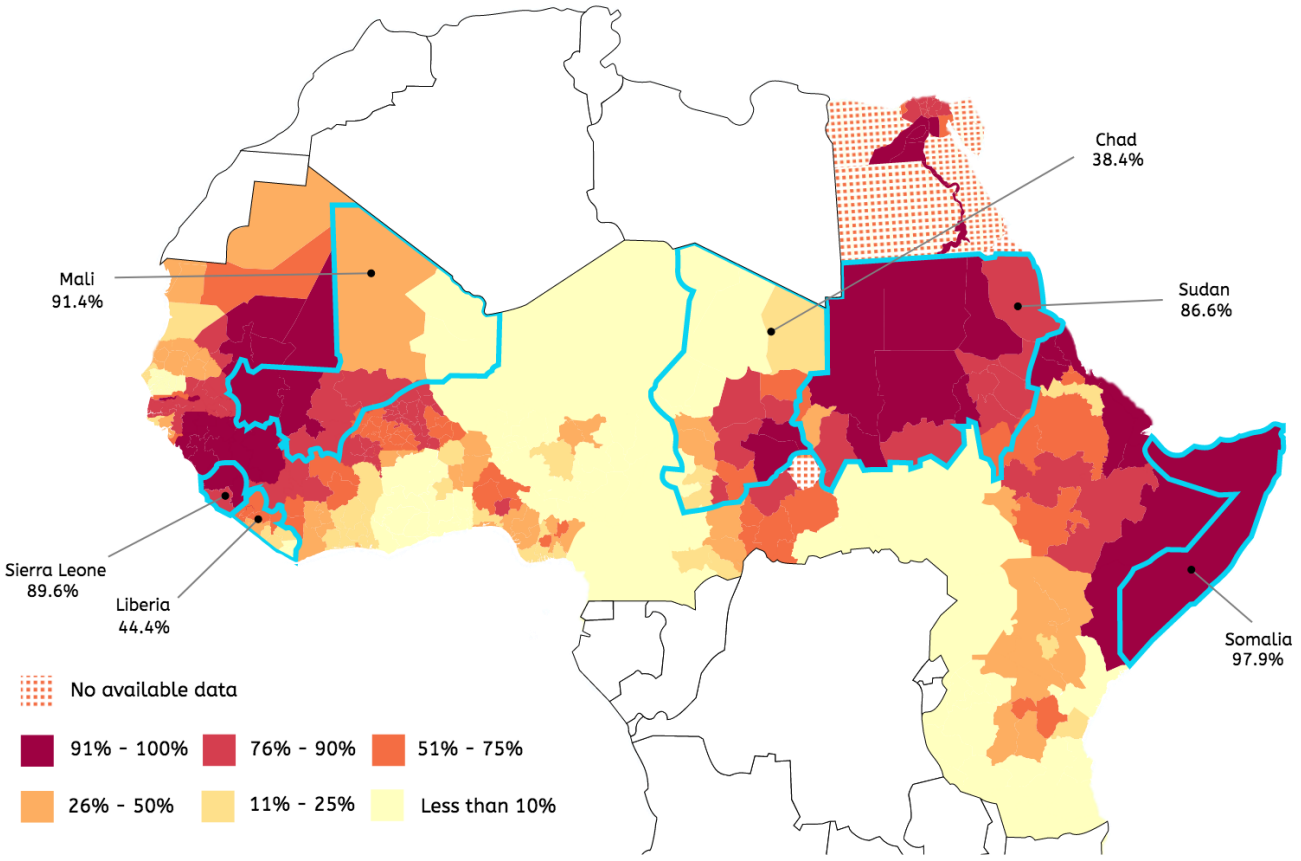
Some countries with diaspora communities, such as those in Europe, require reporting by health professionals when they are presented with a woman or girl who has undergone FGM, but this has not been without controversy. If mandatory reporting by doctors and other medical professionals is to be put into law across practising African countries, it needs to be on the understanding that women who have undergone FGM in the past will not be prosecuted or victimised in any other way and that their data will be recorded anonymously. Adequate recording systems and associated training would need to be put in place. In many countries doctors and nurses will also need to be better trained to understand the potential damage that FGM can cause women and their health needs, in order to help them overcome their physical and mental traumas and provide ongoing support.

**Call to action:**

- **Egypt**, **Nigeria** and **Sudan** should tighten existing national legislation against medicalised FGM and specifically criminalise and punish FGM carried out by any member of the health profession in any location or premises.
- **Guinea** and **Kenya** should work towards fully implementing and enforcing their existing laws against medicalised FGM.
- The remaining countries that do not specifically address medicalised FGM in their current legislation should look to address this in their laws and increase punishments for any member of the medical profession who takes part in FGM.

# 10. Cross-Border FGM

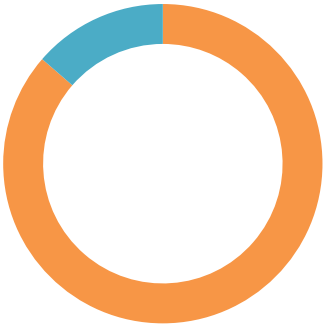
In some countries where FGM has become illegal, the practice has been pushed underground and across borders to avoid prosecution. The movement of families and traditional practitioners across national borders for the purpose of FGM remains a complex challenge for the campaign to end the practice, and women and girls living in border communities can be particularly vulnerable.




Cross-border risk: FGM prevalence (%) in and bordering the six countries currently without national anti-FGM legislation


It is clear from this research that cross-border FGM continues across much of East and West Africa. By way of example, reports in the media refer to ongoing movement between **Kenya** and **Somalia**, and **Burkina Faso** and **Mali**. The variable existence and enforcement of national laws against FGM across the practising countries has encouraged supporters of the practice to move women and girls between countries to avoid prosecution.

While many countries have attempted to address the challenge of cross-border FGM, with police, judiciary and NGOs from neighbouring countries liaising wherever possible, the lack of specific reference to this aspect of the practice in the majority of legislative frameworks continues to undermine efforts of government authorities and civil society to tackle the problem.



Of the 22 countries with anti-FGM laws in place, 19 do not specifically address the issue of cross-border FGM.

Only 3 countries – **Guinea Bissau**, **Kenya** and **Uganda** – specifically criminalise and punish instances of cross-border FGM.

As discussed in Chapter 3, in 2016 the East African Community made FGM a transnational crime between its member countries by passing the **East African Community Prohibition of Female Genital Mutilation Act** (*EAC Act*). Its members include **Kenya**, **South Sudan**, **Tanzania** and **Uganda**, all of which have communities that practise FGM but varying degrees of national law-enforcement against it. Governments of all EAC members are committed to working together to reduce cross-border FGM by promoting 'co-operation in the prosecution of perpetrators . . . harmonisation of laws, policies and strategies' and 'establish[ing] a regional co-ordination mechanism and catalys[ing] efforts of the Partner States to eliminate female genital mutilation in one generation.'[31]

**Article 6** of the EAC Act specifically states:

> 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.[32]

The EAC Act is a good example of a regional mechanism attempting to tackle the cross-border issue, and other regional organisations, in particular the AU, ECOWAS, IGAD and the OIC, should follow this precedent and work towards implementing similar strategies and policies.

The East African Community has passed legislation requiring its members to work together to reduce cross-border FGM.

ECOWAS has looked into the issue but has not yet suggested legislation.

In July 2018 the HRC, at its 38th Session[33], discussed cross-border FGM and made the following **Recommendation 9(e)** calling upon states to:

> harmonize their laws in order to effectively combat the cross-border practice of female genital mutilation, including by strengthening transnational police and judicial cooperation in the exchange of information on victims and perpetrators of female genital mutilation, in accordance with national laws and policies and international human rights law . . .

There remains therefore a considerable gap in the laws across the majority of FGM-practising countries in relation to cross-border movement, and this needs urgent attention by both the international and regional communities.

## Call to action:

- **Every country** needs to tighten its national legislation around cross-border FGM and punish those perpetrators who participate in any action that results in women and girls being moved between countries to be cut.
- **Regional cooperation is essential**; regional bodies including the AU, ECOWAS and IGAD need to review the EAC Act and look to implement and enforce similar regional laws to tackle cross-border FGM.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# 11. Other Key Features of Laws Against FGM

There are other key features of the law that may provide important protection for women and girls at risk of FGM. This study suggests that the following should be considered for inclusion in all legislation against FGM:

- criminalising the use of abusive language and threatening behaviour towards uncut women and girls and their families;
- criminalising the use of premises for FGM;
- criminalising the possession of cutting tools; and
- providing protection orders to prevent girls at risk from undergoing FGM.

Very few of the countries with laws against FGM include any of these additional features, which are considered to be important in the protection of women and girls at risk of FGM.

Each feature is outlined in more detail below, and further information can be found in the individual country reports (see Appendix 1), including the relevance of these aspects according to civil society and activists working in practising communities.

## Discrimination and Abusive Language

It is common in FGM-practising communities for women and girls who choose not to be cut to face discrimination. They are often subjected, along with their families, to abusive and derogatory language or behaviours that exclude them from everyday activities and communal events.

National anti-FGM laws can offer one form of protection for uncut women and girls (and their families) from this discriminatory behaviour, by criminalising and punishing anyone who victimises them through language or actions.

Such legal provisions are in place in both **Kenya** and **Uganda** and have also been included in the regional **EAC Act**.

**The Kenyan FGM Act 2011**, at **Article 25**, punishes abusive language:

> Any person who uses derogatory or abusive language that is intended to ridicule, embarrass or otherwise harm a woman for having not undergone female genital mutilation, or a man for marrying or otherwise supporting a woman who has not undergone female genital mutilation, commits an offence and shall be liable, upon

> conviction, to imprisonment for a term not less than six months, or to a fine of not less than fifty thousand shillings, or both.

**The Ugandan FGM Act 2010** expands this further under **Sections 11 and 12**, setting out penalties for behaviour that excludes an uncut woman and her family from wider activities:

> A person who discriminates against or stigmatizes a female who has not undergone female genital mutilation from engaging or participating in any economic, social, political or other activities in the community commits an offence and is liable on conviction to imprisonment not exceeding five years.
>
> A person who discriminates against or stigmatizes another person whose wife, daughter or relative has not undergone female genital mutilation from engaging or participating in any economic, political, social or other activities in the community commits an offence and is liable on conviction to imprisonment not exceeding five years.

## Use of Premises for FGM and Possession of Cutting Tools

Legal accountability for the offence of FGM should be extended further than those who perform and procure the practice. Members of the community who assist in other ways, such as offering the use of premises for the purposes of FGM, should also face penalties for aiding and abetting a harmful practice. Possession of cutting tools and equipment, too, should be recognised as a criminal offence.

Again, most of the national laws in place across Africa do not mention these aspects; the **Kenyan FGM Act 2011** is comprehensive, however, specifically criminalising these under **Articles 22 and 23** as follows:

> A person who knowingly allows any premises, for which that person is in control of, or responsible for, to be used for purposes of performing female genital mutilation commits an offence.
>
> A person who is found in possession of a tool or equipment for a purpose connected with the performance of female genital mutilation, commits an offence.

**Article 26 of the Kenyan FGM Act 2011** also allows for a law enforcement officer to enter any premises for the purposes of ascertaining whether it is connected to any violation of the law against FGM.

The regional **EAC Act** also includes provisions to punish those who allow their premises to be used for FGM or possess cutting tools or equipment.

## Protection Orders

National legislation could also provide opportunities for further protection of women and girls at risk of FGM through protection orders. Currently, this is not a feature of the law in most practising countries, but could be considered for inclusion if systems and procedures are put in place to support them.

The provision of protection orders can currently be found in either specific national anti-FGM laws, such as in **Section 14 of the Ugandan FGM Act 2010** ('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'), or more generally within child protection measures, such as **Article 18 of the Tanzanian Law of the Child Act 2009**, which allows the court to issue a care order or interim care order to remove any child from a harmful situation.

The regional **EAC Act** also sets out under **Article 13** that, if any state member is satisfied that a girl or woman is at risk of undergoing FGM, it may issue protection orders.

## Call to action:

- Countries with laws against FGM need to review their current legislative frameworks and look to include other key features highlighted in this chapter in order to protect women and girls at risk.
- The six countries without anti-FGM legislation in place should ensure that these key features are considered in the drafting and implementation of future laws.

# 12. Penalties

In the 22 countries that have national legislation in place, penalties for performing FGM comprise fines and/or terms of imprisonment. Both the fines and prison sentences reviewed in this study are expressed as a minimum or a maximum, or within a range. All countries set out some form of prison sentence; most countries also impose some level of fine, with the exception of **Cameroon**, **Ghana**, **Guinea Bissau**, **Senegal** and **Uganda**.

This research has found that:

- **Prison sentences** for performing FGM in the 22 countries that have anti-FGM laws range from a minimum of two months to a maximum of 20 years.
- **Fines** for performing FGM range from (the equivalent of) US$5.50 to US$3,608. These equate to less than 1% of GNI PPP up to 279% of GNI PPP.[x]
- Countries with the **highest fines** are **Benin**, **Côte d'Ivoire** and **Kenya**.
- Countries with the **longest maximum prison sentences** are **Cameroon** (20 years) and **Tanzania** (15 years).
- Countries with the **lowest penalties** overall are **Ethiopia**, **Guinea**, **Niger**, and **Sudan** (specifically Gadaref state).

The penalties for performing FGM vary considerably between countries; for example, in the three countries wherein live 50% of girls (aged 0–14) who have experienced or are most at risk of FGM, the range is as follows:

- **Egypt** – performance of FGM (on a child under 18 years) carries a minimum of six months' imprisonment and a fine of between EGP2,000 and EGP5,000 (US$112–279[34]);
- **Ethiopia** – performance of FGM (on all ages) carries a minimum of three months' imprisonment or a minimum fine of 500 Birr (US$18[35]); and
- **Nigeria** – performance of FGM (on all ages) carries a maximum of four years' imprisonment or a maximum fine of 200,000 Naira (US$555[36]).

Many laws also set out separate (usually lower) penalties for **aiding and abetting** FGM and/or **failing to report** the practice. Penalties may be increased in cases of FGM being performed by **health professionals** (see Chapter 9) and in cases where FGM results in the **death of the victim** (prison sentences and/or fines are increased and imprisonment may be for life, as in **Kenya**). In **Uganda**, penalties set out in the **FGM Act 2010** take into account both who the perpetrator is and the degree of harm caused.

For further details on fines set out in anti-FGM laws, please refer to the individual country reports.

x *Using World Bank: Gross National Income (GNI) (converted to international dollars) / Purchasing Power Parity (PPP) rates.*

## Prosecutions to Date

**In most countries, the number of prosecutions for FGM has historically been low, and sentences to date have been lenient (at the lower end of the scale) and often suspended.** Poor recording and reporting of cases makes it difficult to track whether prosecutions are followed through and sentences carried out. There is a general lack of publicly available data on court cases in most countries included in this report. There also does not appear to be a mechanism within most jurisdictions for the level of fines to be periodically reviewed and increased in line with inflation; hence, the real values of the fines is reduced over time, particularly in countries where anti-FGM laws have been in place for many years.

Activists and commentators on the law and FGM have previously noted, however, that the use of prison sentences generally has a greater impact on perpetrators than a monetary fine. There is a huge stigma in many communities attached to spending time in prison; hence, the possibility of imprisonment is considered the most effective deterrent.

It is important to note that the fear of parents or elders (such as grandmothers) being imprisoned also means that girls at risk of FGM do not report that they will be undergoing, or have undergone, FGM. Civil society also notes that judges may not imprison elderly women (who are often found to be the cutters) due to their age or the inability of the prison system to accommodate them.

### Call to action:

- The 22 countries that have existing anti-FGM laws should review these regularly to raise fines in line with inflation and ensure prison sentences continue to be an effective deterrent.
- The six countries that do not have anti-FGM laws should ensure that any future legislation allows for penalties that will be effective deterrents and regular reviews so that they remain effective.

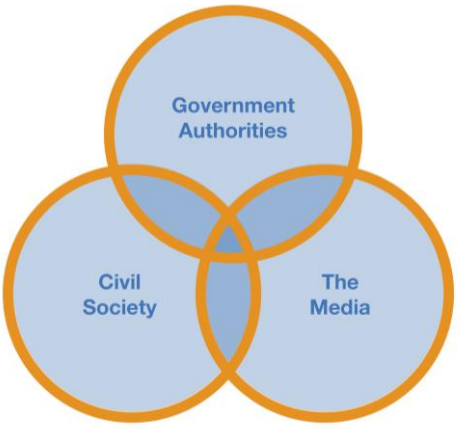
# 13. Implementation of the Law

*The main drivers behind passing legislation that criminalises FGM, or improving legislation that already exists, should be to use it as a deterrent, to utilise its content to protect women and girls at risk and to prevent all forms of FGM from taking place.*[37]

**While some form of legislation against FGM exists in most of the 28 countries studied in this report, there are serious challenges to implementation and enforcement of those laws.** Some of these challenges are systemic; for example, there are often few police or other government officials in remote rural areas, where FGM is most prevalent, and those who are in these areas may have limited knowledge or understanding of the law. There are also cultural challenges and conflicts of interest where police and local political and community leaders continue to support the practice (for reasons of 'tradition', status and/or financial gain).

The primary purpose of a national law should not be to prosecute; ultimately, it is a tool for the prevention of FGM.

Ultimately, while governments are the decision-makers and can lead the way by introducing appropriate policies and legislation, they must be backed up by detailed and appropriate strategies that ensure full implementation and enforcement of the law. A tripartite approach is needed: consultation and engagement by all relevant government authorities (including the police and judiciary) with civil society and the media to ensure that the message that FGM is both harmful *and* illegal reaches all practising communities.




Working together, government authorities, civil society and the media can achieve successful implementation of anti-FGM laws.

A summary of key findings relating to each of these aspects is set out below. 28 Too Many also provides a more detailed analysis for each jurisdiction in the individual country reports (see Appendix 1).

## Relevant Government Authorities and Strategies

As previously stated, merely passing a law against FGM is not sufficient. International and regional treaties require all states to develop and implement **national strategies** to achieve implementation and enforcement of legislation. Governments must take the lead and be proactive in relation to anti-FGM laws, working closely with the police and judiciary, civil society and the media to make progress.

In all 28 countries there are government departments that are responsible for policies to address GBV and harmful practices such as FGM. Often there are several ministries (including health, education, youth and justice) who have an input into anti-FGM programmes, and in many countries the work may be disseminated further down to state, regional or local governments.

**This study has identified that, of the 22 countries that have legislation in place banning FGM, most appear to have some form of national strategy or national action plan in place.** Some appear to have passed the time period for which they were originally drawn up, but they may have been extended or renewed. Not all national plans have been available for inspection.

Significantly, 5 out of the 6 countries that do not have anti-FGM laws also do not appear to have current national strategies in place. This shows a lack of political will to tackle the practice, which is putting 16 million girls at risk in these countries.

**Somalia** (including Somaliland) has neither an FGM law nor a current published national strategy in place.

In several countries **national steering committees** are in place to coordinate the work to end FGM, including **Burkina Faso**, **Central African Republic**, **Djibouti**, **Guinea**, **Mauritania**, **Niger**, **Senegal**, **The Gambia** and **Uganda**. In **Kenya**, the national **FGM Act of 2011** specifically required the establishment of the Anti-FGM Board and set out the functions and responsibilities of the Government of Kenya as a whole to end the practice.

Government authorities in most countries work in partnership with both international and national NGOs, the latter often working together in coalitions as well as individually. Some countries, however, continue to have restrictive operating environments for NGOs and civil society in general, including **Eritrea** and **Ethiopia**.

16 out of the 28 countries in this study form part of the **UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation** (*UNJP*): **Djibouti**, **Egypt**, **Ethiopia**, **Guinea**, **Guinea Bissau**, **Kenya**, **Senegal** and **Sudan** (since 2008); **Burkina Faso**, **Somalia**, **Sudan** and **The Gambia** (since 2009); **Eritrea**, **Mali** and **Mauritania** (since 2011); and **Nigeria** (since 2014). The UNJP works with government departments and a range of implementing partners at all levels of society to engage communities through awareness-raising and community-abandonment projects, supporting development of communication strategies, providing protection and support services for women and girls affected by FGM and establishing religious leaders' networks. An integral part of the UNJP strategy is to support government efforts in all countries to develop policy and anti-FGM legislation, where these do not exist or are inadequate.

Jointly, Government authorities have a responsibility to take the lead in providing training on FGM and the law to judiciary and police as well as doctors, nurses, teachers, social workers, village chiefs and all others who are in positions of responsibility within their countries.

Government authorities can also set up telephone hotlines for reporting cases of FGM and provide safe spaces for women and girls, where a need is identified.

The necessity of improving dissemination of the meaning and content of laws requires close working with both civil society and the media and the distribution of information in all local languages and, where literacy rates are low, in alternative forms.

All these initiatives require commitment to budgeting for and providing adequate funds for their implementation.

In regards to government responsibilities, the HRC, at its 38th Session in July 2018[38], called upon states in **Recommendation 3** to:

> develop and implement, with the participation of the relevant stakeholders — including girls, women, religious and traditional leaders, community leaders, health-care providers, civil society, human rights groups, men and boys and youth organizations — integrated, comprehensive and coordinated strategies and policies to prevent and eliminate all forms of female genital mutilation . . .

Further, in **Recommendation 10** the HRC called upon states to:

> provide assistance to women and girls who are victims of female genital mutilation, including through appropriate support services for treatment of the physical, physiological and psychological consequences . . .

**Call to action:**

- All FGM-practising countries need to develop and implement up-to-date national strategies and action plans to tackle FGM and meet their commitments to international treaties and achieving the SDGs.
- National strategies should include funding commitments and set out budget lines to support the work to end FGM, including dissemination of the law through civil society and the media.
- National strategies should include training around FGM and anti-FGM laws for all members of the police and judiciary (from local police officers through to high court judges and border control) and all those in positions of authority, including medical professionals, social workers, teachers and faith and community leaders.
- Laws need to be made accessible to all members of society and drafted in such a way that they are easy to understand in all local languages.
- Where they are currently unavailable and a need is identified, appropriate protection measures (such as emergency telephone hotlines or safe spaces) should be put in place for women and girls at risk of FGM.

## Police and the Judiciary

The successful implementation of anti-FGM laws on the ground requires a well-trained and resourced police force and judiciary (at all levels). This study has shown that in many countries (including in the **Central African Republic**, **Nigeria**, **Sudan** and **Tanzania**), those law enforcers are not adequately equipped with the knowledge and training they need to efficiently put anti-FGM laws into practice. Reporting of FGM cases is poor and sentences given are generally low or suspended (for example, in countries such as **Egypt,** where medicalised FGM in particular has been increasing). Under-funding and practical challenges such as accessing remote, rural areas, continue to be obstacles, as do conflicts of interest when local police and judiciary themselves come from practising communities.

**Law enforcement is generally weak across most countries, and sentences are usually short or suspended.**

Often, cases of FGM are dealt with under local judicial arrangements, with village elders and local leaders settling disputes in their own communities (for example, in **Ethiopia**) and families who support FGM commonly putting immense pressure on the local judiciary (for example, in **Guinea**). In **Côte d'Ivoire**, it has been reported that out-of-court arrangements between village leaders and local police commissioners are commonplace. Women and girls are often unaware of their rights and the meaning of laws. They do not have access to the official judicial system and have no means of protection if they choose to seek help from public authorities.

It is essential that the police and judiciary work alongside government authorities, civil society and the media to use the law for the prevention of FGM. An innovative approach to legal proceedings undertaken in **Burkina Faso**, for example, is the use of mobile community courts, which take awareness-raising and enforcement to the heart of the community. In **Niger** 'awareness caravans' take information on FGM (and other topics) out to remote rural communities, accompanied by legal experts who give advice to victims of GBV. Police also need to work closely with their counterparts in neighbouring countries to tackle cross-border FGM (such as between **Kenya**, **Tanzania** and **Uganda**; and **Senegal** and **The Gambia**).

### Call to action:

- Police and the judiciary need adequate support and training around FGM and the law and should be encouraged to fully apply the sentences provided for by the legislation.
- Adequate monitoring and reporting of FGM cases is essential to improve efficiency and inform policy-makers, the judiciary, the police and all those working to implement and enforce the law.
- Increased support and protection for victims and witnesses in FGM cases is essential.

## Civil Society

Civil society, which includes international and national NGOs and community and faith-based organisations, has a vital role to play in disseminating information on the law and FGM. To date, in many countries, it appears that community projects already include information around the law wherever possible.

Moving forwards, however, all government authorities need to work in close partnership with these organisations to ensure that the content of the law is easy to understand and available to all members of society.

The development of NGO coalitions in some countries that can share knowledge and best practice is welcomed and should be encouraged by all governments as part of their national plans. Civil society, in partnership with government authorities and the media, can provide access to communities at a grassroots level to supply vital awareness-training on FGM and the meaning of the law.

**A national law is a critical point of reference for civil society and all community activists – it demonstrates that FGM is unacceptable and illegal.**

From observations of all 28 countries in this study, it is clear that the inadequate content of some anti-FGM laws and the absence of legislation altogether in some countries undermine the efforts of civil society and national strategies to end the practice. Local organisations working in communities, alongside local police and the judiciary, are the best placed to provide education on the law and raise awareness of the harms of FGM, but they need robust legislation in place to start with, the ongoing support of the government and adequate funds to increase the impact of their work in future.

**Call to action:**

- Increased funding and empowerment of local activists is needed to help them include greater promotion of anti-FGM laws in their advocacy work.

## The Role of Media

In recent years there has been an increase in the use of media in the campaign to end FGM across Africa and beyond – particularly social media and online news platforms. Other forms of media, such as local radio programmes and interactive dramas, are also being widely and successfully used by activists to disseminate information and promote discussion, particularly in remote rural areas.

Governments committed to ending the practice can also make full use of these media channels to get across messages about the law and FGM. Again, working in partnership with civil society would provide huge potential to make laws more accessible to all members of society, in all languages and in areas of low literacy.

## To be effective and prevent FGM, laws need to be more widely known and understood in all communities.

As well as being useful for disseminating information on the content and meaning of the law, the media is well placed to make public the outcomes of cases of and prosecutions for FGM. It can also provide information vital to protecting women and girls, such as details of emergency telephone hotlines and places they can seek help (such as authorised safe spaces).

There are challenges for the media, however, in countries where press freedom is restricted (such as **Eritrea**, **Ethiopia** and **Egypt**) and in practising communities where anti-FGM laws are still not in place and fierce opposition remains to any individual or organisation that speaks out against FGM (such as **Liberia** and **Sierra Leone**). Government authorities have a responsibility to ensure that the media plays a full and productive role in the dissemination of information on the law and FGM and does not face restrictions and threats for contributing to national plans to end FGM.

### Call to action:

- Increased use of all appropriate forms of media would help raise public awareness of the content and meaning of anti-FGM laws.
- Increased support from governments for the role of media would help in the dissemination of information on the law and FGM.
- Tribunals should be encouraged to ensure any cases and prosecutions relating to FGM are clearly reported through appropriate media channels.

# 14. The Law and FGM: Next Steps

To date, there has been a limited understanding internationally of the content and meaning of laws against FGM. Occasional headlines around a high-profile case may briefly focus attention on the law and FGM, but, ultimately, there is a lack of information on what laws are currently doing or not doing to protect the millions of women and girls who are still at risk of FGM.

Through this research, 28 Too Many, with the support of TrustLaw and the international law teams who assisted on this project, has attempted to identify the current legislative frameworks in 28 FGM-practising countries in Africa. We have identified examples of good practice and, importantly, highlighted where gaps remain in legislation. The primary aim of this report and the accompanying country reports is to disseminate this up-to-date, evidence-based research to all policy-makers at international and national levels. We also aim to reach all those NGOs and activists working at a grassroots level, to give them the knowledge they need on the status of laws and help inform their vital work to end FGM moving forwards. We aim to encourage greater cooperation at a regional level to tackle some of the very real, ongoing challenges to the sector, including medicalisation and cross-border FGM, which are currently neglected in most national legislations.

Anti-FGM laws are important because they are a statement of intent and they demonstrate a commitment to eradicate FGM.

**The lack of a law also makes a strong statement!**

Table 7 below sets out the key features of an anti-FGM law that 28 Too Many considers essential for inclusion in all domestic and regional legislative frameworks. It takes the features outlined in this report to build the idea of a 'Model Law' – an idea that 28 Too Many is looking to explore further with the international teams of lawyers who have worked on this project to date. More details will be made available on **www.28toomany.org** as this work progresses.

It is recognised that any Model Law would need to be adapted to each individual country's legal, political and social contexts, particularly given the various legal systems in place. However, this is presented as a basis for decision-makers to consider moving forwards and for activists to challenge current legal environments that may not be supporting their efforts to end FGM.

28 Too Many welcomes feedback on the content and findings of this study and will continue to support all those working to end FGM through the provision of much-needed research and resources.

Our thanks again to the Thomson Reuters Foundation, TrustLaw, the international law firms, and all those in the anti-FGM sector who have contributed to and supported our work on the Law and FGM to date. We look forward to taking the conversation forward and making the laws on FGM easy to understand and accessible to all.

## Table 7 – The 28 Too Many 'Model Law' on FGM:

### 28 Too Many: Essential Features of a Model Law Against FGM

Includes a **comprehensive definition** of female genital mutilation, including all relevant types practised.

**Criminalises** the following:

- performing FGM on women and girls of ALL ages;
- procuring, aiding and abetting FGM on women and girls of ALL ages;
- failing to report FGM (whether it has taken place, is taking place or is planned);
- performing or assisting in medicalised FGM (including any health professional in any location);
- all cross-border movement between countries for the purpose of FGM;
- allowing the use of premises for FGM; and
- providing or possessing tools or equipment for FGM.

Applies **penalties** that reflect the perpetrator and each of the above crimes (and ensure they are regularly reviewed).

**Protects** uncut women and girls (and their families) from:

- derogatory or abusive language; and
- discrimination and actions that exclude them from society and community activities.

**Protects** all victims and witnesses in FGM cases.

Provides for **protection orders** (where systems are in place and a need is identified).

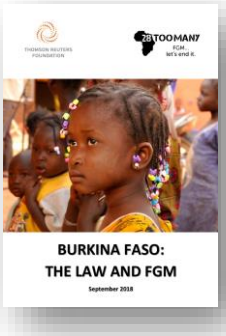
**Obliges** the state to:

- establish national coordinating committees;
- draft and implement comprehensive national action plans and strategies;
- commit to funding streams;
- record and monitor all FGM cases;
- publicise the law (and cases taken to court); and
- provide telephone helplines and/or safe spaces (where a need is identified).

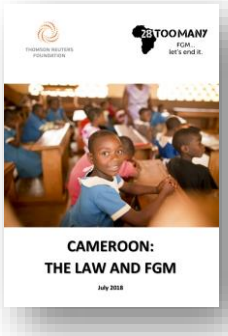
# Appendix 1: The Law and FGM Country Reports

Available online at **www.28toomany.org/law**.


Benin

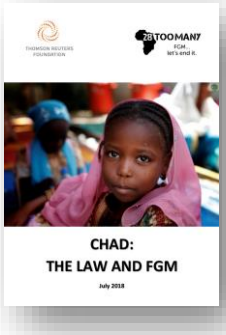



Burkina Faso



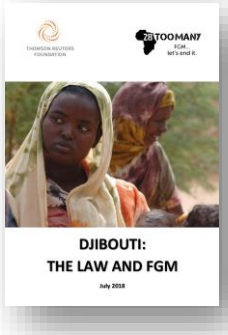

Cameroon


Central African Republic

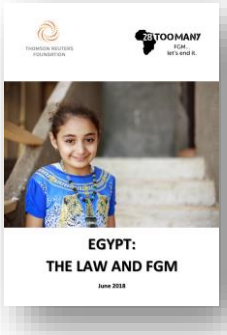



Chad


Côte d'Ivoire

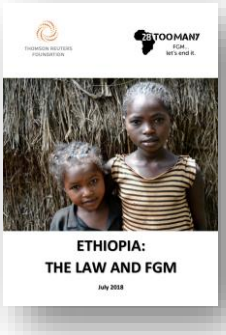



Djibouti



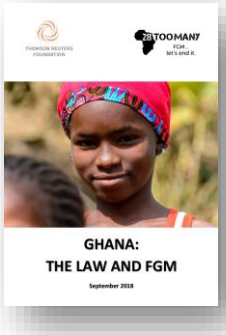

Egypt


Eritrea

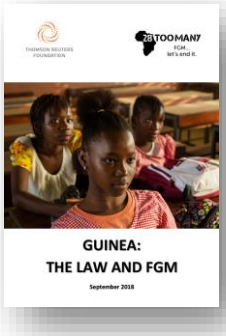



Ethiopia


The Gambia



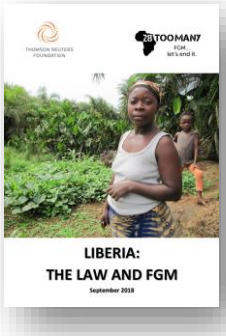

Ghana



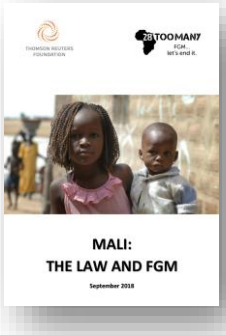

Guinea


Guinea Bissau


Kenya



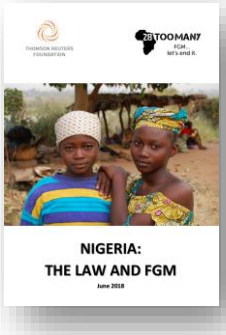

Liberia




Mali


Mauritania

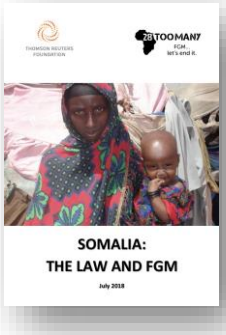

Niger



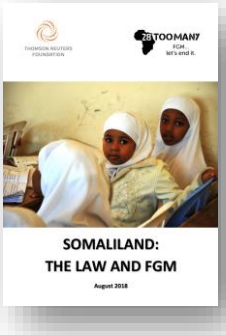

Nigeria


Senegal

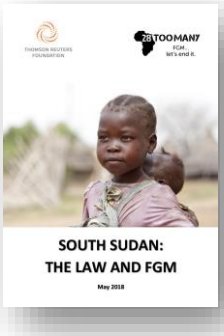

Sierra Leone



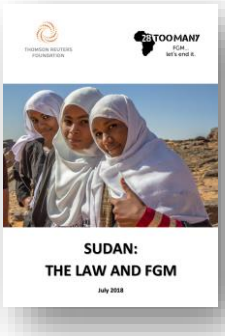

Somalia



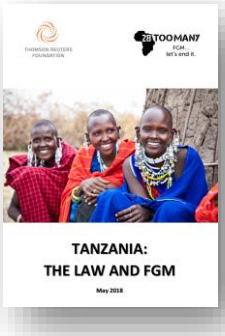

Somaliland



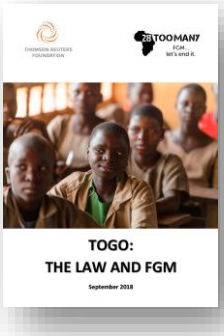

**South Sudan**



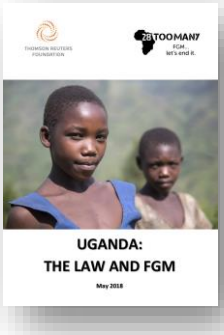

**Sudan**




**Tanzania**




**Togo**




**Uganda**

# Appendix 2: International Treaties Signed, Ratified or Acceded to by Each Country in the Study

### Key to Appendix 2 Tables

**S:** '**Signed**' – a treaty is signed by countries following negotiation and agreement of its contents.

**R:** '**Ratified**' – once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.

**A:** '**Acceded**' – when a country ratifies a treaty that has already been negotiated by other states.

***** **With reservations**

| INTERNATIONAL TREATIES | International Covenant on Civil & Political Rights (1966) | International Covenant on Economic, Social & Cultural Rights (1966) | Convention on the Elimination of All forms of Discrimination Against Women (1979) | Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) | Convention on the Rights of the Child (1989) |
|---|---|---|---|---|---|
| Benin | A | A | S/R | A | S/R |
| Burkina Faso | A | A | A | R | S/R |
| Cameroon | A | A | S/R | A | S/R |
| CAR | A | A | A | A | S/R |
| Chad | A | A | A | A | S/R |
| Côte d'Ivoire | A | A | S/R | A | S/R |
| Djibouti | A | A | A | A | S/R* |
| Egypt | S/R | S/R | S/R* | A | S/R |
| Eritrea | A | A | A | A* | S/R |
| Ethiopia | A | A | S/R* | A | A |
| The Gambia | A | A | S/R | S | S/R |
| Ghana | S/R | S/R | S/R | S/R | S/R |
| Guinea | S/R* | S/R* | S/R | S/R | A |
| Guinea Bissau | S/R | A | S/R | S/R | S/R |
| Kenya | A | A | A | A | S/R |
| Liberia | S/R | S/R | A | A | S/R |
| Mali | A | A | S/R | A | S/R |
| Mauritania | A* | A | A | A | S/R* |
| Niger | A | A | A* | A | S/R |
| Nigeria | A | A | S/R | X | S/R |
| Senegal | S/R | S/R | S/R | S/R | S/R |
| Sierra Leone | A | A | S/R | S/R | S/R |
| Somalia | A | A | X | A | S/R* |
| Somaliland | A | A | X | A | S |
| South Sudan | X | X | A | A | A |
| Sudan | A | A | X | S | S/R |
| Tanzania | A | A | S/R | X | S/R |
| Togo | A | A | A | S/R | S/R |
| Uganda | A | A | S/R | A | S/R |

| REGIONAL TREATIES | African Charter on Human and People's Rights (1981) (*Banjul Charter*) | African Charter on the Rights and Welfare of the Child (1990) | African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*Maputo Protocol*) | | Cairo Declaration on the Elimination of FGM (*CDEFGM*) |
|---|---|---|---|---|---|
| Benin | S/R | S/R | S/R | | ✓ |
| Burkina Faso | S/R | S/R | S/R | | ✓ |
| Cameroon | S/R | S/R | S/R | | ✓ |
| CAR | R | S | S | | ✓ |
| Chad | S/R | S/R/A | S | | ✓ |
| Côte d'Ivoire | S/R | S/R | S/R | | ✓ |
| Djibouti | S/R | S | S/R | | ✓ |
| Egypt | S/R | S/R | X | | ✓ |
| Eritrea | R | R | S | | ✓ |
| Ethiopia | R | R | S | | ✓ |
| The Gambia | S/R | A | S/R | | ✓ |
| Ghana | A | S | S/R | | ✓ |
| Guinea | S/R | S/R | S/R | | ✓ |
| Guinea Bissau | S/R | S | S/R | | – |
| Kenya | R | A | S/R | | ✓ |
| Liberia | R | S/R | S/R | | ✓ |
| Mali | S/R | S/R | S/R | | ✓ |
| Mauritania | S/R | X | R | | ✓ |
| Niger | S/R | S/R | S | | ✓ |
| Nigeria | S/R | S/R | S/R | | ✓ |
| Senegal | S/R | S/R | S/R | | ✓ |
| Sierra Leone | S/R | S/R | S/R* | | ✓ |
| Somalia | S/R | S | S | | – |
| Somaliland | S/R | S | S | | – |
| South Sudan | X | X | S | | – |
| Sudan | S/R | X | S | | ✓ |
| Tanzania | S/R | S/R | S/R | | ✓ |
| Togo | S/R | S/R | S/R | | ✓ |
| Uganda | S/R | S/R | S/R | | ✓ |

# Appendix 3: Aspects of FGM Covered by the Law in the 28 African Countries Studied

## Aspects of FGM Covered by the Law in the 28 African Countries Studied

| Country | Provides Clear Definition of FGM | Criminalises Performance of FGM | Prohibits Procurement, Arrangement or Assistance of FGM | Criminalises Failure to Report FGM | Criminalises Participation of Medical Professionals in FGM | Criminalises Practice of Cross-Border FGM |
|---|---|---|---|---|---|---|
| Benin | ✓ | ✓ | ✓ | ✓ | X | X |
| Burkina Faso | ✓ | ✓ | X | ✓ | ✓ | X |
| Cameroon | X | ✓ | X | X | X | X |
| CAR | ✓ | ✓ | ✓ | ✓ | X | X |
| Chad | X | X | X | X | X | X |
| Côte d'Ivoire | ✓ | ✓ | ✓ | X | ✓ | X |
| Djibouti | ✓ | ✓ | ✓ | ✓ | X | X |
| Egypt | ✓ | ✓ | X | X | X | X |
| Eritrea | ✓ | ✓ | ✓ | ✓ | ✓ | X |
| Ethiopia | X | ✓ | ✓ | X | X | X |
| The Gambia | ✓ | ✓ | ✓ | ✓ | X | X |
| Ghana | ✓ | ✓ | ✓ | X | X | X |
| Guinea | ✓ | ✓ | ✓ | X | ✓ | X |
| Guinea Bissau | ✓ | ✓ | ✓ | ✓ | X | ✓ |
| Kenya | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Liberia | X | X | X | X | X | X |
| Mali | X | X | X | X | X | X |
| Mauritania | ✓ | ✓ | X | X | ✓ | X |
| Niger | ✓ | ✓ | ✓ | X | ✓ | X |
| Nigeria | X | ✓ | ✓ | X | X | X |
| Senegal | ✓ | ✓ | ✓ | X | ✓ | X |
| Sierra Leone | X | X | X | X | X | X |
| Somalia | X | X | X | X | X | X |
| South Sudan | ✓ | ✓ | ✓ | ✓ | X | X |
| Sudan | X | X | X | X | X | X |
| Tanzania | X | ✓ | ✓ | X | X | X |
| Togo | ✓ | ✓ | ✓ | ✓ | X | X |
| Uganda | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| YES | 18 | 22 | 18 | 11 | 9 | 3 |
| NO | 10 | 6 | 10 | 17 | 19 | 25 |

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31 Hon. Dora Christine Kanabahita Byamuka, *op. cit*.
32 *Ibid*.
33 UN Human Rights Council, *op. cit*.
34 ***As at 31 May 2018 (https://www.xe.com/currencyconverter/).***
35 ***As at 23 May 2018 (https://www.xe.com/currencyconverter/).***
36 ***As at 21 May 2018 (https://www.xe.com/currencyconverter/).***
37 28 Too Many, September 2018.
38 UN Human Rights Council, *op. cit.*

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