



# Compendium of International and National Legal Frameworks on Female Genital Mutilation

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COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON  
FEMALE GENITAL MUTILATION/CUTTING

**COMPENDIUM OF INTERNATIONAL AND NATIONAL  
LEGAL FRAMEWORKS ON FEMALE GENITAL MUTILATION/CUTTING**

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**The World Bank Group**

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*The Compendium is a working document intended as a reference tool for anyone interested in the topic of FGM (development practitioners, lawyers, community leaders, academics, researchers, students, etc.). It does not constitute an exhaustive treatment of the legal framework on FGM and may be updated from time to time.*

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## FOREWORD

In 2012 and in 2018, the United Nations General Assembly adopted resolutions urging the international community to intensify global efforts to eliminate female genital mutilation/cutting (FGM/C) (A/RES/67/146<sup>1</sup> and A/RES/73/582<sup>2</sup>). It also called upon “States, the United Nations system, civil society and all stakeholders to continue to observe 6 February as the International Day of Zero Tolerance for FGM/C and to use the day to enhance awareness raising campaigns and to take concrete actions against female genital mutilations”.

FGM/C is a type of violence against women and girls which impairs their development potential and impacts the societies in which they live and work, their children, their families and ultimately their countries. FGM/C also undermines the World Bank’s efforts to end extreme poverty and boost shared prosperity.

Women and girls affected by FGM/C may not be able to reach their personal, productive and professional capacity. FGM/C causes a large number of physical and psychological problems and complications and can even lead to death. It imposes unnecessary suffering and prolonged pain.

The international community recognized that FGM/C is an important development challenge that affects millions of women and girls in the world.<sup>3</sup> Sustainable Development Goal 5 (SDG 5: “Achieve gender equality and empower all women and girls”) includes a target on eliminating all harmful practices against women, such as female genital mutilation by 2030 (target 5.3).

To mark the International Day of Zero Tolerance to FGM/C, we are pleased to share this 4<sup>th</sup> edition of the “Compendium of International and National Legal Frameworks on Female Genital Mutilation/Cutting”. It describes the international and regional instruments that address FGM/C as well as the national legislations adopted to outlaw FGM/C. This is a practical online tool to empower those fighting FGM/C. We hope this responds to the needs of all those interested in this subject as well as those who work with women and girls affected or at risk.

We hope these legal tools help shape change to eliminate FGM/C.

Sandie Okoro

Senior Vice President and Group General Counsel, World Bank  
February 1, 2020

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<sup>1</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/146](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/146)

<sup>2</sup> <https://undocs.org/A/73/582>

<sup>3</sup> <https://data.unicef.org/topic/child-protection/female-genital-mutilation-and-cutting/>

**ABBREVIATIONS**

CEDAW	Convention Eliminating All Forms of Discrimination against Women
CRIN	Children Rights International Network
FGM	Female Genital Mutilation
FGM/C	Female Genital Mutilation/Cutting
HRW	Human Rights Watch
SDG	Sustainable Development Goals
SOSPA	The Sexual Offences Special Provisions Act, 1998
UN	United Nations
UNCRC	UN Convention on the Rights of the Child
UNFPA	United Nations Population Fund
UNICEF	United Nations Children’s Fund Definitions
WHO	World Health Organization

## INTRODUCTION

Female Genital Mutilation/Cutting (FGM/C)<sup>4</sup> is a development issue and a form of violence against women and girls that affects at least 200 million women in the world<sup>5</sup>.

FGM/C is a harmful practice proven to impact the physical and mental health of affected women and girls<sup>6</sup> from the moment of the cutting, with prolonged and irreversible consequences during their entire lives<sup>7</sup>.

Studies show that FGM/C has economic and social consequences<sup>8</sup> and a high obstetric cost<sup>9</sup> although a comprehensive study on the exact extent of these economic, health and social costs is still to be carried out. Beyond the data and the statistics, researcher have shown that FGM/C deprives women of sexual satisfaction, sexual health and psychophysical well-being<sup>10</sup>.

The Compendium of International and National Legal Frameworks on Female Genital Mutilation (the “Compendium”) was prepared to contribute to this urgent and important development debate with the understanding that the knowledge of the law is an important empowerment tool to end FGM/C.

It provides a survey of the key international and regional instruments as well as domestic legislation as they relate to the prohibition of FGM/C.

The Compendium consists of topical chapters (international legal frameworks; regional legal frameworks; consensus documents and national legal frameworks) with hyperlinks to source documents, such as United Nations conventions, regional treaties, and national legislations.

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<sup>4</sup> FGM comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons (WHO, UNICEF, UNFPA, 1997).

FGM is usually classified into four types: (i) Type I consists of partial or total removal of the clitoris and/or its prepuce (clitoridectomy); (ii) Type II consists in the partial or total removal of the clitoris and labia minora, with or without excision of the labia majora (excision); (iii) Type III consists of the partial or total removal of the clitoris and the labia minora with the cutting, appositioning and stitching of the cut areas leaving a small opening for urine and menstrual blood to escape (infibulation); and (iv) Type IV consists of all other harmful procedures to the female genitalia for non-medical purposes, such as pricking, piercing, incising, scraping, cauterization or introduction of corrosive material (unclassified). The Compendium includes all these types of FGM and did not make any distinction as to the particular procedure followed.

<sup>5</sup> WHO data available at <http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/>

<sup>6</sup> FGM is associated with serious physical and mental health problems, such as severe bleeding, severe pain, neurogenic or septic shocks, cysts, swelling, fever, urination problems, wound healing or menstrual problems, infections, tetanus, infertility, kidney failure, fistula, HIV/AIDS, keloids, complications in childbirth, increased risk of newborn death, premature births, depression, vaginism (genito-pelvic pain disorder), anxiety, memory loss, post-traumatic stress disorders, sexual complications, anger and painful intercourse. FGM can even lead to death in some extreme cases. WHO data available at [http://www.who.int/reproductivehealth/topics/fgm/health\\_consequences\\_fgm/en/](http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/)

<sup>7</sup> Berg, Underland, Odgaard-Jensen, Fretheim & Vist 2014; WHO 2016

<sup>8</sup> <http://www.medinstgenderstudies.org/wp-content/uploads/endFGM-factsheet-EN-online4.pdf/>

<sup>9</sup> <http://www.who.int/bulletin/volumes/88/4/09-064808/en/>

<sup>10</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5422681/>

The Compendium is a working document intended as a reference tool for anyone interested in the topic of FGM/C (development practitioners, lawyers, community leaders, academics, researchers, students, etc.). It does not constitute an exhaustive treatment of the legal framework on FGM/C and may be updated from time to time.

The Compendium is based on information available both online and based on research conducted, verified and updated up to December 2019. Because the Compendium is based on information publicly available online, it contains hyperlinks to available treaties and laws and electronically published documents. All hyperlinks were active at the time they were referenced in the Compendium. The hyperlinked references are not under the control of the World Bank, nor is the World Bank responsible for the accuracy of the content provided through these references.

The content of the Compendium does not reflect the views of the World Bank, its Board of Executive Directors, or the governments they represent. Furthermore, the World Bank does not guarantee the accuracy of the data included in this work.

For the domestic legislative aspects, the Compendium is limited to those countries where FGM/C is practiced, and which have specific or general laws prohibiting FGM/C. When evidence of the practice of FGM/C is marginal or not sufficiently documented, the country was not included in our review. When evidence of the existence of FGM/C is sufficiently documented, but the practice is legal or at least not prohibited by law, the country is also not included in this review. Therefore, the absence of a country's name means that the practice is either inexistent (or marginally existent) or legal (or not prohibited by law). It could also be due to lack of information online.

The Compendium is therefore limited to 35 countries in Sub-Saharan Africa; 5 countries in Asia and Pacific; 29 countries in Europe; 6 countries in Latin America and the Caribbean; 7 in Northern Africa and the Middle East; and 2 countries in North America, as far as the domestic legislative aspects are concerned.

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We want to be the generation witnessing the end of this practice and hope you will find this Compendium useful.

Isabella Micali Drossos and Emelyne Calimoutou, World Bank Group



## **1. INTERNATIONAL LEGAL FRAMEWORK**

### **1.1 Universal Declaration on Human Rights**

*Article 1:*

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 2:*

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

*Article 3:*

Everyone has the right to life, liberty and security of person.

*Article 5:*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 7:*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### **1.2 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

*Article 2:*

- 1: Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### **1.3 Covenant on Civil and Political Rights**

*Article 2:*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

*Article 3:* The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

*Article 6:*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

*Article 7:*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

*Article 24:*

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

*Article 26:*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**1.4 Covenant on Economic, Social and Cultural Rights**

*Article 12:*

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.
  - (b) The improvement of all aspects of environmental and industrial hygiene.
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### 1.5 [Convention on the Elimination of all Forms of Discrimination against Women \(CEDAW\)](#)

*Article 1:*

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

*Article 2:*

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- (g) To repeal all national penal provisions which constitute discrimination against women.

*Article 3:*

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

*Article 5: States Parties shall take all appropriate measures:*

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices

which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

*Article 10 (Articles 10(c), (f), (h) in particular):*

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:.

- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely.
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

*Article 12:*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

*Article 14:*

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (b) To have access to adequate health care facilities, including information, counselling and services in family planning.

**1.6 [CEDAW General Recommendation No. 14: Female Circumcision](#)**

- (a) That States parties take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include: The collection and dissemination by universities, medical or nursing associations,

national women's organizations or other bodies of basic data about such traditional practices; The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women; The encouragement of politicians, professionals, religious and community leaders at all levels including the media and the arts to cooperate in influencing attitudes towards the eradication of female circumcision; The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision.

- (b) That States parties include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel including traditional birth attendants to explain the harmful effects of female circumcision.
- (c) That States parties invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices.
- (d) That States parties include in their reports to the Committee under articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.

#### **1.7 [CEDAW General Recommendation No. 19: Violence against women](#)**

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender - based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life.
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict.
- (d) The right to liberty and security of person.
- (e) The right to equal protection under the law.
- (f) The right to equality in the family.
- (g) The right to the highest standard attainable of physical and mental health.
- (h) The right to just and favorable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

### ***Comments on specific articles of the Convention***

#### *Articles 2(f), 5 and 10 (c)*

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.

#### *Article 12:*

19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

20. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

#### *Article 14:*

21. Rural women are at risk of gender - based violence because of traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

### **1.8 [CEDAW Recommendation No. 24 Women and Health](#)**

*Article 12:*

5. The Committee refers also to its earlier general recommendations on female circumcision, human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), disabled women, violence against women and equality in family relations, all of which refer to issues that are integral to full compliance with article 12 of the Convention,
  
12. States parties should report on their understanding of how policies and measures on health care address the health rights of women from the perspective of women's needs and interests and how it addresses distinctive features and factors that differ for women in comparison to men, such as: ... (b) ... Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability;
  
15. The obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:  
[...]  
(d) The enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children.
  
18. The issues of HIV/AIDS and other sexually transmitted diseases are central to the rights of women and adolescent girls to sexual health. ...Harmful traditional practices, such as female genital mutilation... may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases.

In particular, States parties should ensure the rights of female and male adolescents to sexual and equality reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality.

**1.9 [CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women](#)**

21. The Committee notes that the Convention, as an instrument to prevent discrimination against women, contains no explicit provision on non-refoulement. In the framework of its work on individual communications under the Optional Protocol, the Committee has had to address States parties' objections to the effect that the Committee has no competence to deal with cases submitted on behalf of asylum seekers whose applications have been rejected at the national level but who claim that they would be exposed to the risk of sexual and/or gender-based violence and persecution if forcibly returned to their country of origin. In reply, the Committee has noted, among other things,



that, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. In addition, the Committee recalls that civil and political rights and freedoms, including the right to life and the right not to be subjected to torture or ill-treatment, are implicitly covered by the Convention, and thus States parties are under the obligation not to extradite, deport, expel or otherwise remove a person from their territory to the territory of another State where there are substantial grounds for believing that there is a real risk of irreparable harm.

22. The Committee further considers that, under article 2(d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. That duty encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of discrimination against women, including gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party: if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that the person's basic rights under the Convention will be seriously at risk in another jurisdiction, the State party itself may be in violation of the Convention. The foreseeability of the consequence would mean that there was a present violation by the State party, even though the consequence would not occur until later.

23. The Committee is therefore of the view that States parties have an obligation to ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence. What amounts to serious forms of discrimination against women, including gender-based violence, will depend on the circumstances of each case.

24. Articles 1-3, 5(a) and 15 establish an obligation on States parties to ensure that women are not discriminated against during the entire asylum process, beginning from the moment of arrival at the borders. Women asylum seekers are entitled to have their rights under the Convention respected; they are entitled to be treated in a non-discriminatory manner and with respect and dignity at all times during the asylum procedure and thereafter, including through the process of finding durable solutions once asylum status has been recognized by the receiving State.

The receiving State has a responsibility towards women granted asylum status when it comes to helping them to, among other things, find proper accommodation, training and/or job opportunities, providing legal, medical, psychosocial support for victims of trauma and offering language classes and other measures facilitating their integration. In addition,

women asylum seekers whose asylum applications are denied should be granted dignified and non-discriminatory return processes.

25. Article 2(c) of the Convention requires that State asylum procedures allow women's claims to asylum to be presented and assessed on the basis of equality in a fair, impartial and timely manner. A gender-sensitive approach should be applied at every stage of the asylum process. This means that women's claims to asylum should be determined by an asylum system that is informed, in all aspects of its policy and operations, by a thorough understanding of the particular forms of discrimination or persecution and human rights abuses that women experience on grounds of gender or sex. Owing to shame, stigma or trauma, some women may be reluctant to disclose or identify the true extent of the persecution that they have suffered or fear. Account needs to be taken of the fact that they may continue to fear persons in authority or rejection and/or reprisals from their family and/or community. In any event, they should be entitled to appeal against first-instance asylum decisions.

26. In addition, articles 2, 15(1) and 16 require States parties to recognize that women may present independent claims to asylum. In this respect, their claims may also be based on fears relating to their children. For example, claims to refugee status may arise from a fear that their daughters will suffer female genital mutilation, be forced into marriage or be subjected to severe community ostracism and exclusion for being girls. The child's protection claim should also be considered on its own merits in a child-sensitive manner in the best interests of the child. Once the principal claimant is recognized as a refugee, other members of the family should normally also be recognized as refugees ("derivative status").

27. Harm perpetrated against women and girls is often at the hands of non-State actors, including family members, neighbours or society more generally. In such cases, article 2(e) of the Convention requires that States parties assume their due diligence obligation and ensure that women are effectively protected from harm that may be inflicted by non-State actors. It does not suffice to strive for vertical gender equality of the individual woman vis-à-vis public authorities; States must also work to secure non-discrimination at the horizontal level, even within the family. Harm perpetrated by non-State actors is persecution where the State is unable or unwilling to prevent such harm or protect the claimant because of discriminatory governmental policies or practices.

28. The Committee is aware that, in cases in which persecution is perpetrated by non-State actors, receiving States have advanced the option of internal flight alternative, according to which a person is not at risk of persecution by non-State actors if he or she is relocated to a safe place within the State of origin. The Committee recalls that articles 2(d) and (e) of the Convention require that States parties ensure that women are protected against discrimination generated by non-State actors and, in the context of a refugee woman, it observes that the essence of refugee status is to provide effective protection to the refugee woman. It also notes that, should the internal flight alternative be considered by receiving

States, the option should be subject to strict requirements, such as the woman's ability to travel to the area concerned and gain admittance and settle there. States should also take into account gender-related aspects and risks in the assessment as to whether internal relocation is permissible. Difficulties faced by women in relocating to other parts of their countries of origin can include legal, cultural and/or social restrictions or prohibitions on women travelling or living alone, practical realities such as problems of securing accommodation, childcare and economic survival without family or community support, and risk of harassment and exploitation, including sexual exploitation and violence.

29. The Committee acknowledges that, as a matter of international law, the authorities of the country of origin are primarily responsible for providing protection to the citizens, including ensuring that women enjoy their rights under the Convention, and that it is only when such protection is not available that international protection is invoked to protect the basic human rights that are seriously at risk. However, the Committee notes that the fact that a woman asylum seeker has not sought the protection of the State or made a complaint to the authorities before her departure from her country of origin should not prejudice her asylum claim, especially where violence against women is tolerated or there is a pattern of failure in responding to women's complaints of abuse. It would not be realistic to require her to have sought protection in advance of her flight. She may also lack confidence in the justice system and access to justice or fear abuse, harassment or retaliation for making such complaints.

30. In line with the Convention, States parties are required to take proactive measures to ensure that the legally recognized grounds of persecution, including those enumerated in the 1951 Convention relating to the Status of Refugees (race, religion, nationality, membership of a particular social group and political opinion), are given a gender-sensitive interpretation. In addition, gender may be used as a factor in recognizing membership of a particular social group or indeed as an identifying characteristic of such a group for purposes of granting refugee status under the 1951 Convention. States parties are also encouraged to add sex and or gender as an additional ground for refugee status in their national legislation.

34. Gender sensitivity should be reflected in reception arrangements, taking into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture or ill-treatment and of other particularly vulnerable groups of women and girls. Reception arrangements should also allow for the unity of the family as present within the territory, in particular in the context of reception centres. As a general rule, pregnant women and nursing mothers, who both have special needs, should not be detained. Where detention of women asylum seekers is unavoidable, separate facilities and materials are required to meet the specific hygiene needs of women. The use of female guards and warders should be promoted. All staff assigned to work with women detainees should receive training relating to the gender-specific needs and human rights of women. Pursuant to articles 1, 2, 5(a) and 12 of the Convention, failure to address the specific needs of women in immigration detention and ensure the respectful treatment of detained women asylum seekers could

constitute discrimination within the meaning of the Convention. Not least for the purposes of avoiding violence against women, separate facilities for male and female detainees are required, unless in family units, and alternatives to detention are to be made available.

**1.10 Joint general recommendation No. 31 of the CEDAW and the Committee on the Rights of the Child on harmful practices**

7. Harmful practices are therefore grounded in discrimination based on sex, gender and age, among other things, and have often been justified by invoking sociocultural and religious customs and values, in addition to misconceptions relating to some disadvantaged groups of women and children. Overall, harmful practices are often associated with serious forms of violence or are themselves a form of violence against women and children. While the nature and prevalence of the practices vary by region and culture, the most prevalent and well documented are female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour and dowry-related violence. Given that those practices are frequently raised before both Committees, and in some cases have been demonstrably reduced through legislative and programmatic approaches, they are used herein as key illustrative examples.

16. For the purposes of the present joint general recommendation/general comment, practices should meet the following criteria to be regarded as harmful:

- (a) They constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions;
- (b) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;
- (c) They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age and other intersecting factors;
- (d) They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.

17. The causes of harmful practices are multidimensional and include stereotyped sex- and gender-based roles, the presumed superiority or inferiority of either of the sexes, attempts to exert control over the bodies and sexuality of women and girls, social inequalities and the prevalence of male-dominated power structures. Efforts to change the practices must address those underlying systemic and structural causes of traditional, re-emerging and emerging harmful practices, empower girls and women and boys and men to contribute to the transformation of traditional cultural attitudes that condone harmful practices, act as

agents of such change and strengthen the capacity of communities to support such processes.

*A. Female genital mutilation*

19. Female genital mutilation, female circumcision or female genital cutting is the practice of partially or wholly removing the external female genitalia or otherwise injuring the female genital organs for non-medical or non-health reasons. In the context of the present joint general recommendation/general comment, it is referred to as female genital mutilation. Female genital mutilation is performed in every region and, within some cultures, is a requirement for marriage and believed to be an effective method of controlling the sexuality of women and girls. It may have various immediate and/or long-term health consequences, including severe pain, shock, infections and complications during childbirth (affecting both the mother and the child), long-term gynecological problems such as fistula, psychological effects and death. The World Health Organization and the United Nations Children's Fund estimate that between 100 million and 140 million girls and women worldwide have been subjected to a type of female genital mutilation.

*C. Prevention of harmful practices*

56. One of the first steps in combating harmful practices is through prevention. Both Committees have underlined that prevention can be best achieved through a rights-based approach to changing social and cultural norms, empowering women and girls, building the capacity of all relevant professionals who are in regular contact with victims, potential victims and perpetrators of harmful practices at all levels and raising awareness of the causes and consequences of harmful practices, including through dialogue with relevant stakeholders.

*C.1. Establishing rights-based social and cultural norms*

57. A social norm is a contributing factor to and social determinant of certain practices in a community that may be positive and strengthen its identity and cohesion or may be negative and potentially lead to harm. It is also a social rule of behaviour that members of a community are expected to observe. This creates and sustains a collective sense of social obligation and expectation that conditions the behaviour of individual community members, even if they are not personally in agreement with the practice. For example, where female genital mutilation is the social norm, parents are motivated to agree to its being performed on their daughters because they see other parents doing so and believe that others expect them to do the same. The norm or practice is often perpetuated by other women in community networks who have already undergone the procedure and exert additional pressure on younger women to conform to the practice or risk ostracism, being shunned and stigmatization. Such marginalization may include the loss of important economic and social support and social mobility. Conversely, if individuals conform to the social norm, they expect to be rewarded, for example through inclusion and praise.

Changing social norms that underlie and justify harmful practices requires that such expectations be challenged and modified.

58. Social norms are interconnected, meaning that harmful practices cannot be addressed in isolation, but within a broader context based on a comprehensive understanding of how the practices are linked to other cultural and social norms and other practices. This indicates the need to adopt a rights-based approach that is founded on recognition that rights are indivisible and interdependent.

*D. Protective measures and responsive services*

82. Women and children who are victims of harmful practices are in need of immediate support services, including medical, psychological and legal services.

Emergency medical services may be the most urgent and obvious, given that some of the harmful practices covered herein involve the infliction of extreme physical violence and medical intervention may be necessary to treat severe harm or prevent death. Victims of female genital mutilation or other harmful practices may also require medical treatment or surgical interventions to address the short-term and long-term physical consequences. The management of pregnancy and childbirth in women or girls who have undergone female genital mutilation must be included in pre-service and in-service training for midwives, doctors and other skilled birth attendants.

83. National protection systems or, in their absence, traditional structures should be mandated to be child friendly and gender sensitive and adequately resourced to provide all necessary protection services to women and girls who face a high risk of being subjected to violence, including girls running away to avoid being subjected to female genital mutilation, forced marriage or crimes committed in the name of so-called honour. Consideration should be given to the establishment of an easy-to remember, free, around-the-clock helpline that is available and known nationwide. Appropriate safety and security measures for victims must be available, including specifically designed temporary shelters or specialized services within shelters for victims of violence. Given that perpetrators of harmful practices are often the spouse of the victim, a family member or a member of the victim's community, protective services should seek to relocate victims outside their immediate community if there is reason to believe that they may be unsafe. Unsupervised visits must be avoided, especially when the issue may be considered one of so-called honour. Psychosocial support must also be available to treat the immediate and long-term psychological trauma of victims, which may include post-traumatic stress disorder, anxiety and depression.

**1.11 [CEDAW General recommendation No. 34 on the rights of rural women](#)**

22. Article 5(a) addresses elimination of discriminatory stereotypes and practices, which are often more prevalent in rural areas. Rural women and girls are often disadvantaged by harmful practices, such as child and/or forced marriage, polygamy and female genital

mutilation, which endanger their health and well-being and may push them to migrate in order to escape such practices, potentially exposing them to other risks. They are also disadvantaged by practices such as inheritance of ancestral debt, which perpetuates cycles of poverty, and by discriminatory stereotypes and related practices which prevent them from enjoying rights over land, water and natural resources, such as male primogeniture and widows' property-grabbing.

23. States parties should eliminate harmful practices, including child and/or forced marriages, female genital mutilation, and inheritance of ancestral debt, which negatively affect rural women's and girls' health, well-being and dignity, in line with GR 31 (2014) on harmful practices. They should eliminate discriminatory stereotypes including those that compromise the equal rights of rural women to land, water and other natural resources. In this regard, States parties should adopt a range of measures, including outreach and support programmes, awareness-raising and media campaigns in collaboration with traditional leaders and civil society to eliminate harmful practices and stereotypes.

**1.12 [CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19](#)**

7. In many States, legislation addressing gender-based violence against women is non-existent, inadequate or poorly implemented. An erosion of the legal and policy frameworks that aim to eliminate gender-based discrimination or violence, often justified in the name of tradition, culture, religion or fundamentalist ideology, and significant reductions in public spending, often as part of so-called "austerity measures" following economic and financial crises, further weaken States responses. In the context of shrinking democratic spaces and the consequent deterioration of the rule of law, all of those factors contribute to the pervasiveness of gender-based violence against women and lead to a culture of impunity.

10. The Committee considers that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. Throughout its work, the Committee has made clear that such violence is a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms, as enshrined in the Convention.

14. Gender-based violence affects women throughout their life cycle<sup>16</sup> and, accordingly, references to women in the present document include girls. Such violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Gender-based violence against women is affected and often exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors, as evidenced, among other things, in the contexts of displacement, migration, the increased globalization of economic activities,

including global supply chains, the extractive and offshoring industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism.

Gender-based violence against women is also affected by political, economic and social crises, civil unrest, humanitarian emergencies, natural disasters and the destruction or degradation of natural resources. Harmful practices and crimes against women human rights defenders, politicians, 20 activists or journalists are also forms of gender-based violence against women affected by such cultural, ideological and political factors.

16. Gender-based violence against women, may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices, among others. In some cases, some forms of gender-based violence against women may also constitute international crimes.

17. The Committee endorses the view of other human rights treaty bodies and special procedures mandate-holders that in making the determination of when acts of gender-based violence against women amount to torture or cruel, inhuman or degrading treatment, a gender-sensitive approach is required to understand the level of pain and suffering experienced by women, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex.

18. Violations of women's sexual and reproductive health and rights, such as forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.

19. The Committee regards gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behavior. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard

#### *IV. Recommendations*

##### *A. General legislative measures*

29. The Committee recommends that States parties implement the following legislative measures:



- (a) Ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual or psychological integrity, are criminalized and introduce, without delay, or strengthen, legal sanctions commensurate with the gravity of the offence, as well as civil remedies;
- (b) Ensure that all legal systems, including plural legal systems, protect victims/survivors of gender-based violence against women and ensure that they have access to justice and to an effective remedy, in line with the guidance provided in general recommendation No. 33;
- (c) Repeal, including in customary, religious and indigenous laws, all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence. In particular, repeal the following:
  - (i) Provisions that allow, tolerate or condone forms of gender-based violence against women, including child or forced marriage and other harmful practices, provisions allowing medical procedures to be performed on women with disabilities without their informed consent and provisions that criminalize abortion, being lesbian, bisexual or transgender, women in prostitution and adultery, or any other criminal provisions that affect women disproportionately, including those resulting in the discriminatory application of the death penalty to women;
  - (ii) Discriminatory evidentiary rules and procedures, including procedures allowing for the deprivation of women's liberty to protect them from violence, practices focused on "virginity" and legal defences or mitigating factors based on culture, religion or male privilege, such as the defence of so-called "honour", traditional apologies, pardons from the families of victims/survivors or the subsequent marriage of the victim/survivor of sexual assault to the perpetrator, procedures that result in the harshest penalties, including stoning, lashing and death, often being reserved for women and judicial practices that disregard a history of gender-based violence to the detriment of women defendants;
  - (iii) (d) Examine gender-neutral laws and policies to ensure that they do not create or perpetuate existing inequalities and repeal or modify them if they do so;

#### *B. Prevention*

30. The Committee recommends that States parties implement the following preventive measures:

- (a) Adopt and implement effective legislative and other appropriate preventive measures to address the underlying causes of gender-based violence against women, including patriarchal attitudes and stereotypes, inequality in the family and the neglect or denial of women's civil, political, economic, social and cultural rights, and to promote the empowerment, agency and voices of women;

- (b) Develop and implement effective measures, with the active participation of all relevant stakeholders, such as representatives of women's organizations and of marginalized groups of women and girls, to address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or promote gender-based violence against women and underpin the structural inequality of women with men.

C. *Protection*

31. The Committee recommends that States parties implement the following protective measures:

- (a) Adopt and implement effective measures to protect and assist women complainants of and witnesses to gender-based violence before, during and after legal proceedings, including by:
  - (i) Protecting their privacy and safety, in line with general recommendation No. 33, including through gender-sensitive court procedures and measures, bearing in mind the due process rights of victims/survivors, witnesses and defendants;
  - (ii) Providing appropriate and accessible protective mechanisms to prevent further or potential violence, without the precondition that victims/survivors initiate legal action, including through removal of communication barriers for victims with disabilities.<sup>11</sup> Mechanisms should include immediate risk assessment and protection comprising a wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance. Protective measures should avoid imposing an undue financial, bureaucratic or personal burden on women who are victims/survivors. The rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity and guided by the principle of the best interests of the child;

**1.13 [Convention on the Rights of the Child](#)**

*Article 19:*

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental

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<sup>11</sup> For example, protective orders in some countries allow for the banning of travel of people who are believed to be at risk of female genital mutilation

violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

*Article 24.3:*

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

*Article 24.4:*

States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

*Article 27.1:*

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

*Article 37:*

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

*Article 39:*

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

**1.14 [Committee on the Rights of the Child General Comment No. 13 \(2011\) - The right of the child to freedom from all forms of violence](#)**

*Paragraph 29:*

Refers to harmful practices including FGM as covered by “all forms of violence”.

*Paragraph 44:*

Educational measures should address attitudes, traditions, customs and behavioural practices which condone and promote violence against children.

*Paragraph 72(g):*

Elements to be mainstreamed in National Frameworks include children in potentially vulnerable situations. (Harmful traditional practices).

## **2. REGIONAL LEGAL FRAMEWORK**

### **2.1 [African Charter on Human and Peoples' Rights \(the Banjul Charter\) and its Protocol on the Rights of Women in Africa \(Maputo Protocol\)](#)**

*Article 5:*

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- a) Creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes.
- b) Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.
- c) Provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting.
- d) Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

### **2.2 [African Charter on the Rights and Welfare of the Child](#)**

*Article 14:*

(1) Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

*Article 16:*

Children should be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse.

### **2.3 [European Convention on Human Rights](#)**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defense of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

*Article 3: Prohibition of torture*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**2.4 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**

*Article 5: State obligations and due diligence*

1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.
2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

*Article 38: Female Genital Mutilation*

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalized:

- (a) excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- (b) coercing or procuring a woman to undergo any of the acts listed in point(a);
- (c) inciting, coercing or procuring a girl to undergo any of the acts listed in point (a).

*Article 44: Jurisdiction (in particular 44.3)*

1. Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
  - a) in their territory; or
  - b) on board a ship flying their flag; or
  - c) on board an aircraft registered under their laws; or
  - d) by one of their nationals; or
  - e) by a person who has her or his habitual residence in their territory.
2. Parties shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this

- Convention where the offence is committed against one of their nationals or a person who has her or his habitual residence in their territory.
3. For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed.

*Article 60: Gender-based asylum claims*

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1.A(2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

*Article 61: Non-refoulement*

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
2. Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

**2.5 [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women \(Convention of Belem Do Para\)](#)**

*Article 1:*

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

*Article 2:*

Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

## **Chapter II – Rights Protected**

### *Article 3:*

Every woman has the right to be free from violence in both the public and private spheres.

### *Article 4:*

Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The rights to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights.

### *Article 5:*

Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.

### *Article 6:*

The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination; and
- b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

### Chapter III – Duties of the States

#### *Article 7:*

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

#### **2.6 American Convention On Human Rights "Pact Of San Jose, Costa Rica"**

##### *Article 4: Right to Life*

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.



4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority

*Article 5: Right to Humane Treatment*

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

*Article 19: Rights of the Child*

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

**2.7 Charter of Fundamental Rights**

*Article 1: Human dignity*

Human dignity is inviolable. It must be respected and protected.

*Article 2: Right to life*

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3: Right to the integrity of the person*

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

- the free and informed consent of the person concerned, according to the procedures laid down by law,
- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain
- the prohibition of the reproductive cloning of human beings.

*Article 4: Prohibition of torture and inhuman or degrading treatment or punishment*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 6: Right to liberty and security*

Everyone has the right to liberty and security of person.

between men and women must be ensured in all areas, including employment, work and pay.

*Article 23: Equality between men and women*

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article 24: The rights of the child*

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

**3. CONSENSUS DOCUMENTS**

**3.1 [Beijing Declaration and Platform for Action of the Fourth World Conference on Women](#)**

*Article 39:*

The girl child of today is the woman of tomorrow. The skills, ideas and energy of the girl child are vital for full attainment of the goals of equality, development and peace. For the girl child to develop her full potential she needs to be nurtured in an enabling environment, where her spiritual, intellectual and material needs for survival, protection and development are met and her equal rights safeguarded. If women are to be Platform for Action equal partners

with men, in every aspect of life and development, now is the time to recognize the human dignity and worth of the girl child and to ensure the full enjoyment of her human rights and fundamental freedoms, including the rights assured by the Convention on the Rights of the Child, universal ratification of which is strongly urged. Yet there exists worldwide evidence that discrimination and violence against girls begin at the earliest stages of life and continue unabated throughout their lives. They often have less access to nutrition, physical and mental health care and education and enjoy fewer rights, opportunities and benefits of childhood and adolescence than do boys. They are often subjected to various forms of sexual and economic exploitation, pedophilia, forced prostitution and possibly the sale of their organs and tissues violence and harmful practices such as female infanticide and prenatal sex selection, incest, female genital mutilation and early marriage, including child marriage.

*Article 93:*

Discrimination against girls, often resulting from son preference, in access to nutrition and health-care services endangers their current and future health and well-being. Conditions that force girls into early marriage, pregnancy and child-bearing and subject them to harmful practices, such as female genital mutilation, pose grave health risks. Adolescent girls need, but too often do not have, access to necessary health and nutrition services as they mature. Counselling and access to sexual and reproductive health information and services for adolescents are still inadequate or lacking completely, and a young woman's right to privacy, confidentiality, respect and informed consent is often not considered. Adolescent girls are both biologically and psychosocially more vulnerable than boys to sexual abuse, violence and prostitution, and to the consequences of unprotected and premature sexual relations. The trend towards early sexual experience, combined with a lack of information and services, increases the risk of unwanted and too early pregnancy, HIV infection and other sexually transmitted diseases, as well as unsafe abortions. Early childbearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world. Overall, for young women early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term, adverse impact on the quality of their lives and the lives of their children. Young men are often not educated to respect women's self-determination and to share responsibility with women in matters of sexuality and reproduction.

### **3.2 [General Assembly Declaration on the Elimination of Violence against Women](#)**

*Article 2:*

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation, including rape,

- sexual abuse, sexual harassment and intimidation at work, in Physical, sexual and psychological violence occurring within the general community educational institutions and elsewhere trafficking in women and forced prostitution.
- (b) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

*Article 4:*

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.....

**3.3 Programme of Action of the International Conference on Population and Development (ICPD)**

4.22 Governments are urged to prohibit female genital mutilation wherever it exists and to give vigorous support to efforts among non-governmental and community organizations and religious institutions to eliminate such practices.

5.5 Governments should take effective action to eliminate all forms of coercion and discrimination in policies and practices. Measures should be adopted and enforced to eliminate child marriages and female genital mutilation. Assistance should be provided to persons with disabilities in the exercise of their family and reproductive rights and responsibilities.

7.6 All countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015. Reproductive health care in the context of primary health care should, inter alia, include: family-planning counselling, information, education, communication and services; education and services for prenatal care, safe delivery and post-natal care, especially breast-feeding and infant and women's health care; prevention and appropriate treatment of infertility; abortion as specified in paragraph 8.25, including prevention of abortion and the management of the consequences of abortion; treatment of reproductive tract infections; sexually transmitted diseases and other reproductive health conditions; and information, education and counselling, as appropriate, on human sexuality, reproductive health and responsible parenthood. Referral for family-planning services and further diagnosis and treatment for complications of pregnancy, delivery and abortion, infertility, reproductive tract infections, breast cancer and cancers of the reproductive system, sexually transmitted diseases, including HIV/AIDS should always be available, as required. Active discouragement of harmful practices, such as female genital mutilation, should also be an integral component of primary health care, including reproductive health-care programmes.

7.35 Violence against women, particularly domestic violence and rape, is widespread, and rising numbers of women are at risk from AIDS and other sexually transmitted diseases as a result of high risk sexual behaviour on the part of their partners. In a number of countries, harmful practices meant to control women's sexuality have led to great suffering. Among them is the practice of female genital mutilation, which is a violation of basic rights and a major lifelong risk to women's health.

7.40 Governments and communities should urgently take steps to stop the practice of female genital mutilation and protect women and girls from all such similar unnecessary and dangerous practices. Steps to eliminate the practice should include strong community outreach programmes involving village and religious leaders, education and counselling about its impact on girls' and women's health, and appropriate treatment and rehabilitation for girls and women who have suffered mutilation. Services should include counselling for women and men to discourage the practice.

12.13 Research on sexuality and gender roles and relationships in different cultural settings is urgently needed, with emphasis on such areas as abuse, discrimination and violence against women; genital mutilation, where practised; sexual behaviour and mores; male attitudes towards sexuality and procreation, fertility, family and gender roles; risk-taking behaviour regarding sexually transmitted diseases and unplanned pregnancies; women's and men's perceived needs for methods for regulation of fertility and sexual health services; and reasons for non-use or ineffective use of existing services and technologies.

48. Governments should give priority to developing programmes and policies that foster norms and attitudes of zero tolerance for harmful and discriminatory attitudes, including son preference, which can result in harmful and unethical practices such as prenatal sex selection, discrimination and violence against the girl child and all forms of violence against women, including female genital mutilation, rape, incest, trafficking, sexual violence and exploitation. This entails developing an integrated approach that addresses the need for widespread social, cultural and economic change, in addition to legal reforms. The girl child's access to health, nutrition, education and life opportunities should be protected and promoted. The role of family members, especially parents and other legal guardians, in strengthening the self-image, self-esteem and status and in protecting the health and well-being of girls should be enhanced and supported.

### **[3.4 Transforming our World: The 2030 Agenda for Sustainable Development. General Assembly Resolution A/RES/70/1 September 2015](#)**

#### Sustainable Development Goals

##### *SD Goal 5: Achieve gender equality and empower all women and girls*

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

**3.5 [General Assembly Resolution 67/146, Intensifying global efforts for the elimination of female genital mutilations. 20 December 2012](#)**

Please click on the hyperlink to see the General Assembly resolution.

**3.6 [African Union – The Ouagadougou Call to Action on Eliminating Female Genital Mutilation, 23 October 2018](#)**

Please click on the hyperlink to see the African Union resolution.

**3.7 [General Assembly Resolution 73/582: Intensifying Global Efforts for the Elimination of Female Genital Mutilation, 17 December 2018](#)**

Please click on the hyperlink to see the General Assembly resolution.

**3.8 [European Parliament resolution of 7 February 2018 on zero tolerance for Female Genital Mutilation \(FGM\) \(2017/2936\(RSP\)\)](#)**

Please click on the hyperlink to see the European Parliament resolution.

**3.9 [Decision on Galvanising Political Commitment Towards the Elimination of Female Genital Mutilation in Africa Assembly/AU/Dec.737\(XXXII\), February 10-11, 2019](#)**

Please click on the hyperlink to see the African Union resolution.

**4. NATIONAL LEGAL FRAMEWORK**

**4.1 AFRICA**

**4.1.1 BENIN**

**[Law No. 2003-03 on the Repression of the Practice of FGM in the Republic of Benin<sup>12</sup>](#)**

*Article 2:* All forms of female genital mutilation practiced by any person, whatever their occupation, are prohibited.

*Article 3:* According to the law, female genital mutilation includes any form of partial or total removal of the external genitalia of females and/or all other operations concerning these organs. Excluded from this category, are the surgical operations of the genitals under medical prescription.

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<sup>12</sup> Law no. 2003-03 on the Repression of the Practice of FGM in the Republic of Benin, available at [http://www.ilo.org/aids/legislation/WCMS\\_532341/lang--fr/index.htm](http://www.ilo.org/aids/legislation/WCMS_532341/lang--fr/index.htm) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

*Article 4:* Anyone who has practiced female genital mutilation on a female, whatever form this takes, will be punished with a prison sentence ranging from six (6) months to three (03) years and a fine of one hundred thousand (100,000) to two million (2,000,000) francs.

*Article 5:* If genital mutilation is practiced against a minor under 18 years of age, the perpetrator will be punished with a prison sentence of three (03) to five (05) years and a fine of up to three million (3,000,000) francs.

*Article 6:* In the event of the death of the victim, the perpetrator shall be punishable by the penalties of forced labor of five (05) to twenty (20) years and a fine ranging from three million (3,000,000) to six million (6,000,000) francs.

*Article 7:* Any person who has helped, assisted, or solicited the perpetrator of female genital mutilation, including through the provision of means or instructions to carry out female genital mutilation, will be treated as an accomplice and sentenced as if they were the main perpetrator.

*Article 8:* In case of recidivism, the maximum penalty will be applied without the benefit of any suspension.

*Article 9:* Anyone who becomes aware of the planning of a female genital mutilation, and does not act to prevent the act, will be prosecuted for non-assistance to person in danger and punished by the penalties provided for in the Penal Code.

Anyone who becomes aware of a female genital mutilation is required to inform the public prosecutor or the nearest judicial police officer for legal purposes. Non-denunciation is punishable by a fine ranging from fifty thousand (50,000) to one hundred thousand (100,000) francs.

*Article 10:* Officials in the health services, both public and private, are required to provide the victims of female genital mutilation with appropriate care. Such persons also must inform the public prosecutor or the nearest judicial police officer for legal purposes.

#### **4.1.2 BURKINA FASO**

##### **Law No. 043/96/ADP** <sup>13</sup>

*Article 380:* Any person who violates or attempts to violate the physical integrity of the female genital organ, either by total ablation, excision, infibulation, desensitization, or by any other means, shall be punished by imprisonment ranging from 6 months to 3 years and a fine

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<sup>13</sup> Available at [http://www.vertic.org/media/National%20Legislation/Burkina%20Faso/BF\\_Code\\_Penal.pdf](http://www.vertic.org/media/National%20Legislation/Burkina%20Faso/BF_Code_Penal.pdf) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

of 150,000 to 900,000 francs, or by either punishment. If the procedure results in death, the punishment shall be imprisonment ranging from 5 to 10 years.

*Article 381:* The maximum punishment shall be imposed if the offender is a member of the medical or paramedical field. A court may also suspend his or her license to practice medicine for up to five years.

*Article 382:* A person having knowledge of the acts outlined in Article 380 and who fails to advise the proper authorities will be fined 50,000 to 100,000 francs (approximately US \$ 80- 160).

#### **4.1.3 CAMEROON** [Penal Code \(2016\)](#) <sup>14</sup>

*Article 277: Serious bodily injury*

A person who causes another person to be permanently deprived of the use of all or part of a limb, an organ or a sense is punishable by imprisonment ranging from ten to twenty years.

*Article 277.1: Genital Mutilations*

1. Whoever mutilates the genital organ of a person, whatever the procedure, shall be punished with the penalties provided for in Article 277 above.
2. The penalty is life imprisonment where:
  - (a) the person committing the act is regularly engaged in this practice or is doing so for commercial purposes;
  - (b) the procedure results in the death of the victim.
- (3) The court may, in addition, pronounce the forfeitures provided for in Articles 19 and 30 of this Code.
- (4) The provisions of paragraphs 1 and 2 above shall not apply if the facts are performed by an authorized person and justified by the need to save the victim.

#### **4.1.4 CENTRAL AFRICAN REPUBLIC** [Law No. 06.032 \(2006\) - Law on the protection of women against violence in Central African Republic](#) <sup>15</sup>

*Article 1:*

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<sup>14</sup> Loi no. 2016/007 du 12 juillet 2016 portant Code Pénal, available at <https://www.wipo.int/edocs/lexdocs/laws/en/cm/cm014en.pdf> (last visited on January 10, 2017). Unofficial translation by FGM Compendium Team.

<sup>15</sup> Loi n. 06-032 du 27 décembre 2006 portant protection de la femme contre les violences en République Centrafricaine, available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_172466.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_172466.pdf) (last visited January 20, 2020). Unofficial translation by FGM Compendium Team.



Violence specifically directed against women is defined as all acts of violence directed against women, and causing or potentially causing women physical, sexual or psychological harm or suffering, including the threat of such acts, coercion or arbitrary deprivation of liberty, whether in public life or in private life.

*Article 9:*

In addition to the definitions above, the following behaviors or acts are considered to be violence against women and punishable in accordance with the provisions of this law:

- Assault and battery;
- Ill treatment;
- Public insults;
- Female genital mutilation, including all procedures which either partially or totally remove the female genital organs for cultural or religious reasons or for any other non-therapeutic genital reason.

**4.1.5 CHAD**

[Law No. 006/PR/2002](#) <sup>16</sup>

*Article 9:* Every person has the right not to be subject to torture and cruel, inhuman or degrading treatment of his/her body and in particular of his/her reproductive organs.

All forms of violence such as female genital mutations (FGM), early marriages, domestic violence and sexual abuse against any person are prohibited.

**4.1.6 COMOROS**

[Penal Code](#) <sup>17</sup>

**Law No. 082 P/A.F - Law 95-012/AF**

*Article 293:*

Any individual who voluntarily causes injury, beats, or commits any other violence or assault, resulting in illness or total incapacitation that prevents the victims from working for more than twenty-four hours, will be punished by imprisonment from one to five years and a fine of 25,000 to 250,000 francs. When the above-mentioned violence is followed by death, mutilation, amputation, deprivation of the use of a limb, blindness, loss of an eye or other permanent illness, the offender shall be punished by imprisonment of five to ten years and

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<sup>16</sup> Loi No. 006/PR/2002, available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_140821.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_140821.pdf) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

<sup>17</sup> Penal Code available at <http://comoresdroit.comores-droit.com/wp-content/dossier/code/penal.pdf>. Unofficial translation by FGM Compendium Team.

a fine of 25,000 to 500,000 francs. The offender may also be deprived of the rights mentioned in Article 33 for at least five years and not more than ten years.

#### **4.1.7 CONGO REPUBLIC**

##### **Criminal Code**<sup>18</sup>

###### *Article 309:*

Any individual who voluntarily causes bodily harm or injury or commits an act which results in illness or incapacity to work for more than 20 days, shall be liable to serve a prison sentence of between two and five years and pay a fine of between 4,000 and 480,000 francs. Such individuals may, in addition, be deprived of the rights listed in Article 42 of the present Code for a minimum of five years and a maximum of ten years, starting from the day they start serving their sentence. In cases where the above-mentioned acts of violence are followed by mutilation, amputation or the inability to use a limb, blindness, loss of an eye, or other permanent disabilities, the accused shall be liable to imprisonment.

###### *Article 310:*

In cases of premeditation or ambush, the punishment, if the act resulted in death, shall be life imprisonment with hard labor; if the violent acts were followed by mutilation, amputation or inability to use a limb, blindness, loss of an eye, or other permanent disabilities, the punishment shall be a prison term with hard labor.

###### *Article 311:*

In cases where bodily harm or injury inflicted, or other violent acts or means, do not result in any illness or incapacity to work as provided for under Article 309 above, the accused shall be liable to a prison term of between six days and two years and a fine of between 4,000 and 48,000 francs or to only one of the two sanctions.

#### **4.1.8 CÔTE D'IVOIRE**

##### **Criminal Law (1998)**<sup>19</sup>

###### *Article 2:*

Any person who performs a genital mutilation shall be punished by imprisonment of between one to five years and a fine of between 360,000 (US\$573) to 2,000,000 CFA francs" (US\$3,183). If the victim dies, the person shall be punished by imprisonment of between five to twenty years' incarceration and up to five years' prohibition of medical practice, if this procedure is carried out by a doctor. Parents who request the procedure, or who know it is imminent and do not inform the authorities, are subject to imprisonment of between one to

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<sup>18</sup> Available at <http://archive.ipu.org/wmn-e/fgm-prov-c.htm> (last visited, January 20, 2020).

<sup>19</sup> Available at <http://ilo.org/dyn/natlex/docs/SERIAL/65028/128555/F1443029801/CIV-65028.pdf> (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

five years and a fine of 360,000 (US\$573) to 2,000,000 CFA francs (US\$3,183). The same penalties apply to the spouses, relatives, and parents of the perpetrator of the act.

#### 4.1.9 DJIBOUTI

[Penal Code](#) <sup>20</sup>

*Article 333:*

Any violent act that results in genital mutilation is punishable by imprisonment for five years and a fine of 1,000,000 francs.

#### 4.1.10 DEMOCRATIC REPUBLIC OF CONGO

[Penal Code](#) <sup>21</sup>.

*Article 3, para. 7:*

The law imposes a penalty of two to five years of prison and a fine of 200,000 Congolese francs [C\$222 (XE 16 Apr. 2012)] on any person who violates the "physical or functional integrity" of a person's genital organs . The penalty increases to life imprisonment if the act of genital mutilation has led to the death of the victim

#### 4.1.11 ERITREA

[Penal Code](#) <sup>22</sup>

*Art. 284: Intentional Bodily Injury or Assault*

A person who intentionally causes bodily injury to another person or applies force to or causes any impact on the body of another person shall be punished in accordance with the order of graduation provided for in Annex V to this Code.

Intentional bodily injury or assault may only be prosecuted upon preferring of charges by the victim.

*Art. 285(1): Negligent Bodily Injury or Assault*

A person who negligently causes bodily injury to another person or applies force to or causes any impact on the body of another person shall be punishable with a third (1/3) of the

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<sup>20</sup> Penal Code, available at <https://acjr.org.za/resource-centre/penal-code-of-djibouti-1995/view> (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

<sup>21</sup> Available at <http://www.leganet.cd/Legislation/JO/2006/JO.01.08.2006.C.P.P..pdf> (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team. See also <http://archive.ipu.org/wmn-e/fgm-prov-c.htm>.

<sup>22</sup> English version available at [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=101051&p\\_count=4&p\\_classification=01](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101051&p_count=4&p_classification=01) (last visited, January 20, 2020).

punishment due in accordance with the order of graduation provided for in Annex V to this Code.

#### **4.1.12 ETHIOPIA**

##### **Criminal Code**<sup>23</sup>

###### *Article 553(1):*

Whoever intentionally or by negligence causes bodily injury to another or impairs their health, by whatever means or in any manner, is punishable in accordance with the provisions of this Chapter.

These provisions embrace all manner of bodily assaults, blows, wounds, maiming, injuries or harm, and all damage to the physical or mental health of an individual.

###### *Article 555:*

Whoever intentionally:

- a) wounds a person so as to endanger his life or to permanently jeopardize his physical or mental health; or
- b) maims his body or one of his essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or
- c) in any other way inflicts upon another an injury or disease of a serious nature, is punishable, according to the circumstances of the case and the gravity of the injury, with rigorous imprisonment not exceeding fifteen years, or with simple imprisonment for not less than one year.

#### **4.1.13 GAMBIA**

##### **Women's (Amendment) Act, 2015**<sup>24</sup>

###### *Section 32A. Prohibition of female circumcision*

1. A person shall not engage in female circumcision'
2. A person who engages in female circumcision commits an offense and is liable on conviction-
  - (a) to imprisonment for a term of three years or a fine of fifty thousand Dalasis or to both; and
  - (b) where female circumcision causes death, to life imprisonment.
3. Female circumcision includes-

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<sup>23</sup> Available at <https://www.lexadin.nl/wlg/legis/nofr/oeur/arch/eth/TheRevisedCriminalCode.pdf> (last visited, January 20, 2020).

<sup>24</sup> Provided by Satang Nabaneh, Lecturer of Law, University of The Gambia.

- (a) the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy)
- (b) the partial or total excision of the labia minora;
- (c) the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;
- (d) 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;
- (e) symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or
- (f) engaging in any form of female genital mutilation or cutting.

*Section 32B. Accomplices to female circumcision*

- (1) A person who requests, incites or promotes female circumcision by providing tools or by any other means commits an offense and is liable on conviction to imprisonment for a term of three years or a fine of fifty thousand Dalasis or to both.
- (2) A person who knows that female circumcision is about to take place or has taken place, and fails, without good cause, to warn or inform, as the case may be, the proper authorities promptly, commits an offense and is liable on conviction to a fine of ten thousand Dalasis.

**4.1.14 GHANA**

**Criminal Code – 1960** <sup>25</sup>

*Section 69A. Female Circumcision*

- (1) Whoever 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 and shall be guilty of a second-degree felony and liable on conviction to imprisonment of not less than three years.
- (2) 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 the labia majora.

**4.1.15 GUINEA**

**Law No. 2016/059/AN (the Criminal Code 2016)** <sup>26</sup>

*Article 259:* Whoever, by traditional or modern methods, practices, promotes or participates in female genital mutilation, shall be guilty of willful violence against the circumcised person.

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<sup>25</sup> Available at <https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf> (last visited January 20, 2020).

<sup>26</sup> Available at <https://www.refworld.org/docid/44a3eb9a4.html> (last visited, January 20, 2020). Unofficial Translation by Compendium Team.

Acts of this nature shall be punishable by a term of imprisonment ranging from 3 months to 2 years and a fine of 500,000 to 2,000,000 Guinean francs or either penalty alone.

If the act has been premeditated, the imprisonment shall range from 2 to 5 years and the fine of 1,000,000 to 3,000,000 Guinean francs.

The parents or other persons who have authority over the child or have custody thereof, who have authorized or favored female genital mutilation, are punished with the same penalties as the perpetrators.

The maximum penalty is applied when female genital mutilation is practiced in a public or private health facility and performed by a member of the paramedical or medical institutions, including doctors, nurses, sages, and technical health agents.

*Article 260:* When female genital mutilation leads to disability the perpetrators are punished with a term of imprisonment from 5 to 10 years and a fine ranging from 1,000,000 to 3,000,000 Guinean francs or only one of these two penalties.

*Article 261:* When the practice results in the death of the victim, the perpetrators are punished with criminal imprisonment of between 5 to 20 years.

*Article 298:* Anyone who can prevent, through their immediate action, without risk to themselves or to third parties, either a crime or an offense against the bodily integrity of a person and willfully abstains from doing so, is punished by imprisonment of 1 to 5 years and a fine of 1,000,000 to 5,000,000 Guinean francs.

The same penalties are imposed on any person who voluntarily refrains from assisting, either through personal action or by calling help, without risk to themselves or to third parties, a person in danger.

**[Children's Code of Guinea \(L/2008/011/AN Act of August 19, 2008\)](#)** <sup>27</sup>

*Article 406:* All forms of female genital mutilation practiced by any person of any profession are prohibited in the Republic of Guinea.

*Article 407:* Anyone who has practiced, promoted or participated in female genital mutilation by means of traditional or modern methods shall be guilty of intentional violence against the circumcised person. Any act of this nature is punishable by imprisonment from 3 months to 2 years and a fine of 300,000 to 1,000,000 Guinean francs or only one of these two penalties.

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<sup>27</sup> Available at <https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/AAC20477AF5D4B28C12576DC0039A4D7>. (last visited, January 20, 2020). Unofficial Translation by Compendium Team.

The parents or any persons who have authority over the Child or who have custody of them, and who have authorized female genital mutilation will be punished with the same penalties as the perpetrators.

*Article 408:* If female genital mutilation has led to disability, the perpetrator(s) shall be punished by criminal imprisonment ranging from 5 to 10 years and a fine of 1,000,000 to 3,000,000 Guinean francs.

*Article 409:* If the practice results in the death of the child, the perpetrator(s) will be punished with criminal imprisonment of 5 to 20 years.

#### **4.1.16 GUINEA BISSAU**

[Law to Prevent, Combat and Suppress Female Excision in the Republic of Guinea-Bissau: Law no. 14/2011](#)<sup>28</sup>

##### **Chapter I - General Provisions**

###### *Article 1: Scope*

The present law aims to prevent, combat and eliminate female excision in the Republic of Guinea-Bissau.

###### *Article 2: Concept of Excision*

For the purposes of this law, the term "excision" means any form of amputation, incision or partial or total ablation of female external genitalia, as well as any physical harm to the female external genital organ for social, cultural, religious, hygienic or other reasons.

###### *Article 3: Prohibition of Excision*

1. The practice of excision is expressly prohibited in the territory of Guinea-Bissau.
2. The medical intervention on the female genital organ, made within the appropriate sanitary facilities by a qualified person, with the purpose to correct any anomalies resulting or not from the excision is not considered to be female excision for the purposes of this law, if the medical act has been approved by the group of physicians assigned to the service based on a diagnosis that indicates the need for this surgery.

##### **Chapter II - Of Crimes and Penalties**

###### *Article 4: Sanction*

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<sup>28</sup> Lei No. 14/2011 - Lei que Visa Prevenir, Combater e Reprimir a Excisão Genital Feminina em Todo o Território Nacional, available at <http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/legislacao/legislacoes-pertinentes-da-africa/legislacao-guine-bissau> (last visited, October 9, 2017), unofficial translation by FGM Compendium Team.

Whoever, for any reason, performs the female excision in one of its various forms (clitoridectomy, excision, incision, infibulation) with or without the consent of the victim, is punished with imprisonment of 2 to 6 years.

*Article 5: Excision on a Minor*

1. The excision practiced on a minor is punished with imprisonment of between 3 to 9 years.
2. The parents, guardian, education guardian or any person who has the child's custody has a duty to prevent the practice of excision.
3. Failure to comply with the provisions pursuant item number 2 above is punished with imprisonment from 1 to 5 years.
4. For the purposes of this law, both the terms "minor" and "child" refers to a person below the age of majority.

*Article 6: Aggravation*

1. Anyone who, acting with the intention to inflict excision on another person, triggers the effects foreseen in clauses c), d) and e) of Article 115 of the Criminal Code, shall be punished with 2 to 8 years in prison.
2. If, instead of the effects provided for in the Article 115 referred to in point 1 of this law, the act causes the death of the victim, the penalty will range from 4 to 10 years in prison.

*Article 7: Co-Participation*

Whoever facilitates, incites, encourages, or contributes to in any way to the practice of female excision, is treated as the principal author of the crime for the purposes of this statute, and shall be punished in that capacity.

*Article 8: Omission of Aid and Complaint*

1. Anyone who learns about any preparatory action leading to the practice of excision, and who does not take any measure to prevent the excision, when able to do so without risk to his or her physical integrity, shall be punished pursuant to Article 144 of the Criminal Code for omission of aid.
2. Anyone who, by the nature of his or her capacity, is aware of the practice of an excision has a duty to report it to the Judicial Police, the Federal Prosecutor's Office or the Public Order Police.
3. Violation of the provisions of points 1 and 2 above are punishable by a fine ranging from 500,000 xof to 2,500,000 xof.

*Article 9: Evasion of the Law*

The provisions of Articles 4 to 8 of the present law also apply to cases in which the national or foreign citizen residing in Guinea-Bissau is displaced and excised in a foreign country.

*Article 10: Criminal Procedure*



The Criminal Procedure for the crimes foreseen in this law does not depend on the complaint, denunciation or participation of the victims or their legal representatives.

### **Chapter III - Assistance and Preventive Measures**

#### *Article 11: Judicial Assistance*

Victims or any interested party wishing to be assisted pursuant Articles 66, 67, and 68 of the Criminal Procedure Code, in proceedings related to crimes under this law are exempt from the payment of any fees or taxes.

#### *Article 12: Special Duty of Care*

1. The responsible individuals and technicians of health facilities have the duty to provide physical and psychological assistance to the victims of excision and to provide them with the most appropriate treatment, according to the law.
2. Anyone who, due to his or her professional qualifications, becomes aware of the practice of female excision, in addition to the provisions of point 1 above, shall be bound by the regime provided by Article 8 of this law.

#### *Article 13: Government*

The Government, through the competent institutions, must include in the General Budget of the State funds to:

- (a) Support actions of community awareness and sensitization on the consequences of excision.
- (b) Support activities of social assistance and reintegration of the victims of excision.
- (c) Promote and encourage awareness-raising campaigns for media and other information entities on the harmful consequences of excision.
- (d) Promote and encourage training and capacity building of opinion leaders and NGOs that operate within Communities.
- (e) Promote greater cooperation between different structures of human rights promoters, religious leaders and traditional powers in fighting and denouncing cases of excision.

#### *Article 14: Revocation*

All legislation that contravenes the norms of this law shall be revoked.

#### *Article 15: Implementation*

This Law shall come into force 60 days after its publication in the Official Gazette.

#### 4.1.17 KENYA

##### Prohibition of Female Genital Mutilation Act No.32 of 2011<sup>29</sup>

#### **Part IV - Offences (Sections 19 - 25). FGM and related offences are listed:**

##### *Section 19. Offence of female genital mutilation*

- (1) A person, including a person undergoing a course of training while under supervision by a medical practitioner or midwife with a view to becoming a medical practitioner or midwife, who performs female genital mutilation on another person commits an offence.
- (2) If in the process of committing an offence under subsection (1) a person causes the death of another, that person shall, on conviction, be liable to imprisonment for life.
- (3) No offence under subsection (1) is committed by an approved person who performs—
  - (a) a surgical operation on another person which is necessary for that other person's physical or mental health; or
  - (b) a surgical operation on another person who is in any stage of labour or has just given birth, for purposes connected with the labour or birth.
- (4) The following are, for the purposes of this Act, approved persons—
  - (a) in relation to an operation falling within paragraph (a) of subsection (3), a medical practitioner;
  - (b) in relation to an operation falling within paragraph (b) of subsection (3), a medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming a medical practitioner or midwife.
- (5) In determining, for purposes of subsection (3)(a), whether or not any surgical procedure is performed on any person for the benefit of that person's physical or mental health, a person's culture, religion or other custom or practice shall be of no effect.
- (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.

##### *Section 20. Aiding and abetting female genital mutilation*

A person who aids, abets, counsels or procures—

- (a) a person to commit an offence under section 19; or
- (b) another person to perform female genital mutilation on that other person, commits an offence.

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<sup>29</sup>Available at [http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProhibitionofFemaleGenitalMutilationAct\\_No32of2011.pdf](http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProhibitionofFemaleGenitalMutilationAct_No32of2011.pdf) (last visited, January 20, 2020).

*Section 21. Procuring a person to perform female genital mutilation in another country* A person commits an offence if the person takes another person from Kenya to another country, or arranges for another person to be brought into Kenya from another country, with the intention of having that other person subjected to female genital mutilation.

*Section 22. Use of premises to perform female genital mutilation*

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.

*Section 23. Possession of tools or equipment*

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.

*Section 24. Failure to report commission of offence*

A person commits an offence if the person, being aware that an offence of female genital mutilation has been, is in the process of being, or intends to be, committed, fails to report accordingly to a law enforcement officer.

*Section 25. Use of derogatory or 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.

*Section 29. Penalty for offences*

A person who commits an offence under this Act is liable, on conviction, to imprisonment for a term of not less than three years, or to a fine of not less than two hundred thousand shillings, or both.

#### **4.1.18 LIBERIA**

[Penal Law, 1976](#)<sup>30</sup>

### **Chapter 14 - Offenses Involving Danger to the Person**

#### *14.2. Manslaughter*

A person is guilty of manslaughter if he:

- (a) Recklessly causes the death of another human being; or

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<sup>30</sup> Available at [http://oceansbeyondpiracy.org/sites/default/files/Liberia\\_Penal\\_Law.pdf](http://oceansbeyondpiracy.org/sites/default/files/Liberia_Penal_Law.pdf) (last visited, January 20, 2020).

- (b) Causes the death of another human being under circumstances which would be murder except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in the situation under the circumstances as they believe them to be. An emotional disturbance is excusable, within the meaning of this section if it is occasioned by provocation, event or situation for which the offender was not culpably responsible.

Manslaughter is a felony of the second degree.

*14.21. Simple assault*

A person is guilty of a simple assault if he:

- (a) Purposely, knowingly or recklessly causes bodily injury to another; or (b) Negligently causes bodily injury to another with a deadly weapon.

Simple assault is a misdemeanor of the first degree unless committed in an unarmed fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the second degree.

*14.23. Recklessly endangering another person*

A person commits a misdemeanor of the first degree if he recklessly engages in conduct which creates a substantial risk of death or serious bodily injury to another. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized. Recklessness and a substantial risk shall be presumed where a person knowingly points a firearm at or in the direction of another, whether or not the actor believes the firearm to be loaded.

*14.51. Felonious restraint*

A person commits a felony of the third degree if he knowingly:

- (a) Restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or  
(b) Restrains another with the purpose of holding him in a condition of involuntary servitude.

**[Children's Law of Liberia \(2011\)](#)**<sup>31</sup>

*Section 20.1.* Every child shall have the right to be protected from work and other practices that may threaten her or his health, educational, spiritual, physical, and moral development.

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<sup>31</sup> Available at <https://bettercarenetwork.org/sites/default/files/An%20Act%20to%20Establish%20the%20Children%27s%20Law%20of%20Liberia%202011.pdf> (last visited, January 20, 2020)

[Executive Order No. 92 on Domestic Violence](#)<sup>32</sup>

*Section 2. Offense*

A person in a domestic relationship who engages in an act or omission which amounts to Domestic Violence as defined by this Executive Order commits an offense of domestic violence, and shall be guilty of the crime of domestic violence. The *mens rea* and/or *actus rea* of domestic violence shall constitute the following within a domestic relationship if:

[...]

- (l) Female genital mutilation performed on a person under the age of eighteen (18) or a person eighteen (18) years old or over without their consent; or ...

*Section 5. Punishment, Rehabilitation, Fines and Consent*

1. Punishment

- a. A person in a domestic relationship who engages in domestic violence commits a misdemeanor of the first degree and is liable on conviction of a fine as provided for under Section 50.9(c) of the Penal Law (footnote) and/or imprisonment not exceeding 1 year.
- b. The court may in addition to imposing a fine or imprisonment, order the defendants to pay compensation to the survivor/victim of an amount determined by the court.

2. Rehabilitation and Fines

Where a defendant has been convicted of domestic violence, the court may:

- a. Require that the defendant attend a domestic counseling or rehabilitation program.
- b. Impose a fine pursuant to section 50.9 of the Penal Law (footnote) of which twenty-five (25) percent shall go to the Domestic Violence Survivor/Victim's Fund.
- c. Order compensation as provided in the Penal Law.<sup>33</sup>

**4.1.19 MALAWI**

[Penal Code](#)<sup>34</sup>

*Section 235 provides for offences that constitute grievous harm in the following terms:*

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<sup>32</sup> This Executive Order was valid for a period of one year starting of its signature by Mrs. Ellen Johnson Sirleaf, then President of the Republic of Liberia on January 19, 2018. It expired on January 18, 2019.  
<http://www.emansion.gov.lr/doc/sc.pdf>

<sup>33</sup> 50.9(c) For a misdemeanor of the first degree, \$1,000, or double the gain realized by the defendant; [Penal Law, 1976](#)

<sup>34</sup> Available at [https://malawilii.org/system/files/consolidatedlegislation/701/penal\\_code\\_pdf\\_14611.pdf](https://malawilii.org/system/files/consolidatedlegislation/701/penal_code_pdf_14611.pdf) (last visited January 20, 2020).

Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

- (a) unlawfully wounds or does any grievous harm to any person by any means whatever;  
or
- (b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or

*Section 238: Grievous harm.*

Any person who unlawfully does grievous harm to another shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

*Section 253: Common assault*

Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, shall be liable to imprisonment for one year.

*Section 254: Assaults occasioning actual bodily harm*

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and shall be liable to imprisonment for five years with or without corporal punishment.

#### **4.1.20 MALI**

[Penal Code \(2001\)](#) <sup>35</sup>

*Paragraph 1 - Willful assault*

*Art. 207:* Any individual who voluntarily assaults, wounds or commits any other act of violence and the result of such violence is injury or incapacity for work for more than 20 days, shall be punishable with a term of imprisonment ranging from one to five years and a fine of 20,000 to 500,000 FCFA.

If there has been premeditation or ambush the sentence will range from five to ten years' imprisonment.

When the violence, injury or beatings have been followed by mutilation, amputation, deprivation of use of a limb or sense, blindness, loss of an eye or other infirmities or diseases, the offence shall be punishable with a term of imprisonment ranging from five to ten years imprisonment.

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<sup>35</sup> Penal code, available at <http://www.droit-afrique.com/uploads/Mali-Code-2001-penal-MAJ-2016.pdf> (last visited January 20, 2020). Unofficial translation by FGM Compendium Team. .

If there has been premeditation, the offence shall be punishable with a term of imprisonment ranging from five to twenty years' imprisonment.

Where the blows, wounds or violence specified above have been committed by the offender on the occasion or in the practice of their profession, the perpetrator shall be suspended from their profession for a period ranging from five to ten years.

In the case provided for in paragraphs 2, 3 and 4, a judicial injunction to ban the perpetrator from a particular place may be pronounced for a period of one to ten years.

#### **4.1.21 MAURITANIA**

[Ordonnance No. 2005-015](#)<sup>36</sup>

*Article 12:*

Harming or attempting to harm the genitals of a female child through infibulation, numbing or any other means is punishable by one to three years of imprisonment and a fine of 120,000 to 300,000 ouguiyas when this results in harm to her.

The penalty is increased to four years of imprisonment and a fine from 160,000 to 300,000 ouguiyas when the perpetrator of the offense belongs to the medical or paramedical profession.

#### **4.1.22 MOZAMBIQUE**

[Criminal Code \(provision added by Law n. 35/2014\)](#)<sup>37</sup>

*Article 178: Castration and Genital Mutilation*

1. The offence of castration or amputation of an organ necessary for procreation, shall be punishable with the penalty of imprisonment from twelve to sixteen years.
2. The penalty outlined in (1.) also applies to a person who voluntarily mutilates genital organs.
3. If the victim of such an offence dies within forty days after the crime, as a result of the injuries, the penalty shall be of imprisonment from sixteen to twenty years.

#### **4.1.23 NIGER**

[Criminal Code \(1961\)](#)<sup>38</sup>

*Article 232.1:*

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<sup>36</sup> Ordonnance No. 2005-015, available at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/73641/75348/F518879681/MRT-73641.pdf> (last visited, January 20, 2020), Unofficial translation by FGM Compendium Team.

<sup>37</sup> Lei No. 35/2014 - Código Penal, available at <https://www.scribd.com/document/356854172/Lei-35-2014Codigo-Penal-docx> (last visited, January 20, 2020), unofficial translation by FGM Compendium Team. .

<sup>38</sup> Available at <https://www.refworld.org/docid/47fb8e642.html> (last visited, January 20, 2020).

Any attack on the genital organ of a woman by total or partial removal of one or more of its parts, through excision, infibulation, insensibilising or any other means is defined as female genital mutilation.

*Article 232.2:*

Anyone who commits or attempts to commit female genital mutilation shall be punishable by a term of imprisonment ranging from six months to three years and a fine of 20,000 to 200,000 francs. If female genital mutilation is voluntarily done without intent to kill but causes death, the perpetrator shall be punished with a term of imprisonment ranging from ten to twenty years. A person convicted as an accomplice to female genital mutilation is punishable with the same punishment as the principal perpetrator.

*Article 232.3:*

The sanctions foreseen in the preceding article are increased to the maximum when the perpetrator belongs to the medical or paramedical profession; they may also be prohibited from practicing their profession for a period not exceeding five years.

#### **4.1.24 NIGERIA**

##### **[Violence Against Persons \(Prohibition\) Act, 2015](#)**<sup>39</sup>

###### Section 6: Prohibition of female circumcision or genital mutilation

- (1) The circumcision or genital mutilation of the girl child or woman is hereby prohibited.
- (2) A person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both.
- (3) A person who attempts to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.
- (4) A person who incites, aids, abets, or counsels another person to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine nor exceeding N100,000.00 or both.

#### **4.1.25 SENEGAL**

##### **[Penal Code - \(Law No 99-05 of January 29, 1999\)](#)**

*Article 299 Bis*

*(Law No 99-05 of January 29, 1999)*

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<sup>39</sup> Available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104156/126946/F-1224509384/NGA104156.pdf>. (Last visited, January 20, 2020).



Anyone who has impaired or attempted to impair the integrity of the genital organ of a female person by total or partial removal of one or more of its elements, by infibulation, desensitization or other means will be punished with imprisonment of six months to five years. The maximum penalty will be applied when these sexual mutilations have been performed or promoted by a person in the medical or paramedical profession. When these lead to death, the penalty of hard labor for life will always be pronounced. Anyone who will, through gifts, promises, influences, threats, intimidation, abuse of authority or power, induce these sexual mutilations or give instructions to carry them out, will be punished with the same penalties.

**4.1.26 SIERRA LEONE**  
[Child Rights Act, 2007](#) <sup>40</sup>

Section 2: Interpretation

“female genital mutilation” includes the cutting or removal of any part of the female genitalia.

Section 11: (2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission to [...]

(e) to undertake the wide dissemination of the Convention and the Charter generally and through professional training, adult education and child rights promotional activities aimed especially at the registration of births, elimination of forced marriages for girls, female genital mutilation, sexual abuse and economic exploitation of children.

**4.1.27 SOMALIA**  
[Provisional Constitution of 2012](#) <sup>41</sup>

*Article 15. Liberty and Security of the Person*

- (1) Every person has the right to personal liberty and security.
- (2) Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment.
- (3) Every person has the right to physical integrity, which cannot be violated. No one may be subjected to medical or scientific experiments without their consent or, if a person lacks the legal capacity to consent, the consent of a near relative and the support of expert medical opinion.

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<sup>40</sup> Available at <http://www.sierra-leone.org/Laws/2007-7p.pdf> (last visited, January 20, 2020).

<sup>41</sup> Available at <http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf> (last visited, January 20, 2020).

- (4) Female circumcision is a cruel and degrading customary practice and is tantamount to torture. The circumcision of girls is prohibited.
- (5) Abortion is contrary to Shari'ah and is prohibited except in cases of necessity, especially to save the life of the mother.

#### Penal Code<sup>42</sup>

##### *Art. 440: Hurt*

1. Whoever causes hurt to another from which physical or mental illness results, shall be punished with imprisonment from three months to three years.
2. The hurt shall be deemed to be grievous and imprisonment from three to seven years shall be imposed:
  - a) where the act results in an illness which endangers the life of the person injured, or in an illness or incapacity which prevents him from attending to his ordinary occupation for a period exceeding forty days;
  - b) where the act produces a permanent weakening of a sense or organ;
  - c) where the party injured is a pregnant woman and the act results in the acceleration of the birth.
3. The hurt shall be deemed to be very grievous, and imprisonment from six to twelve years shall be imposed, where the act results in:
  - a) an illness certainly or probably incurable;
  - b) the loss of a sense;
  - c) the loss of a limb, or a mutilation which renders the limb useless, or the loss of the use of an organ or of the capacity to procreate, or a permanent and serious difficulty in speech;
  - d) deformity, or the permanent disfigurement of the face;
  - e) the miscarriage of the person injured.

##### *Art. 441: Preterintentional Homicide*

Whoever, with acts directed to commit one of the crimes referred to in articles 439 and 440, causes the death of another, shall be punished with imprisonment from ten to fifteen years.

#### **4.1.28 SOUTH AFRICA**

##### Children's Act 38 of 2005<sup>43</sup>

#### **Chapter 2 – General Principles**

##### *Section 12: Social, cultural and religious practices*

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<sup>42</sup> Legislative Decree No. 5 of 16 December 1962, available at <http://www.refworld.org/docid/4bc5906e2.html> (last visited, January 20, 2020).

<sup>43</sup> Available at <https://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf> (last visited, January 20, 2020).

- (1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.
- (2) A child-
  - (a) below the minimum age set by law for a valid marriage may not be given out in marriage or engagement; and
  - (b) above that minimum age may not be given out in marriage or engagement without his or her consent.
- (3) Genital mutilation or the circumcision of female children is prohibited.
- (4) Virginity testing of children under the age of 16 is prohibited.
- (5) Virginity testing of children older than 16 may only be performed-
  - (a) if the child has given consent to the testing in the prescribed manner;
  - (b) after proper counselling of the child; and
  - (c) in the manner prescribed.
- (6) The results of a virginity test may not be disclosed without the consent of the child.
- (7) The body of a child who has undergone virginity testing may not be marked.
- (8) Circumcision of male children under the age of 16 is prohibited, except when-
  - (a) circumcision is performed for religious purposes in accordance with the practices of the religion concerned and in the manner prescribed; or
  - (b) circumcision is performed for medical reasons on the recommendation of a medical practitioner.
- (9) Circumcision of male children older than 16 may only be performed-
  - (a) if the child has given consent to the circumcision in the prescribed manner;
  - (b) after proper counselling of the child; and (c) in the manner prescribed.
- (10) Taking into consideration the child's age, maturity and stage of development, every male child has the right to refuse circumcision.

#### Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000<sup>44</sup>

##### *Section 8: Prohibition of unfair discrimination on ground of gender*

Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including-

- (a) gender-based violence;
- (b) female genital mutilation;
- (c) the system of preventing women from inheriting family property;
- (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;

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<sup>44</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, available at <http://www.justice.gov.za/legislation/acts/2000-004.pdf> (last visited, January 20, 2020).

- (e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;
- (f) discrimination on the ground of pregnancy;
- (g) limiting women's access to social services or benefits, such as health, education and social security;
- (h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;
- (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.

#### 4.1.29 SUDAN

[Penal Code 2003](#) <sup>45</sup>

*Section 284(A): "Female Circumcision"*

Whoever makes or causes female circumcision to be done commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years or with fine, or with both.

#### 4.1.30 SOUTH SUDAN

[Penal Code Act, 2008, Sec. 259](#) <sup>46</sup>

*Section 259. Female Genital Mutilation*

Whoever, makes or causes a female Genital Mutilation to be performed, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both.

#### 4.1.31 TANZANIA

[Penal Code](#) <sup>47</sup>

[The Sexual Offences Special Provisions Act, 1998](#)

**Section 21 of the SOSPA** provides for amendment to Section 169 of the Penal Code to add Section 169A to prohibit FGM in the following terms:

*Section 169A. Cruelty to children*

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<sup>45</sup> Penal Code available at [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=75718&p\\_country=SDN&p\\_count=65&p\\_classification=01&p\\_classcount=25](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=75718&p_country=SDN&p_count=65&p_classification=01&p_classcount=25) (last visited January 20, 2020).

<sup>46</sup> Available at <http://www.wipo.int/edocs/lexdocs/laws/en/ss/ss014en.pdf> (last visited, January 20, 2020).

<sup>47</sup> Available at [http://defensewiki.ibj.org/images/1/19/Tanzania\\_Penal\\_Code.pdf](http://defensewiki.ibj.org/images/1/19/Tanzania_Penal_Code.pdf) (last visited, January 20, 2020).

Any person who, having the custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person or causes female genital mutilation or carries or causes to be carried out female genital mutilation or procures that person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of, sight or hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.

- (1) Any person who commits the offence of cruelty to children is liable on conviction to imprisonment for a term of not less than five years and not exceeding fifteen years or to a fine not exceeding three hundred thousand shillings or to both the fine and imprisonment, and shall be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person.

#### 4.1.32 TOGO

[Penal Code \(2008\)](#)<sup>48</sup>

*Art. 217.*

All forms of female genital mutilation practiced by any person, regardless of their occupation, are prohibited.

*Art. 218.*

Female genital mutilation refers to any partial or total removal of the external genitalia of girls or women, and / or any other operations involving these organs.

#### 4.1.33 UGANDA

[The Prohibition of Female Genital Mutilation Act](#)<sup>49</sup>

##### Part II—The Offence of Female Genital Mutilation

*Section 2: Offence of female genital mutilation*

A person who carries out female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding ten years.

*Section 3: Aggravated female genital mutilation*

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<sup>48</sup> Penal Code Act 2008, available at [http://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=104616&p\\_count=99518&p\\_classification=01.04&p\\_classcount=2384](http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=104616&p_count=99518&p_classification=01.04&p_classcount=2384), (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

<sup>49</sup> Available at <https://ulii.org/system/files/legislation/act/2010/5/Prohibition%20of%20female%20Genital%20Mutilation%20Act.pdf> (last visited January 20, 2020).

- (1) A person commits the offence of aggravated female genital mutilation where— (a) death occurs as a result of female genital mutilation; (b) the offender is a parent, guardian or person having authority or control over the victim; (c) the victim suffers disability; (d) the victim is infected with HIV as a result of the act of female genital mutilation; or (e) female genital mutilation is done by a health worker.
- (2) A person who commits the offence of aggravated female genital mutilation is liable on conviction to life imprisonment.

*Section 4: Carrying out female genital mutilation on oneself*

A person who carries out female genital mutilation on herself commits an offence and is liable on conviction to imprisonment not exceeding ten years.

*Section 5: Attempt to carry out female genital mutilation*

A person who attempts to carry out female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding five years.

*Section 6: Procuring, aiding, abetting, etc. female genital mutilation*

A person who procures, counsels, aids, abets, induces, coerces, threatens or under false pretence carries out female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding five years.

*Section 7: Participation in events leading to female genital mutilation*

A person who participates in any event leading to female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding five years.

*Section 8: Parents, guardians, husband or a person having authority or control*

Where the offender in sections 5, 6 or 7 is a parent, guardian, husband or a person having authority or control over the victim, the offender is liable on conviction to imprisonment not exceeding eight years.

*Section 9: Consent of the victim to female genital mutilation*

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

*Section 10: Culture and religion not a defence to female genital mutilation*

Any culture, custom, ritual, tradition, religion or any other nontherapeutic reason shall not be a defence under this Act.

*Section 11: Protection of females who have not undergone female genital mutilation*

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.

*Section 12: Protection of persons whose wives, daughters or relatives have not undergone female genital mutilation*

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.

**Part III—Court Orders and Jurisdiction**

*Section 13: Compensation*

- (1) Where a person is convicted of an offence under this Act, the court may, in addition to the punishment provided there, order such person to pay by way of compensation to the victim, such sum as in the opinion of the court is just, having regard to the injuries suffered by the victim, medical and other expenses.
- (2) The order referred to in subsection (1) shall be deemed to be a decree under the Civil Procedure Act, and shall be executed in the manner provided there under.

*Section 14: Special powers of court*

- (1) A magistrate's court may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order.  
Prohibition of Female Genital Act 5 Mutilation Act 2010 5
- (2) Where the protection order is issued in respect of a child, the Family and Children Court may issue appropriate orders for the child as it deems necessary.

*Section 15: Extra-territorial jurisdiction*

This Act shall apply to offences under this Act committed outside Uganda where the girl or woman upon whom the offence is committed is ordinarily resident in Uganda.

**Part IV—Duty to Report**

*Section 16: Duty to report female genital mutilation*

- (1) A person, who knows that a person has committed or intends to commit an offence under this Act, shall report the matter to Police or other authority for appropriate action.
- (2) A person who knowing that a person has committed or intends to commit an offence under this Act, does not report to the Police or other person in authority within twenty four hours of having such knowledge, commits an offence and is liable on conviction to a fine not exceeding twelve currency points or imprisonment not exceeding six months or both. (3) A person who threatens, harms or in any way inhibits a person who is reporting or about to report an offence under this Act commits an offence and is liable on conviction to a fine of twelve currency points or imprisonment not exceeding six months or both.

#### 4.1.34 ZAMBIA

##### [Penal Code \(Amendment\) Act No. 15 of 2005](#)<sup>50</sup>

#### Chapter XV – Offences against Morality

##### *Art. 157. Harmful Cultural Practices*

- (1) Any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.
- (2) In this section “harmful cultural practice” includes sexual cleansing, female genital mutilation or in initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.

#### 4.1.35 ZIMBABWE

##### [Domestic Violence Act](#) <sup>51</sup>

##### *Section 3: Meaning of domestic violence and its scope*

- (1) For the purposes of this Act, domestic violence means any unlawful act, omission or behaviour which results in death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent and includes the following—
  - (i) abuse derived from the following cultural or customary rites or practices that discriminate against or degrade women—
  - (ii) female genital mutilation; or

##### *Section 4: Offence of domestic violence and acts excluded from its scope*

- (1) Subject to subsection (2), any person who commits an act of domestic violence within the meaning of section 3 shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

## 4.2 ASIA-PACIFIC

### 4.2.1 AUSTRALIA

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<sup>50</sup>Penal Code (Amendment) Act No. 15 of 2005, available at [https://www.unodc.org/res/cld/document/zmb/1931/the\\_penal\\_code\\_act\\_html/Zambia\\_Penal\\_Code\\_Act\\_1930\\_as\\_amended\\_2005.pdf](https://www.unodc.org/res/cld/document/zmb/1931/the_penal_code_act_html/Zambia_Penal_Code_Act_1930_as_amended_2005.pdf) (last visited, January 20, 2020).

<sup>51</sup> Domestic Violence Act, available at [http://evaw-global-database.unwomen.org/-/media/files/un\\_women/vaw/full\\_text/africa/zimbabwe\\_domestic\\_violence\\_act\\_2007.pdf](http://evaw-global-database.unwomen.org/-/media/files/un_women/vaw/full_text/africa/zimbabwe_domestic_violence_act_2007.pdf) (last visited, January 20, 2020).



All 6 States and 2 Territories have criminal legislation against female genital mutilation including the application of the extraterritoriality principle.

### **Australian Capital Territory**

#### **Crimes (Amendment) Act (No.3) 1995**<sup>52</sup>

### **Part IIIB – Female Genital Mutilation**

#### *92V. Interpretation*

In this Part—

‘female genital mutilation’ means—

- (a) clitoridectomy or the excision of any other part of the female genital organs;
- (b) infibulation or similar procedure; or
- (c) any other mutilation of the female genital organs.

#### *92W. Prohibition of female genital mutilation*

- (1) A person shall not intentionally perform female genital mutilation on another person.  
Penalty: Imprisonment for 15 years.
- (2) It is not a defence to a prosecution for an offence under this section that the person on whom the female genital mutilation was performed, or a parent or guardian of that person, consented to the mutilation.

#### *92X. Removal of child from Territory for genital mutilation*

- (1) A person shall not take a child from the Territory, or arrange for a child to be taken from the Territory, with the intention of having female genital mutilation performed on the child.  
Penalty: Imprisonment for 7 years.
- (2) In proceedings for an offence against subsection (1), if it is proved that—
  - (a) the defendant took a child, or arranged for a child to be taken, from the Territory; and
  - (b) female genital mutilation was performed on the child while outside the Territory; it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the Territory with the intention of having female genital mutilation performed on the child.
- (3) In this section—  
‘child’ means a person under the age of 18 years.

#### *92Y. Exception—medical procedures for genuine therapeutic purposes*

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<sup>52</sup> Crimes (Amendment) Act (No.3) 199552, available at <http://www.legislation.act.gov.au/a/1995-50/19971201-4315/pdf/1995-50.pdf> (last visited, Januaray 20, 2020).

- (1) It is not an offence under this Part to perform a medical procedure that has a genuine therapeutic purpose or to take a person, or arrange for a person to be taken, from the Territory with the intention of having such a procedure performed on the person.
- (2) A medical procedure has a genuine therapeutic purpose only if—
  - (a) performed on a person in labour, or who has just given birth, and for medical purposes connected with that labour or birth, by a medical practitioner or midwife; or
  - (b) necessary for the health of the person on whom it is performed and it is performed by a medical practitioner.
- (3) A medical procedure that is performed as, or as part of, a cultural, religious or other social custom is not of itself to be regarded as being performed for a genuine therapeutic purpose.
- 4) In paragraph (2) (a)—  
'midwife' means a person—
  - (a) registered as a midwife under the Nurses Act 1988; or
  - (b) deemed to be registered as a midwife under that Act by virtue of section 25 of the Mutual Recognition Act 1992 of the Commonwealth.

*“92Z. Exception—sexual reassignment procedures*

- (1) It is not an offence under this Part to perform a sexual reassignment procedure or to take, or arrange for a person to be taken, from the Territory with the intention of having such a procedure performed on the person.
- (2) In subsection (1)—  
'sexual reassignment procedure' means a surgical procedure performed by a medical practitioner to give a female person, or a person whose sex is ambivalent, the genital appearance of a person of the opposite sex or of a particular sex (whether male or female).”

### **Interpretation**

6. Section 349AA of the Principal Act is amended by omitting the definition of “medical practitioner”.

#### **4.2.1.1 NEW SOUTH WALES**

##### **[Crimes Act 1900 – Section 45 – Prohibition of female genital mutilation](#)<sup>53</sup>**

#### **45. Prohibition of female genital mutilation**

- (1) A person who:

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<sup>53</sup> Crimes Act 1900 – Section 45 – Prohibition of female genital mutilation, available at [http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol\\_act/ca190082/s45.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/ca190082/s45.html) (last visited, January 20, 2020).

- (a) excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of another person, or
  - (b) aids, abets, counsels or procures a person to perform any of those acts on another person,
- is liable to imprisonment for 21 years.
- (3) It is not an offence against this section to perform a surgical operation if that operation:
- (a) is necessary for the health of the person on whom it is performed and is performed by a medical practitioner, or
  - (b) is performed on a person in labour or who has just given birth, and for medical purposes connected with that labour or birth, by a medical practitioner or authorised professional, or
  - (c) is a sexual reassignment procedure and is performed by a medical practitioner.
- (4) In determining whether an operation is necessary for the health of a person only matters relevant to the medical welfare of the person are to be taken into account.
- (5) It is not a defence to a charge under this section that the person mutilated by or because of the acts alleged to have been committed consented to the acts.
- (6) This section applies only to acts occurring after the commencement of the section.
- (7) In this section:
- "authorised professional" means:
- (a) a registered midwife, or
  - (b) a midwifery student, or
  - (c) in relation to an operation performed in a place outside Australia--a person authorised to practise midwifery by a body established under the law of that place having functions similar to the functions of the Nursing and Midwifery Board of Australia, or
  - (d) a medical student.
- "medical practitioner" , in relation to an operation performed in a place outside Australia, includes a person authorised to practise medicine by a body established under the law of that place having functions similar to the Medical Board of Australia.
- "medical student" means:
- (a) a person registered as a student in the medical profession under the Health Practitioner Regulation National Law, or
  - (b) in relation to an operation performed in a place outside Australia--a person undergoing a course of training with a view to being authorised to be a medical practitioner in that place.
- "midwifery student" means:
- (a) a person registered as a student in the nursing and midwifery profession under the Health Practitioner Regulation National Law, or

- (b) in relation to an operation performed in a place outside Australia--a person undergoing a course of training with a view to being authorised to be a midwife practitioner in that place.

"sexual reassignment procedure" means a surgical procedure to alter the genital appearance of a person to the appearance (as nearly as practicable) of the opposite sex to the sex of the person.

[Crimes Act 1900 – Section 45A – Removing person from State for female genital mutilation<sup>54</sup>](#)

**45A. Removing person from State for female genital mutilation**

- (1) A person is guilty of an offence if the person takes another person from the State, or arranges for another person to be taken from the State, with the intention of having female genital mutilation performed on the other person.  
Maximum penalty: imprisonment for 21 years.
- (2) In proceedings for an offence under subsection (1) and in the absence of proof to the contrary, it is to be presumed that the accused took another person, or arranged for another person to be taken, from the State with the intention of female genital mutilation being performed on the other person if it is proved that:
- (a) the accused took the person, or arranged for the person to be taken, from the State, and
- (b) female genital mutilation was performed on the person while outside the State.
- (3) It is not a defence to a charge under this section that the person taken from the State consented to being so taken.
- (4) In this section: female genital mutilation means an act referred to in section 45(1)(a), the performance of which would be an offence against that section if performed in the State.

**4.2.1.2 NORTHERN TERRITORY**

[Criminal Code Act – Division 4A - Sections 186 A,B,C and D<sup>55</sup>](#)

[Criminal Code Amendment \(Female Genital Mutilation\) Act 2013<sup>56</sup>](#)

**Division 4A. Female genital mutilation**

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<sup>54</sup> Crimes Act 1900 – Section 45A – Removing person from State for female genital mutilation, available at [http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol\\_act/ca190082/s45a.html?context=1;query=crimes act 1900 - sect 45A - disp2](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/ca190082/s45a.html?context=1;query=crimes act 1900 - sect 45A - disp2) (last visited, January 20, 2020).

<sup>55</sup> Criminal Code Act, available at <https://legislation.nt.gov.au/en/Legislation/CRIMINAL-CODE-ACT-1983> (last visited, October 15, 2017).

<sup>56</sup> Criminal Code Amendment (Female Genital Mutilation) Act 2013, available at <https://legislation.nt.gov.au/en/Bills/Criminal-Code-Amendment-Female-Genital-Mutilation-Bill-2013> (last visited, January 20, 2020).

*186A. Definitions*

In this Division:

"authorised professional" means a person registered under the Health Practitioner Regulation National Law (other than as a student) to practise in:

- (a) the Aboriginal and Torres Strait Islander health practice profession; or
- (b) the nursing and midwifery profession.

"female genital mutilation" means the excision, infibulation or any other mutilation of the whole or any part of the labia majora or labia minora or clitoris.

"gender reassignment procedure" means a surgical procedure to give a female, or a person whose sex is ambivalent, the genital appearance of a particular sex (whether male or female).

*186B. Female genital mutilation*

- (1) A person who performs female genital mutilation on another person is guilty of a crime and is liable to imprisonment for 14 years.
- (2) An offence is committed against this section even if one or more of the acts constituting the offence occurred outside the Territory if the person mutilated by or because of the acts is ordinarily resident in the Territory.
- (3) It is not an offence against this section to perform a surgical operation if the operation:
  - (a) has a genuine therapeutic purpose and is performed by a medical practitioner or authorized professional; or
  - (b) is a gender reassignment procedure and is performed by a medical practitioner.
- (4) A surgical operation does not have a genuine therapeutic purpose by virtue of the fact that it is performed as, or as part of, a cultural, religious or other social custom.

*186C. Removal of person from Territory for female genital mutilation*

- (1) A person who takes another person from the Territory, or arranges for another person to be taken from the Territory, with the intention of having female genital mutilation performed on that person is guilty of a crime and liable to imprisonment for 14 years.
- (2) In proceedings for an offence against subsection (1), if it is proved that:
  - (a) the accused took another person, or arranged for another person to be taken, from the Territory; and
  - (b) female genital mutilation was performed on the person while outside the Territory, it shall be presumed, until the contrary is proved, that the accused took the person, or arranged for the person to be taken, from the Territory with the intention of having female genital mutilation performed on the person.

*186D. Consent not relevant*

It is not a defence to a charge of a crime defined by this Division that the person mutilated by or because of the acts alleged to have been committed:

- (a) consented to the acts; and/or
- (b) consented to being taken from the Territory, or that a parent or guardian of the person so consented.

#### 4.2.1.3 QUEENSLAND

##### [Criminal Code Act 1899](#)<sup>57</sup>

#### Female genital mutilation

*Section 323A:*

(1) Any person who performs female genital mutilation on another person is guilty of a crime.

**Maximum penalty** - 14 years imprisonment,

(2) It is not a defence that the other person, or, if the other person is a child, a parent or guardian of the other person, consented to the mutilation.

(3) In this section -

"female genital mutilation" means -

- (a) clitoridectomy; or
- (b) excision of any other part of the female genitalia;
- (c) or a procedure to narrow or close the vaginal opening; or
- (d) any other mutilation of the female genitalia;

but does not include -

- (e) a sexual reassignment procedure; or
- (f) a medical procedure for a genuine therapeutic purpose.

"medical procedure for a genuine therapeutic purpose" means a medical procedure that is-

- (a) directed only at curing or alleviating a physiological disability, physical abnormality, psychological disorder or pathological condition; or
- (b) performed on a person in labour or who has just given birth and directed only at alleviating physical symptoms in relation to the labour or birth or for other medical purposes; or
- (c) performed on a person who has been subjected to female genital mutilation and directed only at treating the effects, or to reversing the effects, or the previous mutilation.

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<sup>57</sup> Criminal Code Act 1899, available at [http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol\\_act/cc189994/s323a.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cc189994/s323a.html) (last visited, January 20, 2020).

"sexual reassignment procedure" means a surgical procedure to give a person the genital appearance of a particular sex, whether male or female.

### **Removal of child from State for female genital mutilation**

#### *Section 323B.*

- (1) Any person who takes a child from the State, or arranges for a child to be taken from the State, with the intention of having female genital mutilation performed on the child is guilty of a crime.  
Maximum penalty: 14 years imprisonment.
- (2) In the absence of proof to the contrary, it is to be presumed that a person took a child, or arranged for a child to be taken, from the State with the intention of having female genital mutilation performed on the child if it is proved -
  - (a) the person took the child, or arranged for the child to be taken, from the State; and
  - (b) female genital mutilation was performed on the child while outside the State.
- (3) In this section -  
"child" means a person under 18 years.  
"female genital mutilation" see section 323A

#### **4.2.1.4 SOUTH AUSTRALIA**

##### [Criminal Law Consolidation Act 1935](#)<sup>58</sup>

#### Part 3 (Offences against the person)

#### **Division 8 – Female Genital Mutilation**

##### *Section 33—Definitions*

- (1) In this Division—  
"child" means a person under 18;  
"female genital mutilation" means—
  - (a) clitoridectomy; or
  - (b) excision of any other part of the female genital organs; or
  - (c) a procedure to narrow or close the vaginal opening; or
  - (d) any other mutilation of the female genital organs,but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;  
"sexual reassignment procedure" means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.

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<sup>58</sup> Criminal Law Consolidation Act 1935, available at <https://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20CONSOLIDATION%20ACT%201935/CURRENT/1935.2252.AU.TH.PDF> (last visited, October 15, 2017).

- (2) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.

*33A—Prohibition of female genital mutilation*

- (1) A person who performs female genital mutilation is guilty of an offence.  
Maximum penalty: Imprisonment for 7 years.
- (2) This section applies irrespective of whether the victim, or a parent or guardian of the victim, consents to the mutilation.

*33B—Removal of child from State for genital mutilation*

- (1) A person must not take a child from the State, or arrange for a child to be taken from the State, with the intention of having the child subjected to female genital mutilation.  
Maximum penalty: Imprisonment for 7 years.
- (2) In proceedings for an offence against subsection (1), if it is proved that—
  - (a) the defendant took a child, or arranged for a child to be taken from the State; and
  - (b) the child was subjected, while outside the State, to female genital mutilation, it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the State (as the case may be) with the intention of having the child subjected to female genital mutilation.

**Children and Young People (Safety) Act 2017<sup>59</sup>**

[...]

**18—Meaning of at risk**

- (1) For the purposes of this Act, a child or young person will be taken to be at risk if—
  - (a) the child or young person has suffered harm (being harm of a kind against which a child or young person is ordinarily protected); or
  - (b) there is a likelihood that the child or young person will suffer harm (being harm of a kind against which a child or young person is ordinarily protected); or
  - (c) there is a likelihood that the child or young person will be removed from the State (whether by their parent or guardian or by some other person) for the purpose of—
    - (i) being subjected to a medical or other procedure that would be unlawful if performed in this State (including, to avoid doubt, female genital mutilation);or  
[...]
- (4) In this section— female genital mutilation means—
  - (a) clitoridectomy; or

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<sup>59</sup> Children and Young People (Safety) Act 2017, available at [https://www.legislation.sa.gov.au/LZ/C/A/CHILDREN%20AND%20YOUNG%20PEOPLE%20\(SAFETY\)%20ACT%202017/CURRENT/2017.25.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/CHILDREN%20AND%20YOUNG%20PEOPLE%20(SAFETY)%20ACT%202017/CURRENT/2017.25.AUTH.PDF) (last visited, January 20, 2020).



- (b) excision of any other part of the female genital organs; or
  - (c) a procedure to narrow or close the vaginal opening; or
  - (d) any other mutilation of the female genital organs, but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose; sexual reassignment procedure means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.
- [...]

149—Powers of child protection officers

- (1) Subject to this Act, a child protection officer may, as may reasonably be required in the administration, operation or enforcement of this Act, do 1 or more of the following:
- (a) enter and remain on any premises, place, vehicle or vessel (and for that purpose require a vehicle or vessel to stop);
  - (b) inspect any premises or place, vehicle or vessel;
  - (c) use reasonable force to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel;
  - (d) if the officer believes on reasonable grounds that a child or young person is at risk of removal from the State for female genital mutilation or marriage—seize and retain any passport issued in the name of the child or young person;
- [...]

**4.2.1.5 TASMANIA**

**Criminal Code Act 1924**<sup>60</sup>

**Chapter XVIII (Crimes Endangering Life or Health)**

*Section 178A. Female genital mutilation*

- (1) Any person who performs female genital mutilation on another person is guilty of a crime.
- Charge:** Performing female genital mutilation.
- (2) It is not a defence to a charge under this section that the person on whom female genital mutilation was performed or that person's parent or guardian consented to the mutilation.

*Section 178B. Removal of child from State*

- (1) Any person who takes a child under the age of 18 years, or arranges for such a child to be taken, out of the State with the intention of having female genital mutilation performed on that child is guilty of a crime.

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<sup>60</sup> Criminal Code Act 1924, available at [https://www.legislation.tas.gov.au/view/html/inforce/current/act-1924-069\\_-\\_JS1@GS178A@EN](https://www.legislation.tas.gov.au/view/html/inforce/current/act-1924-069_-_JS1@GS178A@EN) (last visited, October 15, 2017).

**Charge:** Removal of child for performance of female genital mutilation.

- (2) If it is proved that a person took the child, or arranged for the child to be taken, out of the State and that female genital mutilation was performed on the child outside the State, it is a presumption, in absence of proof to the contrary, that the person took the child, or arranged for the child to be taken, out of the State with the intention of having female genital mutilation performed on the child.

*Section 178C. Medical procedures*

- (1) Sections 178A(1) and 178B(1) do not apply in relation to the performance of—
  - (a) a surgical procedure for a genuine therapeutic purpose; or
  - (b) a sexual reassignment procedure.
- (2) The fact that a surgical procedure is performed as, or as part of, a cultural, religious or other social custom is not, of itself, a genuine therapeutic purpose.
- (3) A sexual reassignment procedure is a surgical procedure to give a female, or a person whose sex is ambivalent, the genital appearance of a particular sex.

#### 4.2.1.6 VICTORIA

##### [Crimes \(Female Genital Mutilation\) Act 1996<sup>61</sup>](#)

#### **32. Offence to perform female genital mutilation**

- (1) A person must not perform female genital mutilation on a child.  
Penalty: Level 4 imprisonment.
- (2) A person must not perform on a person other than a child any type of female genital mutilation referred to in paragraphs (a) to (e) of the definition of female genital mutilation (\*).  
Penalty: Level 4 imprisonment.

#### **33. Offence to take a person from the State with the intention of having prohibited female genital mutilation performed**

- (1) A person must not take another person from the State, or arrange for another person to be taken from the State, with the intention of having prohibited female genital mutilation performed on the other person.  
**Penalty:** Level 4 imprisonment.
- (2) In proceedings for an offence under sub-section (1), proof that—
  - (a) the defendant took the person, or arranged for the person to be taken from the State; and
  - (b) the person was subjected, while outside the State, to prohibited female genital mutilation— is, in the absence of proof to the contrary, proof that the

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<sup>61</sup> Crimes (Female Genital Mutilation) Act 1996, available at [http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/A7F189B86D600C2DCA256E5B00213B02/\\$FILE/96-046a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/A7F189B86D600C2DCA256E5B00213B02/$FILE/96-046a.pdf) (last visited, January 20, 2020).

defendant took the person or arranged for the person to be taken from the State with the intention of having prohibited female genital mutilation performed on the person.

**34. Consent not a defence to a charge under sections 32 or 33**

It is not a defence to a charge brought under section 32 or 33 to prove that the person on whom the act which is the subject of the charge was performed, or the parents or guardian of that person, consented to the performance of that act.

**34A. Exceptions to offences under section 32**

- (1) It is not an offence against section 32 if the performance of the female genital mutilation is by a surgical operation which is—
  - (a) necessary for the health of the person on whom it is performed and which is performed by a medical practitioner; or
  - (b) is performed on a person in labour or who has just given birth, and for medical purposes or the relief of physical symptoms connected with that labour or birth, and which is performed by a medical practitioner or a midwife; or
  - (c) is a sexual reassignment procedure which is performed by a medical practitioner.
- (2) For the purposes of sub-section (1)(a), in determining whether an operation is necessary for the health of a person, the only matters to be taken into account are those relevant to the medical welfare or the relief of physical symptoms of the person.
- (3) The burden of proving that the performance of the female genital mutilation did not occur in any of the circumstances set out in sub-section (1) lies with the prosecution."  
(\* "female genital mutilation" means all or any of the following—
  - (a) infibulation;
  - (b) the excision or mutilation of the whole or a part of the clitoris;
  - (c) the excision or mutilation of the whole or a part of the labia minora or labia majora;
  - (d) any procedure to narrow or close the vaginal opening;
  - (e) the sealing or suturing together of the labia minora or labia majora;
  - (f) the removal of the clitoral hood.

**4.2.1.7 WESTERN AUSTRALIA**

[Criminal Code Act Compilation Act 1913](#)<sup>62</sup>

**Chapter XXIX - Offences endangering life or health**

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<sup>62</sup>Criminal Code Act Compilation Act 1913, available at [https://www.slp.wa.gov.au/pco/prod/filestore.nsf/FileURL/mrdoc\\_37141.pdf/\\$FILE/Criminal Code Act Compilation Act 1913 - %5B19-a0-00%5D.pdf?OpenElement](https://www.slp.wa.gov.au/pco/prod/filestore.nsf/FileURL/mrdoc_37141.pdf/$FILE/Criminal%20Code%20Act%20Compilation%20Act%201913-%20-%5B19-a0-00%5D.pdf?OpenElement) (last visited, January 20, 2020).

*Section 306 – Female genital mutilation*

- (1) In this section —  
“child” means a person under the age of 18 years;  
“female genital mutilation” means —
- (a) the excision or mutilation of the whole or a part of the clitoris, the labia minora, the labia majora, or any other part of the female genital organs; or
  - (b) infibulation or any procedure that involves the sealing or suturing together of the labia minora or the labia majora; or
  - (c) any procedure to narrow or close the vaginal opening,
- but does not include —
- (d) a reassignment procedure within the meaning of the Gender Reassignment Act 2000 carried out on a person’s genitals by a medical practitioner as defined in section 3 of that Act; or
  - (e) a medical procedure carried out for proper medical purposes.
- (2) A person who performs female genital mutilation on another person is guilty of a crime and is liable to imprisonment for 20 years.
- (3) It is not a defence to a charge under subsection (2) that the other person, or a parent or guardian of the other person, consented to the mutilation.
- (4) A person who takes a child from Western Australia, or arranges for a child to be taken from Western Australia, with the intention of having the child subjected to female genital mutilation is guilty of a crime and is liable to imprisonment for 10 years.
- (5) In proceedings for an offence under subsection (4), proof that —
- (a) the accused person took a child, or arranged for a child to be taken from Western Australia; and
  - (b) the child, while out of Western Australia, was subjected to female genital mutilation, is proof, in the absence of evidence to the contrary, that the accused person took the child, or arranged for the child to be taken, from Western Australia, as the case may be, with the intention of having the child subjected to female genital mutilation.

**4.2.2 NEW ZEALAND**

**Crimes Act 1961**<sup>63</sup>

*204A. A Female genital mutilation*

- (1) For the purposes of this section,—  
**female genital mutilation** means the excision, infibulation, or mutilation of the whole or part of the labia majora, labia minora, or clitoris of any person

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<sup>63</sup> Crimes Act 1961, available at <http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM329734.html> (last visited, January 20, 2020).

**midwife** means a health practitioner who is, or is deemed to be, registered with the Midwifery Council established by section 114(3) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of midwifery.

**sexual reassignment procedure** means 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 of a person of the opposite sex.

**trainee health professional** means any person who is receiving training or gaining experience under the supervision of—

- (a) a medical practitioner for the purpose of gaining registration as a medical practitioner; or
  - (b) a midwife for the purpose of gaining registration as a midwife.
- (2) Subject to subsection (3), every one is liable to imprisonment for a term not exceeding 7 years who performs, or causes to be performed, on any other person, any act involving female genital mutilation.
- (3) Nothing in subsection (2) applies in respect of—
- (a) any medical or surgical procedure (including a sexual reassignment procedure) that is performed on any person—
    - (i) for the benefit of that person's physical or mental health; and
    - (ii) by a medical practitioner.
  - (b) any medical or surgical procedure that is performed on any person—
    - (i) while that person is in labour or immediately after that person gives birth; and
    - (ii) for the benefit of that person's health or the health of the child; and
    - (iii) by a medical practitioner or a midwife or a trainee health professional, or by any other person in any case where the case is urgent and no medical practitioner or midwife or trainee health professional is available.
- (4) In determining, for the purposes of subsection (3), whether or not any medical or surgical procedure is performed on any person for the benefit of that person's physical or mental health, no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice.
- (5) Nothing in subsection (3) limits or affects any enactment or rule of law relating to consent to any medical or surgical procedure or treatment.
- (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.
- (7) No person shall be charged as a party to an offence committed upon her against this section.

### 4.2.3 INDIA

#### Penal Code<sup>64</sup>

##### *Section 319: Hurt*

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

##### *Section 320: Grievous hurt*

The following kinds of hurt only are designated as “grievous”:  
— First.—Emasculation.  
— Secondly.—Permanent privation of the sight of either eye.  
— Thirdly.—Permanent privation of the hearing of either ear.  
— Fourthly.—Privation of any member or joint.  
— Fifthly.—Destruction or permanent impairing of the powers of any member or joint.  
— Sixthly.—Permanent disfiguration of the head or face.  
— Seventhly.—Fracture or dislocation of a bone or tooth.  
— Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

##### *Section 321: Voluntarily causing hurt*

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

##### *Section 322. Voluntarily causing grievous hurt*

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt”.  
Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

##### *Section 323: Punishment for voluntarily causing hurt:*

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

##### *Section 324: Voluntarily causing hurt by dangerous weapons or means*

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow,

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<sup>64</sup> Available at <http://lawmin.nic.in/ld/P-ACT/1860/186045.pdf> (last visited, 20 January, 2020).

or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Section 325: Punishment for voluntarily causing grievous hurt*

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Section 326: Voluntarily causing grievous hurt by dangerous weapons or means*

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### 4.2.4 PAKISTAN

[Pakistan Penal Code, 1860<sup>65</sup>](#)

*Article 333: Itlaf-i-udw:*

Whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause Itlaf-i-udw.

*Article 334: Punishment for Itlaf-udw:*

Whoever by doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person causes Itlaf-i-udw of any person, shall, in consultation with the authorised medical officer, be punished with qisas, and if the qisas is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

#### 4.2.5 PHILIPPINES

[The Revised Penal Code of the Philippines<sup>66</sup>](#)

*Art. 262. Mutilation*

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<sup>65</sup> Pakistan Penal Code, available at <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html> (last visited, January 20, 2020).

<sup>66</sup> Act No. 3815 December 8, 1930, [http://www.lawphil.net/statutes/acts/act\\_3815\\_1930.html](http://www.lawphil.net/statutes/acts/act_3815_1930.html) (last visited, January 20, 2020).

The penalty of reclusion temporal to reclusion perpetual shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ of reproduction.

Any other intentional mutilation shall be punished by prison mayor in its medium and maximum periods.

### 4.3 EUROPE

#### 4.3.1 AUSTRIA

[Penal Code, 1974](#)<sup>67</sup>

*Article 90: Consent of the injured*

1. Bodily injury or endangering one's bodily safety is not illegal, if the injured or endangered person has consented to it and the injury or endangering as such does not violate good morals.
2. Sterilization performed by a physician and with the consent of the sterilized person is not illegal if either the person is already 25 years old or the operation does not violate good morals for other reasons.
3. It is not possible to consent to a mutilation or other injury of the genitals that may cause a lasting impairment of the sexual sensitivity.

#### 4.3.2 BELGIUM

[Penal Code, 1867](#)<sup>68</sup>

*Article 409:*

- § 1. Anyone who has practiced, facilitated or favored any form of genital mutilation in a female person, with or without the consent of the person who the mutilation is performed upon, shall be punished by imprisonment of three years to five years. The attempt shall be punished by imprisonment of eight days to one year. The same penalty shall be imposed on anyone who has incited the practice of any form of female genital mutilation or who has, directly or indirectly, in writing or verbally made, caused to be made, published, distributed or disseminated for publicity for such a practice.
- § 2. If the mutilation is practiced on a minor person or for the purpose of profit, the penalty shall be the imprisonment of five years to seven years.

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<sup>67</sup> Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch – StGB) modified by Strafrechtänderungsgesetz Nr. 130/2001 available at <https://www.jusline.at/gesetz/stgb> (last accessed on January 20, 2020), translation by FGM Compendium Team.

<sup>68</sup> Loi du 28 novembre 2000 sur la protection pénale des mineurs, modifiant l'article 409 du Code Pénal, available at [http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&tri=dd%20as%20rank&cn=1867060801&caller=image\\_a1&fromtab=loi&la=fr#Art.410](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&tri=dd%20as%20rank&cn=1867060801&caller=image_a1&fromtab=loi&la=fr#Art.410) (last visited on January 20, 2020). Unofficial translation by FGM Compendium Team.



- § 3. When the mutilation has caused a seemingly incurable disease or a personal incapacity for more than four months, the punishment will be the imprisonment for five years to ten years.
- § 4. When the mutilation is performed without intent to cause death but has caused it, the penalty will be the imprisonment for ten years to fifteen years.
- § 5. If the mutilation referred to in § 1 has been practiced on a minor or a person who, because of her physical or mental state was unable to provide for her own maintenance, by her father, mother, guardians, including any other person who has authority over the minor or the incapable the minimum penalties laid down in §§ 1 to 4 shall be doubled in case of imprisonment and increased by two years in the case of imprisonment. This includes persons who have custody, or any person who occasionally or habitually cohabits with the victim.

#### 4.3.3 BULGARIA

##### Penal Code<sup>69</sup>

###### *Art. 128:*

- (1) A person who inflicts severe bodily injury on another person shall be punished by imprisonment for three to ten years.
- (2) A bodily injury shall be considered severe if it has caused: continuous problems with consciousness; permanent blindness of one or both eyes; permanent deafness; loss of speech; inability to bear children; disfigurement which causes permanent loss of speech or of a sensory organ; loss of one kidney, spleen or a lung lobe; loss or mutilation of a leg or an arm; a permanent general health impairment that is life threatening.

###### *Art. 129:*

- (1) A person who inflicts on another medium bodily injury shall be punished by imprisonment for up to six years.
- (2) An injury shall be considered to be bodily injury if it has caused: permanent impairment of the eyesight or hearing; permanent impairment of speech, difficulties of the movement of the extremities, the body or the neck, disturbance of the functions of the genital organs without causing reproductive incapacity; breaking of a jaw or knocking out of teeth, without which chewing or speech are impaired; disfigurement of the face or of other parts of the body; permanent impairment of health that is not dangerous to life or impairment of health temporarily dangerous to life; injuries which penetrate into the cranial, thoracic and abdominal cavities.

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<sup>69</sup> English translation available at [https://www.mlsp.government.bg/ckfinder/userfiles/files/admob/Criminal\\_Code.pdf](https://www.mlsp.government.bg/ckfinder/userfiles/files/admob/Criminal_Code.pdf) (last visited January 20, 2020).

*Art. 131:*

(1) For inflicting bodily injury:

1. (amended, SG No. 62/1997) to an official, a representative of the public, a serviceman, including such of an allied or friendly state or army, in the course of or in connection with the fulfilment of his duty or functions, or to a person enjoying international protection;
2. (amended, SG No. 27/2009) by an official, a representative of the public, a police authority in the course of or in connection with the fulfilment of his duty or function;
3. to a mother or to a father;
4. (supplemented, SG No. 62/1997) to a pregnant woman, a minor or to more than one person;
5. in a manner particularly painful for the victim;
6. by a person who has intentionally inflicted another severe or medium bodily injury under Articles 128 and 129 or under this article, for which no sentence has been pronounced;
7. for a second time, if the bodily injury is severe or medium;
8. (new, SG No. 92/2002) by a person acting at the orders or in implementing a decision of an organized criminal group; 8a. (new, SG No. 84/2013) for the purpose of dispossessing the victim of a body organ, tissue, cell or body fluid;
9. (new, SG No. 92/2002) using means and ways dangerous to the life of many or with particular cruelty;
10. (new, SG No. 92/2002) with a venal goal in mind;
11. (new, SG No. 92/2002) in view of facilitating or concealing another criminal act;
12. (new, SG No. 92/2002, amended, SG No. 26/2010, supplemented, SG No. 33/2011, effective 27.05.2011) out of hooligan, racist or xenophobic motives the punishment shall be imprisonment:

for three to fifteen years for severe bodily injury; from two to ten years for medium bodily injury; for up to three years for trivial bodily injury under Article 130, paragraph (1), and for up to one year or corrective labour under Article 130, paragraph (2).

(2) (Last amendment, SG No. 27/2009) The penalty for causing a bodily harm to a judge, prosecutor, investigating magistrate, police department official, state executive magistrate, private executive magistrate and assistant private executive magistrate, custom-house officer, taxation authorities official, official from the Executive Agency for Forests, official from the Ministry of Environment and Water that executes controlling activities during or on account of discharging his duties, is imprisonment for a term from:

1. Five up to fifteen years in case of great bodily harm;
2. Three up to ten years in case of medium bodily injury;
3. One up to five years in case of trivial bodily injury under art130, para.1;
4. Up up to three years in case of trivial bodily injury under art.130, para.2.

### Child Protection Act<sup>70</sup>

#### *Article 25:*

- (1) (Amended, SG No. 36/2003, previous text of Article 25, SG No. 14/2009) A child may be removed from their family in cases where:
  4. the child is the victim of violence by a family member and is in danger of his/her physical, mental, moral, intellectual and social development;
- (2) (New, SG No. 14/2009) The placement of the child outside the family shall be imposed as a measure of protection after all possibilities for protection within the family have been exhausted save in the cases when urgent removal is necessary.

#### **4.3.4 CROATIA**

### Criminal Code, 2013<sup>71</sup>

#### Article 116

- (1) Whoever partially or totally removes or permanently alters the external female genitalia, shall be punished by imprisonment from six to five years.
- (2) Whoever incites a woman to subject herself to procedures referred to in paragraph 1 of this Article or assists therein shall be punished by imprisonment not exceeding three years.
- (3) Whoever commits the offence referred to in paragraphs 1 and 2 of this Article out of hatred against a child or family member, shall be punished by imprisonment from one and eight years.

### The Family Act, 2009<sup>72</sup>

In Croatia, the Family Act can be used to protect children's rights. Article 114 refers to 'gross violation of child rights' that could be applied to FGM cases.

#### *Art 114:*

- (1) In a non-litigation procedure the court will deprive a parent who abuses or grossly violates parental responsibility, duties and rights of the right to parental care.
- (2) A parent is deemed to abuse or grossly violate parental responsibility, duties and rights if he or she:
  10. in some other way grossly abuses the rights of the child.

#### **4.3.5 CZECH REPUBLIC**

### Criminal Code, Sec. 122(2)<sup>73</sup>

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<sup>70</sup> English translation available at <https://www.refworld.org/docid/44ad32014.html> (last visited, January 20, 2020).

<sup>71</sup> English translation available at [https://www.legislationline.org/download/id/7896/file/Croatia\\_Criminal\\_Code\\_2011\\_en.pdf](https://www.legislationline.org/download/id/7896/file/Croatia_Criminal_Code_2011_en.pdf) (last visited, January 20, 2020).

<sup>72</sup> English version available at <http://pak.hr/cke/propisi,%20zakoni/en/FamilyAct/EN.pdf> (last visited, January 20, 2020).

<sup>73</sup> Available at <https://www.zakonyprolidi.cz/cs/2009-40> (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

*Section 122: Personal Injury and Severe Personal Injury*

- (1) Injury is understood to be a condition implying a health disorder or other illness which, by affecting normal physical or mental functions, impairs the usual life of the injured person and requires medical treatment, not just for a short period of time.
- (2) Serious health damage is understood only as a serious health disorder or other serious illness. Under these conditions, the following are considered serious health injuries:
  - (a) mutilation,
  - (b) loss of, or substantial reduction of work capacity,
  - (c) limb paralysis,
  - (d) loss or substantial impairment of the sensory system function,
  - (e) damage to an important organ,
  - (f) disfigurement,
  - (g) Inducement of abortion or death of a fetus,
  - (h) torture, or
  - (i) prolonged health disorder.

*Section 145: Severe Bodily Harm*

- (1) Whoever deliberately causes serious injury shall be punishable by an imprisonment term ranging from three years to ten years.
- (2) The perpetrator shall be punished by imprisonment for five to twelve if he or she commits the offense referred to in paragraph 1:
  - (a) Against two or more persons,
  - (b) Against a pregnant woman,
  - (c) Against a child under the age of 15,
  - (d) Against witnesses, experts or interpreters in connection with the performance of their duties,
  - (e) Against a healthcare professional in the exercise of their profession or seeking to save a life or protect one's health, or any other person who has performed a similar duty to protect life, health or property resulting from their employment, occupation, status or function or,
  - (f) Against anyone due to his or her actual or alleged race, ethnicity, nationality, political belief, religion, or because he or she does not have a religion,
  - (g) Repeatedly or after having committed another particularly serious crime involving intentional or serious injury or death, or
  - (h) Due to a reprehensible motive.
- (3) If the act referred to in paragraph 1 results in death, the *perpetrator shall be punished by a term of imprisonment ranging from eight to sixteen years.*
- (4) Preparatory acts are considered crimes.

*§ 146: Injury:*

- (1) Whoever intentionally injures another person shall be punished by a term of imprisonment ranging from six months to three years.
- (2) *The perpetrator shall be punished by an imprisonment term ranging from one to five years if he commits the offense referred to in paragraph 1:*
  - (a) Against a pregnant woman,
  - (b) Against a child under the age of 15,
  - (c) Against witnesses, experts or interpreters in connection with the performance of their duties,
  - (d) Against a healthcare professional in the exercise of their profession or seeking to save a life or protect one's health, or any other person who has performed a similar duty to protect life, health or property, due to their employment, occupation, status or function or
  - (e) Against anyone due to his or her actual or alleged race, ethnicity, nationality, political belief, religion, or because he or she does not have a religion.
- (3) *The perpetrator shall be punished by a term of imprisonment ranging from two to eight years if he causes serious damage to someone's health by committing the act referred to in paragraph 1.*
- (4) *The perpetrator shall be punished by a term of imprisonment ranging from five to ten years if the offense referred to in paragraph 1 results in death.*

§ 198: Abuse perpetrated by an entrusted person

- (1) Whoever abuses a person under their care or education shall be punished by an imprisonment term ranging from one to five years.
- (2) The perpetrator shall be punished by an imprisonment term ranging from two years to eight years,
  - (a) if the offense referred to in paragraph 1 is committed in a particularly cruel or brutal manner,
  - (b) if such an act causes serious damage to health,
  - (c) if he/she commits such conduct against at least two persons, or
  - (d) if he/she commits such an act for a prolonged period of time.
- (3) The perpetrator shall be punished by an imprisonment term ranging from five to twelve years if the offense referred to in paragraph 1 results in:
  - (a) serious injury to at least two persons, or
  - (b) death.

#### 4.3.6 DENMARK

##### [Penal Code, 1930](#)<sup>74</sup>

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<sup>74</sup> Lov om ændring af straffeloven og udlændingeloven, March 12, 2003 available at <https://danskelove.dk/straffeloven> (last visited on January 20, 2020). Unofficial translation by FGM Compendium Team.

**Section 245a:** Anyone who, with or without consent, removes female external sex organs in whole or in part, shall be sentenced to imprisonment for up to 6 years.

#### **4.3.7 ESTONIA**

##### **Penal Code, 2001** <sup>75</sup>

###### *§ 118: Causing serious health damage*

- (1) Causing a health damage which results in:
  - 6) loss or cessation of the functioning of an organ; is punishable from four to twelve years of imprisonment.

###### *§ 121. Physical abuse*

- (1) Causing damage to the health of another person and physical abuse which causes pain is punishable by a pecuniary punishment or up to one year of imprisonment.

##### **Child Protection Act, 1992**

###### *§ 24. Prohibition of child abuse*

- (1) Neglect of a child, mental, emotional, physical and sexual abuse of a child, including humiliation, frightening and physical punishment of a child, also punishment of a child in any other manner which endangers his or her mental, emotional or physical health is prohibited.

##### **Family Law Act**

###### *§ 134. Endangering of well-being of child*

- (1) If the physical, mental or emotional well-being or the property of a child is endangered by abuse of the parent's right of custody, neglecting the child, inability of the parents to perform their obligations or conduct of a third person and the parents do not wish or are unable to prevent danger, a court shall apply necessary measures, including the measures listed in subsection (3) of this section and §§ 135 and 136 of this Act, for the prevention of danger.
- (2) If the well-being of a child is endangered, the official of a state agency or local government agency, police officer, health care professional, judge, prosecutor, notary, bailiff, teacher or any other person who has information concerning the endangered child shall notify the rural municipality government or city government of the residence of the child or a court thereof.  
(RT I, 29.12.2011, 1 - entry into force 01.01.2012)

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<sup>75</sup> Penal Code, 2001, available at <https://www.riigiteataja.ee/en/eli/522012015002/consolide> (last visited, January 20, 2020), Unofficial translation by FGM Compendium Team.

#### 4.3.8 FINLAND

##### Penal Code, Chapter 21 <sup>76</sup>

###### *Section 6: Aggravated assault*

In the case the assault:

- 1) causes another person a serious bodily injury, serious illness or life-threatening condition;
- 2) the offense is committed in a particularly brutal or cruel way; or
- 3) firearms, shields or other comparable life-threatening instruments are used ...the offender must be convicted of gross assault and shall be imprisoned for at least one and a maximum of ten years.

###### *Section 6a:*

For any offense referred to in Sections 1-3 or Section 6

- 1) the possession of a firearm or blade holder or other comparable life-threatening device, or an instrument particularly suitable for use as a tool in a criminal offense,
- 2) agreement with another or draw up a detailed plan to commit one of these crimes; or
- 3) payment, order or otherwise incitement to another to commit, or offer to commit, shall be sentenced to imprisonment for *an offense or a health offense* for up to four years.

##### Child Welfare Act <sup>77</sup>

###### *Chapter 9*

###### *Section 4: Duty to take a child into care and provide substitute care*

- (1) Children must be taken into care and substitute care must be provided for them by the municipal body responsible for social services if:
  - 1) their health or development is seriously endangered by lack of care or other circumstances in which they are being brought up; or
  - 2) they seriously endanger their health or development by abuse of intoxicants, by committing an illegal act other than a minor offence or by any other comparable behaviour.

###### *Section 25 (88/2010):*

Duty to notify:

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<sup>76</sup> Penal Code, 1889, available at <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L18> (last visited, October 20, 2017), Unofficial translation, by FGM Compendium Team.

<sup>77</sup> English version available at <http://www.finlex.fi/fi/laki/kaannokset/2007/en20070417.pdf> (last visited, January 20, 2020).

- (1) Persons employed by, or in positions of trust for;
  - 1) social and health-care services and child day care;
  - 2) education services;
  - 3) youth services;
  - 4) the police service;
  - 5) the Criminal Sanctions Agency;
  - 6) fire and rescue services;
  - 7) social welfare and health care service providers;
  - 8) education or training provider;
  - 9) a parish or other religious community;
  - 10) a reception centre and organisation centre referred to in section 3 of the Act on Reception of People Seeking International Protection (746/2011);
  - 11) a unit engaged in emergency response centre activities; or
  - 12) a unit engaged in morning and afternoon activities for schoolchildren as well as persons working in a principal/contractor relationship or as independent professionals, and all health care professionals have a duty to notify the municipal body responsible for social services without delay and notwithstanding confidentiality provisions if, in the course of their work, they discover that there is a child for whom it is necessary to investigate the need for child welfare on account of the child's need for care, circumstances endangering the child's development, or the child's behaviour.

#### 4.3.9 FRANCE

##### Code Penal <sup>78</sup>

###### *Art 222-9:*

Violence acts that result in mutilation or permanent damage is punishable by ten years of imprisonment and a fine of 150,000 euros.

###### *Art 222-10 as modified by Law No. 2017-86 of January 27, 2017 - art. 171:*

The offense defined in section 222-9 is punishable by fifteen years of imprisonment when it is committed:

1. on a minor under the age of fifteen years;
2. on a person who has a particular vulnerability, due to age, illness, infirmity, physical or mental disability or a state of pregnancy, is apparent or known to the offender;
3. on a legitimate or natural guardian or on the adoptive father or mother;

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<sup>78</sup>

Available

at

[https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=E611A82B3317558A9F60E8AF089923AD.tplgr30s\\_2?idArticle=LEGIARTI000006417617&cidTexte=LEGITEXT000006070719&dateTexte=20200124](https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=E611A82B3317558A9F60E8AF089923AD.tplgr30s_2?idArticle=LEGIARTI000006417617&cidTexte=LEGITEXT000006070719&dateTexte=20200124) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.



- 4 On the spouse, guardian or descendants in direct line or on any other person habitually living in the home of the persons mentioned in 4 and 4 bis, because of the functions performed by the latter;
- 5 With respect to a witness, a victim or a civil party, either to prevent him from denouncing the facts, to file a complaint or to lodge a legal action, because of his denunciation or complaint, or because of his testimony before a national court or before the International Criminal Court.

*Art. 226-14:*

Article 226-13 is not applicable in cases where the law imposes or authorizes the disclosure of the secret. In addition, it is not applicable:

- (1) to any person who informs the judicial, medical or administrative authorities of deprivation or abuse, including in the case of sexual abuse or mutilation, of which he becomes aware and which has been inflicted on a minor or a minor a person who is unable to protect himself because of his age or his physical or mental disability;
- (2) to the doctor or any other health professional who, with the victim's consent, informs the public prosecutor or cell of collection, treatment and evaluation of the information of concern relating to minors in danger or who are likely to be, mentioned in the second paragraph of Article L. 226-3 of the Code of Social Action and Families, the abuse or deprivation he has observed, physically or mentally, in the exercise of his profession and which enables him to presume that physical, sexual or psychological violence of any kind has been committed;

(Note: Article 226-13 states that the disclosure of information of a secret nature by a person who is a depository either by state or profession, or because of a function or a temporary mission, is punishable by one year's imprisonment and 15,000 euros of fine.)

#### **4.3.10 GERMANY**

##### **[German Criminal Code, 1871](#)** <sup>79</sup>

#### **Section 226a: Female genital mutilation**

- (1) Whosoever mutilates the external genitalia of a woman shall be liable to a term of imprisonment of not less than one year.
- (2) In less serious cases the penalty shall be a term of imprisonment from six months to five years.

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<sup>79</sup> Siebenundvierzigste Gesetz zur Änderung des Strafgesetzbuches - Strafbarkeit der Verstümmelung weiblicher Genitalien, September 24 2013, available at [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1905](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1905) (last accessed on January 20, 2020), official translation.

#### 4.3.11 GREECE

##### [Penal Code](#)<sup>80</sup>.

#### CHAPTER 10 - CRIMES AGAINST PHYSICAL INTEGRITY

##### Article 308 – Bodily Harm

1. Anyone who causes another person physical injury or harm to his/her health shall be punishable by imprisonment of up to two years or a fine. If the injury or harm caused to him/her is minor, the perpetrator is sentenced to carry out community service.
2. An indictment shall be required for the prosecution of the act referred to in the preceding paragraph, unless the person concerned is a civil servant and the act has been carried out in the performance of his/her service or for reasons relating to its execution, in which case the prosecution is initiated *motu proprio*.
3. The physical damage referred to in paragraph 1 shall not be considered illegal when attempted with the consent of the victim and when not offending morality.
4. The person responsible for the act referred to in paragraph 1 may be relieved of any penalty if he/she has been influenced to commit said act by exasperation, due to an act committed against him/her, or in front of him/her immediately before by the victim and in a particularly cruel or brutal manner.

##### Article 309 - Dangerous Bodily Harm

If the act of the previous article was carried out in a manner that could cause the patient a risk of life or dangerous bodily harm, a prison sentence of up to three years or a fine is imposed.

##### Article 310 - Grievous Bodily Harm

1. Anyone who causes grievous bodily harm shall be punished with imprisonment of at least one year. If he/she sought to cause grievous bodily harm, he/she shall be sentenced to up to ten years in prison.
2. Grievous bodily harm exists in particular if the act caused the victim a risk of life or severe and long-term illness or serious amputation or if it has significantly prevented him/her to use his/her body or intellect for a long time.

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<sup>80</sup> Greek Penal Code, available at <http://www.odigostoupoliti.eu/nomos-4619-2019-neos-poinikos-kodikas/> (last visited, October 15, 2017), unofficial translation by FGM Compendium Team. .

#### Article 311 - Fatal Bodily Harm

If the physical injury resulted in the death of the victim, the perpetrator is sentenced to ten years in prison. If the perpetrator sought to cause grievous bodily harm to the victim, he/she must be imprisoned.

#### Article 312 - Personal Injury of Weak People

1. Anyone who causes physical injury or harm to the health of a minor or a person who cannot defend himself/herself, provided that such persons are in the custody or protection of the offender by law, by judgment or through a *de facto* situation, living together with the offender or having a working or service relationship with him/her, shall be punished: (a) for the offense under Article 308 (1) (a), with imprisonment of at least one year, (b) for the offense under Article 309, with imprisonment of at least two years, (c) for the offense under Article 310 par. 1 (a), with imprisonment of at least three years and if he/she sought to cause grievous bodily harm, with life imprisonment and (d) for the offense under Article 311, with life imprisonment.

2. The same penalties shall be imposed when the offense is committed against a spouse during the marriage or against a partner during cohabitation. The commission of the act against a pregnant woman is an aggravating circumstance.

3. The infliction of bodily harm against a minor referred to in paragraph 1(a) shall also be considered equivalent to the infliction of the acts of the preceding paragraphs against a minor.

4. Causing physical injury referred to in paragraph 1(c) shall also be considered equal to the systematic infliction of severe physical pain or physical exhaustion dangerous for health, of mental pain capable of causing serious mental injury, in particular when associated with prolonged isolation and when inflicted to the persons referred to in the first paragraph.

#### Article 313 – Scuffle

If, as a consequence of a scuffle or an assault carried out by many persons, another person has been killed or seriously injured, each one of those who participated in the scuffle or assault is punished only for his participation in it with imprisonment of up to three years or a fine, unless he has been involved without his responsibility.

#### Article 314 - Bodily Harm by Negligence

1. Anyone who negligently causes physical injury or harm to another person's health shall be punishable by community service or a fine or imprisonment of up to two years.

2. For the criminal prosecution of said offense mentioned in the previous paragraph, an indictment is requested. The prosecution is carried out *sua sponte* when the person responsible was a driver of a vehicle whose service or profession demand to pay special care or attention. When the responsible driver of a vehicle does not carry passengers nor goods necessary for livelihoods, the criminal prosecution is carried out *sua sponte*, but the prosecutor will refrain from criminal prosecution if the victim declares that he does not wish to prosecute the offender. If the declaration is submitted after the criminal prosecution, the court shall terminate it permanently.

Article 315

Anyone who convinces a woman to undergo genital mutilation is punishable by imprisonment.

#### **4.3.12 HUNGARY**

##### **Penal Code, 2012<sup>81</sup>**

###### *Section 164:*

- (1) Anyone who violates another person's physical integrity or health commits a physical offense.  
(...)
- (5) The penalty shall be imprisonment from one year to five years if a simple bodily injury results in permanent disability or serious deterioration of health.
- (6) The penalty shall be imprisonment from one year to five years if the aggravated bodily injury:  
(...)  
(d) causes a permanent disability or serious deterioration of health.
- (7) Anyone who commits the offense provided for in paragraph 3 or 6 shall be punished by imprisonment for a term of up to one year.
- (8) The penalty shall be imprisonment from two years to eight years if the physical offense is life threatening or results in death.

##### **Child Protection Act, 1997**

###### *Section 6:*

- (5) A child has the right to respect human dignity, to the protection of abuse, physical, sexual or psychological violence, neglect and information harm. A child shall not be

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<sup>81</sup> Penal Code, 2012, available at [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

subjected to torture, bodily punishment or other cruel, inhuman or degrading punishment or treatment.

#### **4.3.13 ITALY**

##### **Penal Code - Law No. 7/2006 Female Genital Mutilation**<sup>82</sup>

###### *Art. 583-bis:*

Whosoever, in the absence of medical need, causes female genital mutilation shall be punishable for imprisonment from four to twelve years. Within the meaning of this article, female genital mutilation shall encompass clitoridectomy, excision and female infibulation and any other practice having the same effects.

Whosoever, in the absence of medical need, in order to cripple the sexual functions, damages female genital organs in a way other than those mentioned in the first paragraph resulting in a physical or mental disease shall be punishable for imprisonment from three to seven years. The length of the punishment is reduced to two thirds of the total amount if the injury caused is minor.

The length of the punishment shall be increased by one third when the practices mentioned in the first paragraph are addressed to a minor or if the offense is carried out for profit-making purposes.

The provisions of this article shall apply even when the offense is committed by an Italian citizen abroad or by a foreign citizen who resides in Italy. They shall apply even when the offense harms an Italian citizen or a foreign citizen who resides in Italy. In the latter case, the guilty party shall be punished upon request of the minister of justice.

###### *Art. 583-ter:*

When a person who practices a healthcare-related profession is convicted for one of the crimes under art. 583-bis, the sentence shall entail the secondary/accessory ban from the practice of such profession from three to ten years. The sentence is communicated to the national body/order of surgeons and dentists.

###### *Art. 361. Failure to report a crime by the public official*

A public official, who omits or delays to report to the judicial authority, or to another authority which is obliged to report it, a crime of which he has been informed in the exercise or due to his functions, is punished with fine from € 30 to € 516.

The penalty is imprisonment up to one year if the culprit is an officer or a judicial police officer, who has anyway been informed of an offense of which he was obliged to report.

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<sup>82</sup> Available at <https://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale> (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

The previous provisions do not apply if it is a crime punishable on complaint by the injured party.

#### 4.3.14 LATVIA

##### Criminal Law <sup>83</sup>

###### *Section 125. Intentional Serious Bodily Injury*

- (1) For a person who commits intentional infliction of such bodily injury as is dangerous to life or has been the cause of loss of vision, hearing or any other organs or functions of organs, or mental or other trauma to health, if it is associated with a general ongoing loss of ability to work to the extent of not less than one third, or has resulted in the termination of pregnancy, or has been manifested in irreparable facial disfigurement (serious bodily injury), the applicable sentence is deprivation of liberty for a term not exceeding ten years, with or without police supervision for a term not exceeding three years.
- (2) For a person who commits the same acts, if:
  - 1) their commission is associated with the victim or his or her relative having performed his or her official or professional duty or having participated in the prevention or interruption of a criminal or other illegal offence, or having given evidence in court or at a pre-trial investigation;
  - 2) they have been committed against two or more persons;
  - 3) they have been committed in a way dangerous to the life or health of several persons;
  - 4) they have been in the nature of torment or torture;
  - 5) they have been committed by a group of persons;
  - 6) they have been committed by a person who has previously committed a murder or inflicted intentional serious bodily injury, except where committed in a state of extreme mental agitation or in the course of violating the limits of necessary self-defence or provisions regarding arrest of a person; or
  - 7) they have been committed by a person who has been confined to a place to be held under custodial arrest, for pre-trial detention or in imprisonment, the applicable sentence is deprivation of liberty for a term of not less than three years and not exceeding twelve years, with or without police supervision for a term not exceeding three years.
- (3) For a person who commits intentional infliction of serious bodily injury which, as a result of the negligence of the offender, has been the cause of the death of the victim, the applicable sentence is deprivation of liberty for a term of not less than

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<sup>83</sup> English version available at <https://www.legislationline.org/documents/section/criminal-codes/country/19/Latvia/show> (last visited, January 20, 2020).

three years and not exceeding fifteen years, with or without police supervision for a term not exceeding three years.

*Section 126: Intentional Moderate Bodily Injury (Chapter XIII - Criminal Offences Against Bodily Integrity of Persons)*

- (1) For a person who commits intentional infliction of such bodily injury as is not dangerous to life and has not resulted in the consequences provided for in Section 125 of this Law but has resulted in protracted damage to health or general ongoing loss of ability to work to the extent of less than one third (moderate bodily injury), the applicable sentence is deprivation of liberty for a term not exceeding five years, or custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage.
- (2) For a person who commits the same acts, if:
  - 1) their commission is associated with the victim or his or her relative having performed his or her official or professional duty or having participated in the prevention or interruption of a criminal or other illegal offence, or having given evidence in court or at a pre-trial investigation;
  - 2) they have been in the nature of torment or torture;
  - 3) they have been committed by a group of persons;
  - 4) they have been committed by a person who has previously committed a murder or inflicted intentional serious or moderate bodily injury, which has been committed in a state of extreme mental agitation (in an aggravated state) or in the course of violating limits of necessary self-defence or provisions regarding arrest of a person; or
  - 5) they have been committed by a person who has been confined to a place to be held under arrest, for pre-trial detention or in imprisonment, the applicable sentence is deprivation of liberty for a term not exceeding eight years.

*139. Unlawful Removal of Tissue and Organs from a Human Being*

For a person who commits unlawful removal of tissue or organs from a living or dead human being in order to utilise such for medical purposes, where commission thereof is by a medical practitioner, the applicable sentence is deprivation of liberty for a term not exceeding five years, with or without deprivation of the right to engage in the practice of medical treatment for a period not exceeding five years.

*Section 174. Cruelty Towards and Violence Against a Minor*

For a person who commits cruel or violent treatment of a minor, if physical or mental suffering has been inflicted upon the minor and if such has been inflicted by persons upon whom the victim is financially or otherwise dependent, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service.

## Protection of the Right of the Child Law

### *Section 51. Protection of the Child from Illegal Activities*

- (1) A person who commits a violent act against a child, encourages or forces a child to take part in sexual activities, exploits or involves a child in prostitution, shall be held liable as prescribed by law.
- (2) A child who is a victim of a criminal offence, exploitation, sexual abuse, violence or any other unlawful, cruel or demeaning acts, in accordance with procedures prescribed by the Cabinet, shall be provided with emergency assistance free of charge, aiming at the child's physical and mental health regain and his/her reintegration into society. Such medical treatment and reintegration shall take place in an environment favourable to the health, self-esteem and honour of the child, carefully guarding his/her private information.
- (3) Every person has the duty to inform the police or another competent institution regarding violence or any other criminal offence directed against a child. Whoever fails to inform shall be held liable as prescribed by law.

### **4.3.15 LITHUANIA**

#### Criminal law <sup>84</sup>

#### **Crimes against Human Health**

##### *Article 135. Severe Health Impairment*

A person who causes bodily harm or an illness to a person resulting in the victim's loss of eyesight, hearing, ability to speak, ability to reproduce, pregnancy or other serious mutilation, contracting of a terminal illness or a long-lasting illness posing a threat to his life or seriously affecting his mental health or in the loss of a considerable part of professional or general capacity for work or in a permanent disfigurement of the victim's body shall be punished by imprisonment for a term of up to ten years.

A person who causes a serious bodily injury or illness

- 1) to a young child;
- 2) to a person in a helpless state;
- 3) to his close relative or family member;
- 4) to a pregnant woman;
- 5) to two or more persons;
- 6) by torturing or in another particularly cruel manner;
- 7) in a manner endangering other persons' lives;
- 8) by reason of disorderly conduct;

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<sup>84</sup> Available at [https://www.legislationline.org/download/id/8272/file/Lithuania\\_CC\\_2000\\_am2017\\_en.pdf](https://www.legislationline.org/download/id/8272/file/Lithuania_CC_2000_am2017_en.pdf) (last visited, January 20, 2020).



- 9) for mercenary reasons;
- 10) by reason of performance of official or citizen's duties by the victim;
- 11) in order to conceal another crime;
- 12) in order to acquire the victim's organ, tissue or cells;
- 13) in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views shall be punished by imprisonment for a term of two up to twelve years.

### Child Protection Law

#### **Chapter II – Fundamental Rights and Freedoms of the Child**

##### *Article 7: Right of the Child to Life and Growth*

1. Every child shall have the inalienable right to life and growth.
2. All types of scientific experimentation or other experimentation involving a child, that may be detrimental to his life, health, or normal personal development, shall be prohibited. This prohibition shall also apply even in the presence of an agreement by the child, his parents or other legal representatives of the child.

##### *Article 10: Right of the Child to Personal Life, Personal Inviolability and Freedom*

1. The child shall have a right to personal life, associations, privacy in correspondence, personal inviolability and freedom. These rights and freedoms shall be protected and defended by the Constitution of the Republic of Lithuania, this Law and other laws and legal acts.
2. A child shall not be tortured and injured, his honour and dignity be degraded and be subjected to cruel treatment.

#### **4.3.16 LUXEMBOURG**

##### Penal Code, 1867<sup>85</sup>

##### *Article 400:*

If beatings and injuries cause a seemingly incurable illness, a permanent incapacity for personal work, the loss of the absolute use of an organ, or a serious mutilation, the act shall be punishable with imprisonment from two years to five years and a fine of 500 euros to 5,000 euros. The penalty will be five to ten years' imprisonment, if there has been premeditation.

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<sup>85</sup> Code pénal, 1867 modified by the Loi du 12 novembre 1971 relative à la protection de la jeunesse, available at <http://legilux.public.lu/eli/etat/leg/code/penal/20170401> (last accessed on January 20, 2020), unofficial by FGM Compendium Team.

*Article 401 bis:*

Anyone who voluntarily injures or kills a child under fourteen years of age, or who voluntarily deprived them of food or health care to the extent of endangering their health or who has committed against any other violence or assault, to the exclusion of minor violence, will be punishable by imprisonment for one to three years and a fine of 251 to 2,500 euros.

If the abuse or deprivation has been followed, either of an apparently incurable illness or of a permanent incapacity for personal work, or of the loss of the absolute use of an organ, or of a serious mutilation or if they have caused death without intention of giving it, the penalty will be that of imprisonment from ten to fifteen years, and if the culprits are the persons named in the preceding paragraph, that of life imprisonment.

**4.3.17 MALTA**

Criminal Law

Sub-title II: Of Wilful Offences against the Person (Section 214-222A)<sup>86</sup>

*Section 214:*

Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.

*Section 215:*

A bodily harm may be either grievous or slight.

*Section 216:*

- (1) A bodily harm is deemed to be grievous and is punishable with imprisonment for a term from three months to three years –
- (a) if it can give rise to danger of –
    - (i) loss of life; or
    - (ii) any permanent debility of the health or permanent functional debility of any organ of the body; or
    - (iii) any permanent defect in any part of the physical structure of the body;

*Section 217:*

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<sup>86</sup> Available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1> (last visited, January 20, 2020).

A grievous bodily harm is punishable with imprisonment for a term from five months to four years if it is committed with arms proper, or with a cutting or pointed instrument, or by means of any explosive, or any burning or corrosive fluid or substance:

*Section 218:*

- (1) A grievous bodily harm is punishable with imprisonment for a term from nine months to nine years -
  - (a) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity;
- (2) Any debility of the health or any functional debility of any organ of the body, and any mental infirmity, serious disfigurement, or defect shall be deemed to be permanent even when it is probably so.

**Child Protection Law - Children and Young Persons (care orders) Regulations**

**Subsidiary Legislation 285.01**<sup>87</sup>

*Article 10:*

- (1) It shall be the duty of any person or persons responsible for the home, hostel or institution with whom or in which a child or young person has been boarded out or accommodated in accordance with the provisions of article 10(1) of the Act to ensure that such child or young person is treated and brought up in an environment which is normally to be found in a good Maltese family and which is conducive to psychological security as well as to physical well-being, so as to promote normal and healthy development. In particular, such person or persons shall provide a balanced and nourishing diet and maintain normally acceptable standards of hygiene to the satisfaction of the Director; and shall further ensure that, without prejudice to anything contained in any other law, the child or young person attends regular religious services and receive religious instruction.

**4.3.18 NETHERLANDS**

**Dutch Penal Code, 1881**<sup>88</sup>

*Article 300:*

1. Physical abuse is punishable by a term of imprisonment of not more than two years or a fine of the fourth category.

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<sup>87</sup>Available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9731&l=1> (last visited, January 20, 2020).

<sup>88</sup> Wetboek van Strafrecht, available at <http://wetten.overheid.nl/BWBR0001854/2017-09-01#BoekTweede> (last accessed on January 20, 2020), unofficial translation by FGM Compendium Team.

2. Where serious bodily harm ensues as a result of the act, the offender is liable to a term of imprisonment of not more than four years or a fine of the fourth category.
3. Where death is caused by the act, the offender is liable to a term of imprisonment of not more than six years or a fine of the fourth category.
4. Intentionally injuring a person's health is equivalent to physical abuse.
5. Attempt of this crime is not punishable.

*Article 301:*

1. Premeditated physical abuse is punishable by a term of imprisonment of not more than three years or a fine of the fourth category.
2. Where serious bodily harm ensues as a result of the act, the offender is liable to a term of imprisonment of not more than six years or a fine of the fourth category.
3. Where death is caused by the act, the offender is liable to a term of imprisonment of not more than nine years or a fine of the fifth category

*Article 302:*

1. A person who intentionally inflicts serious bodily harm on another person is guilty of aggravated physical abuse and is liable to a term of imprisonment of not more than eight years or a fine of the fifth category.
2. Where death ensues as a result of the act, the offender is liable to a term of imprisonment of not more than ten years or a fine of the fifth category.

*Article 303:*

1. Premeditated aggravated physical abuse is punishable by a term of imprisonment of not more than twelve years or a fine of the fifth category.
2. Where death is caused by the act, the offender is liable to a term of imprisonment of not more than fifteen years or a fine of the fifth category.

*Article 304:*

The terms of imprisonment prescribed in articles 300-303 may be increased by a third in the following cases:

1. Where the offender commits the serious offence against his/her mother, his/her legal father, his/her spouse or his/her child;
2. Where the serious offence is committed against a public servant during or in connection with the lawful execution of his duties;
3. Where the serious offence is committed by administering substances dangerous to life or health.

#### 4.3.19 NORWAY

##### Norwegian Criminal Code, 1902<sup>89</sup>

###### *Section 284: Genital mutilation*

A person who performs an intervention on a woman's genital organs which damages the sexual organs or causes lasting changes shall be punished with imprisonment for up to 6 years. Reconstruction of genital mutilation is punished in the same way.

Consent does not release from punishment.

Will be punished with a fine or imprisonment for up to 1 year, professionals and employees in daycares, child welfare services, social services, health and care services, schools, school-based retirement, and religious communities who fail to notify or otherwise fail to seek to avert genital mutilation. The same applies to fellow believers and religious leaders in religious communities. The waiver obligation applies without regard to confidentiality. The failure is not punishable if the genital mutilation is not being executed or is limited to an attempt.

###### *Section 285: Severe genital mutilation*

Severe genital mutilation is punished by imprisonment for up to 15 years.

In determining whether the genital mutilation is coarse, emphasis should be placed on whether the procedure has been followed by:

- a) illness or work disability of some duration, cf. section 274,
- b) an incurable blemish, failure, or injury, or
- c) death or significant damage to body or health.

#### 4.3.20 POLAND

##### Criminal law<sup>90</sup>

###### **Articles 156, 157 and 160 of the Penal Code**

###### *Article 156:*

§ 1. Whoever causes grievous bodily harm in a form which: 1) deprives a human being of sight, hearing, speech or the ability to procreate, or 2) inflicts on another a serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

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<sup>89</sup> Straffeloven, modified in 1995, 2005, and 2011, available at [https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL\\_2-10#%C2%A7284](https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL_2-10#%C2%A7284) (last accessed on January 20, 2020), unofficial translation by FGM Compendium Team.

<sup>90</sup> Available at <http://www.legislationline.org/documents/section/criminal-codes/country/10> (last visited, January 20, 2020).

- § 2. If the perpetrator acts unintentionally he shall be subject to the penalty of deprivation of liberty for up to 3 years.
- § 3. If the consequence of an act specified in § 1 is the death of a human being, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.

*Article 157:*

Whoever causes a bodily injury or an impairment to health other than specified in Article 156:

- § 1. Shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.
- § 2. Whoever causes a bodily injury or an impairment to health lasting not longer than 7 days, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.
- § 3. If the perpetrator of the act specified in § 1 or 2 acts unintentionally he/she shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.
- § 4. The prosecution of the offence specified in § 2 or 3 shall, if the bodily injury or an impairment of health did not exceed 7 days, occur upon a private charge.
- § 5. If the bodily injury or an impairment of health, did not exceed 7 days, and the injured person is the person closest to the accused, the prosecution shall occur upon the motion of the latter.

*Article 160:*

- § 1. Whoever exposes a human being to an immediate danger of loss of life, a serious bodily injury, or a serious impairment of health shall be subject to the penalty of deprivation of liberty for up to 3 years.
- § 2. If the perpetrator has a duty to take care of the person exposed to danger he shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.
- § 3. If the perpetrator of an act specified in §1 or 2 acts unintentionally he/she shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.
- § 4. A perpetrator who voluntarily averted the impending danger shall not be subject to the penalty for the offence specified in § 1-3. § 5. The prosecution of the offence specified in § 3 shall occur on a motion of the injured person.

**Child Protection Law**

### The Law on Counteracting Domestic Violence<sup>91</sup>

#### *Article 12a:*

1. In the event of direct risk to life or health of a child due to domestic violence, a social worker performing professional duties has the right to remove the child from the family and put it at another relative's household, in the understanding of Article 115 of the Act of 6 June 1997 - The Criminal Code (Dz. U. No 88, item 553 as amended), in foster care or care and education centre.
2. The mode of putting children in foster care of care and education centre is regulated by the provisions of the Act of 9 June 2011 on supporting family and foster care system (Dz. U. No 149, item 887).
3. A decision referred to in (1) shall be taken by a social worker in agreement with a police officer and a physician or paramedical practitioner or a nurse. Provisions of Articles 59810, 59811 (3) and 59812 (1) first sentence of the Act of 17 November 1964 – the Code of Civil Procedure shall apply accordingly.
4. The social worker shall be obliged to immediately inform a guardianship court no later than within 24 hours about the removal of a child from a family and putting it at an immediate family member's with a separate place of residence, in a foster family or a round-the-clock care and education centre.
5. With regard to putting the child at an immediate family member's with a separate place of residence, provisions on putting the child in a foster family or a round-the-clock care and education centre shall apply.
6. The Minister competent for internal affairs, in cooperation with the Minister competent for social security shall determine, by means of an ordinance, the procedures for Police concerning measures set forth in (1) and (3) and the manner of recording the measures by Police, taking into consideration the need to provide effective support for children.

#### *Article 12b:*

1. The parents, legal guardians or the actual custodians shall have the right to file an appeal to the guardianship court against the removal of their child from them, as set forth in article 12a. The appeal may demand that justification and compliance with legal provisions, as well as manner of execution of the child's removal be investigated.

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Available

at

[https://www.legislationline.org/download/id/6835/file/Poland\\_act\\_counteracting\\_domestic\\_violence\\_2005\\_am2\\_012\\_en.pdf](https://www.legislationline.org/download/id/6835/file/Poland_act_counteracting_domestic_violence_2005_am2_012_en.pdf) (last visited, January 20, 2020).

2. The appeal may be submitted by the intermediary of a social worker or police officer who removed the child. In such a case the appeal shall be submitted to the guardianship court immediately.
3. The court shall investigate the appeal immediately, no later than within 24 hours. Should the child removal be deemed unjustified or illegal, the court shall determine immediate return of the child to the parents, legal or actual guardians the child had been removed from.
4. If the unjustified, illegal or incorrect child removal is determined, the court shall inform the superiors of the persons who removed the child about the fact

### Professional Secrecy Provisions

#### **Civil Code**

##### *Article 572:*

1. States that any person who is aware of an event that justifies the initiation of ex officio prosecution is obliged to inform the guardianship court thereof.
2. The above duty lies first of all on register offices, courts, prosecutors, notaries, bailiffs, local government bodies and government administrations, police, educational institutions, social workers, and organisations and institutions dealing with the care of children or mentally ill people.

### Code of Criminal Procedure<sup>92</sup>

##### *Article 304:*

§ 1. Whoever learns that an offence prosecuted has been committed, shall be under civic duty to inform the state prosecutor or the Police.

§ 2. State or local government institutions which in connection with their activities have been informed of an offence prosecuted, shall be obligated to immediately inform the state prosecutor or the Police thereof. In addition, they are obligated to take steps not amenable to delay, until the arrival of the officials of an agency authorised to prosecute such offences, or until that agency issues a suitable ruling in order to prevent the destruction of evidence of the offence.

**Act of 5 December 1996, The Professions of Doctor and Dentist** - although obliging a doctor/dentist to keep secret any information relating to the patient and obtained while performing his/her profession (Article 40.1), provides also for exceptional circumstances when the provisions Article 40.1 do not apply. These are, among others, when the laws so

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<sup>92</sup> Available at [https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997\\_am%202003\\_en.pdf](https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997_am%202003_en.pdf) (last visited, January 20, 2020).



provide (Article 40.2.1) or when respecting secrecy may be dangerous to the life or health of the patient or other persons (Article 40.2.3).

#### **4.3.21 PORTUGAL**

##### **Criminal Code (provision added by Law n. 83/2015)<sup>93</sup>**

###### *Article 144-A: Female Genital Mutilation*

1. Whoever genitally mutilates, totally or partially, a female person by clitoridectomy, infibulation, excision or any other harmful practice for the female genital organ for non-medical reasons shall be punished with imprisonment from 2 to 10 years.
2. The preparatory acts of the crime provided for in point (1) shall be punished by imprisonment for up to 3 years.

###### *Article 145: Qualified physical integrity offense*

1. If the offenses against physical integrity are done in circumstances that reveal special reprehensibility or perversity of the agent, the agent is punished with:
  - (b) imprisonment from 1 to 5 years in the case of Article 144-A (2);
  - (c) imprisonment from 3 to 12 years in the case of Article 144 and Article 144-A (1).
2. The circumstances referred to in Article 132 (2), among others, may reveal the special reprehensibility or perversity of the agent.

###### *Article 149: Consent*

3. The victim's consent of the acts provided in Article 144-A shall not in any way mitigate the unlawfulness of the act.

##### **Law 147/99 of 1 September - Protection of Children and Young People at Risk Act<sup>94</sup>**

###### *Article 3: Para 2.*

Considers that the child or youngster is in danger, for example, in one of following situations:

- (a) when the child lives by him/herself or has been abandoned;
- (b) when the child suffers physical or mental abuse or is the victim of sexual abuse;
- (c) when the child does not receive the care or affection appropriate to their age and personal situation;

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<sup>93</sup> Lei No. 83/2015 - Código Penal, available at <http://www.codigopenal.pt/> (last visited, October 9, 2017), unofficial translation, by FGM Compendium Team. .

<sup>94</sup> Available at [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=545&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=545&tabela=leis) (last visited, January 20, 2020). unofficial translation, by FGM Compendium Team. .

- (d) when the child is forced to perform activities or is required to work in a manner excessive or inappropriate to their age, dignity and personal situation or prejudicial to their personal education or development;
- (e) when the child is subjected, directly or indirectly, to behaviour that seriously affects his/her safety or emotional wellbeing;
- (f) when the child indulges in behaviour or activities or habits that damage seriously his/her health, safety, training, education or development and in case there is no action from the parents, legal guardian or whoever is responsible with the aim of removing the child from this situation.'

### Professional Secrecy provisions

#### Criminal Procedure Code<sup>95</sup>

##### *Article 242: Mandatory reporting*

- 1) Reporting is mandatory, even if the perpetrators are not known:
  - (a) for law enforcement authorities, for all crimes of which they come to know;
  - (b) for public functionaries, within the meaning of the Article 386 of the Penal Code, for information on crimes of which they come to know in the course of their occupational duties and activities.
- 2) When several persons are obliged to report the same crime, disclosure by one of them dismisses the disclosure by the remaining ones.
- 3) When referring to a crime for which the procedure requires a complaint or private accusation, reporting shall only give rise to an investigation if the complaint is filed within the period established by law.'

Health professionals, social workers, teachers, and policies and public servants in general have to report if they consider that a girl may be at risk of or has been subjected to FGM.

#### **4.3.22 UNITED KINGDOM (For England, Wales and Northern Ireland)**

##### Female Genital Mutilation Act 2003<sup>96</sup>

#### **1. Offence of female genital mutilation**

- (1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.
- (2) But no offence is committed by an approved person who performs—

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<sup>95</sup> Available at [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?tabela=leis&artigo\\_id=&nid=199&ficha=201&pagina=&nversao=&so\\_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?tabela=leis&artigo_id=&nid=199&ficha=201&pagina=&nversao=&so_miolo=) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

<sup>96</sup> Available at [http://www.legislation.gov.uk/ukpga/2003/31/pdfs/ukpga\\_20030031\\_en.pdf](http://www.legislation.gov.uk/ukpga/2003/31/pdfs/ukpga_20030031_en.pdf) (last visited, January 20, 2020).

- (a) a surgical operation on a girl which is necessary for her physical or mental health, or
  - (b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.
- (3) The following are approved persons—
- (a) in relation to an operation falling within subsection (2)(a), a registered medical practitioner,
  - (b) in relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.
- (4) There is also no offence committed by a person who—
- (a) performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and
  - (b) in relation to such an operation exercises functions corresponding to those of an approved person.
- (5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

## **2. Offence of assisting a girl to mutilate her own genitalia**

A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.

## **3. Offence of assisting a non-UK person to mutilate overseas a girl's genitalia**

- (1) A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom national or permanent United Kingdom resident to do a relevant act of female genital mutilation outside the United Kingdom.
- (2) An act is a relevant act of female genital mutilation if—
- (a) it is done in relation to a United Kingdom national or permanent United Kingdom resident, and
  - (b) it would, if done by such a person, constitute an offence under section 1.
- (3) But no offence is committed if the relevant act of female genital mutilation—
- (a) is a surgical operation falling within section 1(2)(a) or (b), and
  - (b) is performed by a person who, in relation to such an operation, is an approved person or exercises functions corresponding to those of an approved person.

## **4. Extension of sections 1 to 3 to extra-territorial acts**

- (1) Sections 1 to 3 extend to any act done outside the United Kingdom by a United Kingdom national or permanent United Kingdom resident.
- (2) If an offence under this Act is committed outside the United Kingdom—
  - (a) proceedings may be taken, and
  - (b) the offence may for incidental purposes be treated as having been committed, in any place in England and Wales or Northern Ireland.

## **5. Penalties for offences**

A person guilty of an offence under this Act is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both),
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

## **6. Definitions**

- (1) Girl includes woman.
- (2) A United Kingdom national is an individual who is—
  - (a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (3) A permanent United Kingdom resident is an individual who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 (c. 77)).
- (4) This section has effect for the purposes of this Act.

## **7. Consequential provision**

- (1) The Prohibition of Female Circumcision Act 1985 (c. 38) ceases to have effect.
- (2) In paragraph 1(b) of the Schedule to the Visiting Forces Act 1952 (c. 67) (offences against the person in respect of which a member of a visiting force may in certain circumstances not be tried by a United Kingdom court), for paragraph (xi) there is substituted— “(xi) the Female Genital Mutilation Act 2003;”

## **8. Short title, commencement, extent and general saving**

- (1) This Act may be cited as the Female Genital Mutilation Act 2003.
- (2) This Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) An order under subsection (2) may include transitional or saving provisions.
- (4) This Act does not extend to Scotland.

(5) Nothing in this Act affects any criminal liability arising apart from this Act.

**Protection Orders (as amended by the Serious Crime Act, 2015)**<sup>97</sup>

*Section 73 of the Serious Crime Act 2015 amended the Female Genital Mutilation Act to include FGM protection orders (FGMPOs)*

An FGM protection order is a civil measure which can be applied for through a family court. The FGM protection order offers the means of protecting actual or potential victims from FGM under the civil law.

Breach of an FGM protection order is a criminal offence carrying a sentence of up to 5 years in prison. As an alternative to criminal prosecution, a breach could be dealt with in the family court as a contempt of court, carrying a maximum of 2 years' imprisonment.

Applications for an order can be made by:

- the person who is to be protected by the order;
- a relevant third party (such as the local authority);
- any other person with the permission of the court (for example, teachers, health care professionals, police, family member).

**Mandatory reporting**

Section 74 of the Serious Crime Act 2015 amended the Female Genital Mutilation Act 2003 to introduce the legal duty for regulated health and social care professionals and teachers to make a report to the police if:

- they are informed by a girl under the age of 18 that she has undergone an act of FGM, or
- they observe physical signs that an act of FGM may have been carried out on a girl under the age of 18.

**4.3.23 SCOTLAND**

**Female Genital Mutilation Act (Scotland) 2005**<sup>98</sup>

**1. Offence of female genital mutilation**

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<sup>97</sup> See <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/female-genital-mutilation-fgm/legislation-policy-and-guidance/> (last visited, January 20, 2020).

<sup>98</sup> Female Genital Mutilation Act (Scotland) 2005, available at <https://www.legislation.gov.uk/asp/2005/8/introduction> (last visited, January 20, 2020).

- (1) A person who performs an action mentioned in subsection (2) in relation to the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of another person is guilty of an offence.
- (2) Those actions are—
  - (a) excising it;
  - (b) infibulating it; or
  - (c) otherwise mutilating it.
- (3) No offence under subsection (1) is committed by an approved person who performs an action mentioned in subsection (4).
- (4) Those actions are—
  - (a) a surgical operation on another person which is necessary for that other person's physical or mental health; or
  - (b) a surgical operation on another person who is in any stage of labour or has just given birth, for purposes connected with the labour or birth.
- (5) The following are, for the purposes of this Act, approved persons—
  - (a) in relation to an action falling within paragraph (a) of subsection (4), a registered medical practitioner;
  - (b) in relation to an action falling within paragraph (b) of that subsection, a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.
- (6) For the purposes of determining whether an operation is necessary for the mental health of a person, it is immaterial whether that or any other person believes that the operation is required as a matter of custom or ritual.

## **2. Modification of section 1**

- (1) The Scottish Ministers may by order modify section 1 so as to—
  - (a) add or remove an action to or from those actions for the time being listed in subsection (2) of that section;
  - (b) vary an action for the time being listed in that subsection;
  - (c) add an action to those for the time being listed in subsection (4) of that section and, in relation to that action, define “approved persons”;
  - (d) remove an action added under paragraph (c) and any related definition of “approved persons”; or
  - (e) vary—
    - (i) an action added under paragraph (c); or
    - (ii) any related definition of “approved persons”.
- (2) An order under this section is to be made by statutory instrument.
- (3) No such order is to be made unless a draft of it has been laid before and approved by a resolution of the Scottish Parliament.

## **3. Aiding and abetting female genital mutilation**

- (1) A person who aids, abets, counsels, procures or incites—
  - (a) a person to commit an offence under section 1;
  - (b) another person to perform an action mentioned in section 1(2) in relation to the whole or any part of that other person's own labia majora, labia minora, prepuce of the clitoris, clitoris or vagina; or
  - (c) a person who is not a United Kingdom national or a United Kingdom resident to do a relevant act of genital mutilation outside the United Kingdom, commits an offence.
- (2) An act is a relevant act of genital mutilation if it would, if done by a United Kingdom national or United Kingdom resident, constitute an offence under section 1.
- (3) No offence under subsection (1)(c) is committed if the relevant act of genital mutilation—
  - (a) is an action mentioned in section 1(4); and
  - (b) is performed by a person who, in relation to the action, is an approved person or provides services corresponding to those of an approved person.

#### **4. Extension of sections 1 and 3 to extra-territorial acts**

- (1) Sections 1 and 3 extend to any act done outside the United Kingdom by a United Kingdom national or United Kingdom resident.
- (2) No offence under section 1 is committed by a person who—
  - (a) outside the United Kingdom, performs an action mentioned in subsection (4) of that section; and
  - (b) in relation to the action, provides services corresponding to those of an approved person.
- (3) If an offence under this Act is committed outside the United Kingdom—
  - (a) it may be treated as having been committed in any place in Scotland; and
  - (b) proceedings may be taken accordingly.

#### **5. Penalties for offences**

A person guilty of an offence under this Act is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

#### **6. Definitions**

In this Act—

“United Kingdom national” is an individual who is—

- (a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen;

- (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
- (c) a British protected person within the meaning of that Act;

“United Kingdom resident” is an individual who is habitually resident in the United Kingdom.

#### **7. Amendment and repeal**

- (1) In Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c. 46) (offences against children under 17 to which special provisions apply), after paragraph 2 there is inserted—  
“2A Any offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005 where the person mutilated or, as the case may be, proposed to be mutilated, is a child under the age of 17 years.”.
- (2) The Prohibition of Female Circumcision Act 1985 (c. 38) is repealed.

#### **8. Short title and commencement**

- (1) This Act may be cited as the Prohibition of Female Genital Mutilation (Scotland) Act 2005.
- (2) This Act comes into force at the end of the period of two months beginning with the date of Royal Assent.

#### **4.3.24 ROMANIA**

##### **Criminal law**<sup>99</sup>

##### *Art. 193: Battery and other acts of violence*

- (1) Battery or any other acts of violence that cause physical suffering shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.
- (2) An act causing traumatic injuries or affecting the health of an individual, the seriousness of which is assessed based on medical-care days of maximum 90 days, shall be punishable by no less than 6 months and no more than 5 years of imprisonment or by a fine.
- (3) Criminal Proceedings shall be initiated upon prior complaint from the injured person.

##### *Art. 194: Bodily Harm*

- (1) The act referred to in Art. 193, that caused any of the following:
  - a) an impairment;

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<sup>99</sup> Available at [https://www.legislationline.org/download/id/8291/file/Romania\\_Penal%20Code\\_am2017\\_en.pdf](https://www.legislationline.org/download/id/8291/file/Romania_Penal%20Code_am2017_en.pdf) las accessed on January 20, 2020.



- b) traumatic injuries or health impairment of an individual the healing of which required more than 90 medical care days;
  - c) a serious and permanent aesthetic injury;
  - d) miscarriage;
  - e) endangering of an individual's life,
- shall be punishable by no less than 2 and no more than 7 years of imprisonment.
- (2) When such act was committed for the purpose of causing any of the consequences listed under par. (1), it shall be punishable by no less than 3 and no more than 10 years of imprisonment.
- (3) The attempt to commit the offense set under par. (2) shall be punishable.

**Order 1136/2007 issued by the Ministry of Public Health<sup>100</sup>**

*Annex 2, Article 7:*

Under sanction of penal and civil responsibility, any form of genital mutilation, as well as any other procedure which can be defined as female circumcision, is forbidden. It is irrelevant as to whether or not the woman consented

**4.3.25 SLOVAKIA**

**Penal Code, 2005<sup>101</sup>**

The principle of extraterritoriality is applicable, making FGM punishable even if it is committed outside the country.

*Article 123: Bodily harm*

- (1) For the purposes of this act, bodily harm means any damage to the health of another person.
- (2) For the purposes of this act, bodily injury means any damage to the health of another person requiring medical examination, intervention or cure and rendering the usual lifestyle of the injured impossible for a significant period of time.
- (3) For the purposes of this act, the following serious health problems and illnesses are considered grievous bodily harm:
  - (a) disability,
  - (b) loss of or significant limitation to working aptitude,
  - (c) paralysis of a limb,
  - (d) loss of or significant limitation to the function of sensorial organs,
  - (e) damage to an important organ,

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<sup>100</sup> See

<http://eige.europa.eu/sites/default/files/documents/Study%20to%20map%20the%20current%20situation%20and%20trends%20on%20FGM%20-Country%20reports%20-%20MH3212540ENN.pdf>, p. 390 (last visited, January 20, 2020).

<sup>101</sup> Available at [https://www.legislationline.org/download/id/3763/file/Slovakia\\_CC\\_2005\\_en.pdf](https://www.legislationline.org/download/id/3763/file/Slovakia_CC_2005_en.pdf) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

- (f) disfigurement,
  - (g) inducement of abortion or killing of the fetus,
  - (h) torture,
  - (i) health problems over an extended period of time.
- (4) For the purposes of this act, health problems over an extended period of time mean health problems objectively requiring cure or even work absence, for a period of at least 42 calendar days during which the usual lifestyle of the injured has been altered in an important way.

### **Child protection law**

*Article 27 of the Act No. 305/2005 on Social and Legal Protection of Children and Social Curatorship*

General child protection provisions could be used in cases of FGM. This provision refers to cases in which the life, health or physical and mental development of a child is endangered. Although subject to court permission, the Office of Social and Legal Protection of Children and Social Curatorship may suggest the suspension of parental authority or the removal of a child from the family.

### **Professional secrecy law**<sup>102</sup>

General laws with regard to professional secrecy and disclosure may be applied to report cases of performed or planned FGM. According to the Code of Ethics of Health Care Professionals, these professionals are obliged to report information on abuse and cruel treatment, especially when concerning a minor. In addition, according to Act No. 305/2005 on Social and Legal Protection of Children and Social Curatorship, everyone is obliged to report a violation of children's rights. Furthermore, not reporting a serious crime is punishable under the Penal Code. The bodies to which reports should be made are the police and the prosecution office.

### **4.3.26 SLOVENIA**

#### **Criminal Code, 2008 (amended 2009)**<sup>103</sup>

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<sup>102</sup> [http://eige.europa.eu/sites/default/files/documents/current\\_situation\\_and\\_trends\\_of\\_female\\_genital\\_mutilation\\_in\\_slovakia\\_en.pdf](http://eige.europa.eu/sites/default/files/documents/current_situation_and_trends_of_female_genital_mutilation_in_slovakia_en.pdf) (last visited, January 20, 2020).

<sup>103</sup> English translation available at [https://www.legislationline.org/download/id/3773/file/Slovenia\\_CC\\_2008\\_en.pdf](https://www.legislationline.org/download/id/3773/file/Slovenia_CC_2008_en.pdf) (last visited, January 20, 2020).

FGM not mentioned explicitly. FGM would be prosecuted under Article 123 (grievous bodily harm) and Article 124 (especially grievous bodily harm).<sup>104</sup>

*Art. 123:*

- (1) Whoever inflicts bodily harm on another person or damages his/her health to such an extent that this might place the life of the injured person in danger or cause the destruction or permanent serious impairment of an organ or part of the body, the temporary serious weakness of a vital part or organ of the body, the temporary loss of his ability to work, the permanent or serious temporary diminution of his ability to work, his temporary disfigurement, or serious temporary or less severe but permanent damage to the health of the injured person shall be sentenced to imprisonment for not less than six months and not more than five years.
- (2) If the injury under the preceding paragraph results in the death of the injured person the perpetrator shall be sentenced to imprisonment for not less than one and not more than ten years.
- (3) Whoever commits the offence under paragraph 1 of this Article by negligence shall be sentenced to imprisonment for not more than two years.
- (4) The perpetrator, who commits the offence under paragraphs 1 or 2 of this Article through no fault of his own and in the sudden heat of passion provoked by assault or grave insult from the injured person shall be sentenced to imprisonment for not more than three years.

*Art. 124:*

- (1) Whoever inflicts bodily harm on another or damages his health so gravely that this results in a risk to the life of the injured person, the destruction or substantial permanent impairment of any vital part or organ of the body, permanent loss of his ability to work, or serious permanent damage to his health shall be sentenced to imprisonment for not less than one and not more than ten years.
- (2) If the injury under the preceding paragraph results in the death of the injured person, the perpetrator shall be sentenced to imprisonment between three and fifteen years.
- (3) Whoever commits the offence under paragraph 1 of this Article by negligence shall be sentenced to imprisonment for not more than three years.
- (4) The perpetrator, who commits the offence under paragraphs 1 or 2 of this Article through no fault of his own and in a sudden heat of passion provoked by assault or

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<sup>104</sup>

See [http://eige.europa.eu/sites/default/files/documents/current\\_situation\\_and\\_trends\\_of\\_female\\_genital\\_mutilation\\_in\\_slovenia\\_en.pdf](http://eige.europa.eu/sites/default/files/documents/current_situation_and_trends_of_female_genital_mutilation_in_slovenia_en.pdf) (last visited, January 20, 2020).

grave insult from the injured person, shall be sentenced to imprisonment for not less than six months and not more than five years.

#### **Professional Secrecy Provisions - Patient Rights Code**

##### *Article 45:*

A doctor is permitted to report information about a patient's medical condition in order to save a patient's life or to prevent health damage to other persons. However, if a patient is a child, a doctor is obliged to report any suspected criminal offences against life and body (Chapter 15 of the Criminal Code), against sexual integrity (Chapter 19 of the Criminal Code) and against wedlock, family and youth (Chapter 21 of the Criminal Code).

#### **Family Violence Prevention Act**

##### *Article 6:*

Bodies and organizations, as well as NGOs, which encounter possible ongoing violence are obliged to inform the social work centre, unless a victim is explicitly against this action and if it is not the case of a suspected criminal offence. This paragraph of Article 6 applies in cases in which the victim is an adult. The second paragraph of Article 6 addresses situations in which the victim is a child. In such cases everybody, and especially workers in the medical, educational or care sectors, are obliged to contact the social work centre, police or prosecutor, despite their being bound to secrecy.

#### **4.3.27 SPAIN**

##### **Criminal Code**<sup>105</sup>

##### *Article 149:*

Whoever causes to another person, by any means or procedures, to forfeit or lose the use of a major organ or limb or a sense, or carry out an act that causes sexual impotence, sterility, serious deformity or to suffer a serious physical and mental illness, shall be punished with a sentence of imprisonment from six to twelve years.

Whoever causes to another person genital mutilation in any form shall be punished with a sentence of imprisonment from six to twelve years. Should the victim be a minor or incapacitated, the punishment of special barring from exercise of parental rights, guardianship, care, safekeeping or fosterage shall be applicable for a term from four to ten years, should the Judge deem it appropriate in the interest to the minor or incapacitated person.

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<sup>105</sup> Available at <https://www.boe.es/legislacion/codigos/codigo.php?id=38&modo=1&nota=0> (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

### Child Protection Laws<sup>106</sup>

#### **Organic Act 1/1996 on the Legal Protection of Minors**

Regulates the obligation of the state public agencies to intervene in case a minor's health or security is at risk, or when the minor has been abandoned.

#### **Civil Code, modified by the Organic Law 9/2000**

Article 158 allows judges to adopt preventive measures, especially relevant in cases of impending risk of FGM.

### Professional Secrecy Provision(s)<sup>107</sup>

#### **Criminal Code**

*Article 450* states that all persons have the duty to prevent a crime affecting a person's life, integrity or health, liberty or sexual liberty when possible and/or to report it to the public authorities. In case of non-reporting, the action shall be punishable with a term of imprisonment of 6 months to 2 years' in case of crimes affecting life and fines to be paid over a period of 6 months to 2 years in the other cases.

#### **Law on Criminal Procedure**

*Articles 262 and 263* of the Law on criminal procedure states that anyone who, due to their status or profession, has knowledge about a crime that has been committed, has a duty to report it. This duty is applicable to all professions with the exception of lawyers, examining magistrates and priests who have the right to keep professional secrecy.

### **4.3.28 SWEDEN**

#### Act prohibiting Female Genital Mutilation, 1982<sup>108</sup>

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<sup>106</sup> See [http://eige.europa.eu/sites/default/files/documents/current\\_situation\\_and\\_trends\\_of\\_female\\_genital\\_mutilation\\_in\\_spain\\_en.pdf](http://eige.europa.eu/sites/default/files/documents/current_situation_and_trends_of_female_genital_mutilation_in_spain_en.pdf) (last visited, January 20, 2020).

<sup>107</sup> See [http://eige.europa.eu/sites/default/files/documents/current\\_situation\\_and\\_trends\\_of\\_female\\_genital\\_mutilation\\_in\\_spain\\_en.pdf](http://eige.europa.eu/sites/default/files/documents/current_situation_and_trends_of_female_genital_mutilation_in_spain_en.pdf) (last visited, January 20, 2020).

<sup>108</sup> Lag (1982:316) med förbud mot könsstympning av kvinnor, available at [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1982316-med-forbud-mot-konsstympning-av\\_sfs-1982-316](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1982316-med-forbud-mot-konsstympning-av_sfs-1982-316) (last accessed on January 20, 2020). Unofficial translation by FGM Compendium Team.

*Section 1:*

Operations on the external female genital organs which are designed to mutilate them or produce other permanent changes in them (genital mutilation) must not take place, regardless of whether consent to this operation has or has not been given.

*Section 2:*

Anyone contravening Section 1 will be sent to prison for a maximum of four years. If the crime has resulted in danger to life or serious illness or has in some other way involved particularly reckless behavior, it is to be regarded as serious. The punishment for a serious crime is prison for a minimum of two and a maximum of ten years. Attempts, preparations, conspiracy and failure to report crimes are treated as criminal liability in accordance with section 23 of the Penal Code.

*Section 3:*

A person who violates this law is liable to prosecution in a Swedish court, even if Section 2 or 3 of Chapter 2 of the Penal Code is not applicable

#### **4.3.29 SWITZERLAND**

##### **Criminal Code, 1937**<sup>109</sup>

*Article 124 – Assault/Female Genital Mutilation:*

Female genital mutilation

1 Any person who mutilates the genitals of a female person, impairs their natural function seriously and permanently or damages them in some other way is liable to a custodial sentence not exceeding ten years or to a monetary penalty of no less than 180 daily penalty units.

2 Any person who has committed the offence abroad but is now in Switzerland and is not extradited is liable to the foregoing penalties. Article 7 paragraphs 4 and 5 apply.

*Article 260 bis, al. 1, let. C bis*

Acts preparatory to the commission of an offence

1 Any person who, in accordance with a plan, carries out specific technical or organisational measures, the nature and extent of which indicate that the offender intends to commit any of the offences listed below is liable to a custodial sentence not exceeding five years or to a monetary penalty:

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<sup>109</sup> Loi modifiant le Code pénal Suisse du 30 septembre 2011, available at <https://www.admin.ch/opc/fr/official-compilation/2012/2575.pdf> (last visited on January 20, 2020). English version available at <https://www.admin.ch/opc/en/classified-compilation/19370083/index.html> (last visited, January 20, 2020).

(...)

cbis.2 female genital mutilation (Art. 124);

#### 4.4 LATIN AMERICA AND THE CARIBBEAN

##### 4.4.1 BRAZIL<sup>110</sup>

###### Criminal Code<sup>111</sup>

###### **Bodily Injury**

*Article 129: To offend the bodily integrity or health of others.*

Penalty - detention, from three months to one year.

###### **Serious Bodily Injury**

*Paragraph 1.*

If it results in:

- I. Permanent incapacity to work;
- II. Incurable disease;
- III. Loss or disuse of the member, sense or function;
- IV. Permanent deformity;
- V. Abortion;

Penalty - imprisonment, from two to eight years.<sup>112</sup>

###### Law to Restrain Domestic Violence Against Women: Law n. 11.340/06<sup>113</sup>

*Article 7:*

The following are forms of domestic and family violence against women, among others:

- I. Physical violence, understood as any conduct that offends the woman's integrity or bodily health.

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<sup>110</sup> Brazil does not have an explicit law or provision regarding FGM, but there is a bill in the lower chamber of the Congress (Bill of Law n. 3344/2015) trying to specifically introduce Paragraphs 2-A and 13 to Article 129 of the Criminal Code, to explicitly define and criminalize FGM in Brazilian legislation. See at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2023864> (last visited, January 20, 2020).

<sup>111</sup> Decreto-Lei No. 2.848, de 7 de dezembro de 1940 - Código Penal, available at [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/De12848compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/De12848compilado.htm) (last visited, January 20, 2020), unofficial translation by FGM Compendium Team.

<sup>112</sup> Article 121 criminalizes homicide. According to paragraphs 4<sup>th</sup> and 6<sup>th</sup> of article 121, the penalty is increased by 1/3 (one third) if the offense is committed against a person less than 14 (fourteen) or greater than 60 (sixty).

<sup>113</sup> Lei No. 11.340, de 7 de agosto de 2006 - Lei da Violência Doméstica e Familiar Contra a Mulher, available at [http://www.planalto.gov.br/ccivil\\_03/ato2004-2006/2006/lei/l11340.htm](http://www.planalto.gov.br/ccivil_03/ato2004-2006/2006/lei/l11340.htm) (last visited, January 20, 2020), unofficial translation by FGM Compendium Team.

- III. Sexual violence, understood as any conduct that constrains the woman to witness, to maintain or to participate in unwanted sexual intercourse, through intimidation, threat, coercion or use of force; to induce the woman to sell or otherwise use her sexuality, to prevent her from using any method of contraception or to force her into marriage, pregnancy, abortion or prostitution, through coercion, blackmail, bribery or manipulation; or that limits or nullifies the exercise of their sexual and reproductive rights.

#### 4.4.2 COLOMBIA<sup>114</sup>

##### Criminal Code<sup>115</sup>

###### *Article 111: Personal Injuries*

Anyone who inflicts any damage to other's body or health will incur the penalties established in the following articles.

###### *Article 113: Deformity*

If the damage consists of a transitory physical deformity, the penalty shall be imprisonment from sixteen (16) to one hundred eight (108) months and a fine of twenty (20) to thirty-seven point five (37.5) minimum legal monthly wages in force.

If it is permanent, the penalty shall be imprisonment of thirty two (32) to a hundred and twenty-six (126 months) and a fine of thirty-four point sixty-six (34.66) to fifty-four (54) minimum legal monthly wages in force.

###### *Article 114: Functional disorder*

If the damage consists of a transitory functional disorder of an organ or limb, the penalty shall be imprisonment of thirty-two (32) to one hundred twenty-six (126) months and a fine of twenty (20) to thirty-seven point five (37.5) minimum legal monthly wages in force.

If permanent, the penalty shall be forty-eight (48) to one hundred forty-four (144) months of imprisonment and a fine of thirty-four point sixty-six (34.66) to fifty-four (54) minimum legal monthly wages in force.

###### *Article 116: Anatomical or functional loss of an organ or limb*

If the damage consists in the loss of the function of an organ or limb, the penalty shall be ninety-six (96) to one hundred eighty (180) months of imprisonment and a fine of thirty-three point thirty-three (33.33) to one hundred fifty (150) minimum legal monthly wages in force.

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<sup>114</sup> Colombia does not have an explicit law or provision regarding FGM, except when it results in death (femicide).

<sup>115</sup> Ley 599 de 2000, Código Penal, available at [http://www.secretariassenado.gov.co/senado/basedoc/ley\\_0599\\_2000\\_pr003.html#111](http://www.secretariassenado.gov.co/senado/basedoc/ley_0599_2000_pr003.html#111) (last visited, January 20, 2020), unofficial translation by FGM Compendium Team.



The previous penalty will be increased by up to one third in case of anatomical loss of the organ or limb.

*Article 104A: Femicide*

Whoever causes the death of a woman, by virtue of her status as a woman or because of her gender identity, or when any of the following circumstances has occurred or preceded, shall incur a prison term of two hundred fifty (250) months to five hundred (500) months:

- a) If the perpetrator has or has had a family relationship, intimate or cohabitation with the victim, friendship, fellowship or work and perpetrate a cycle of physical, sexual, psychological or patrimonial violence that preceded the crime against her.
- b) If the perpetrator exercises on the body and the life of the woman acts of instrumentalization of gender or sexuality or actions of oppression and dominion over her vital decisions and her sexuality.
- c) If the perpetrator commits the crime in the use of power relations over women, expressed in personal, economic, sexual, military, political or socio-cultural hierarchy.
- d) If the perpetrator commits the crime to generate terror or humiliation to those who are considered to be their enemies.
- e) If there are precedents or indications of any type of violence or threat in the domestic, family, work or school environment by the perpetrator against the victim or of gender violence committed by the perpetrator against the victim, regardless of whether the fact has been reported or not.
- f) If the victim has been held incommunicado or deprived of her freedom of movement, whatever the time prior to her death.

*Article 104B: Circumstances of punitive aggravation of femicide*

The penalty shall be five hundred (500) months to six hundred (600) months of imprisonment, if the femicide is committed:

- f) When the crime is committed after a sexual assault, to the performance of rituals, acts of genital mutilation or any other type of aggression or physical or psychological suffering.

[Law of Violence Against Women<sup>116</sup>](#)

*Article 2: Definition of violence against women*

Violence against women means any act or omission, which causes death, physical, sexual, psychological, economic or patrimonial damage or suffering due to their condition as a

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<sup>116</sup> Ley 1257 de 2008, "Por la cual se dictan normas de sensibilización, prevención y sanción de formas de violencia y discriminación contra las mujeres, se reforman los Códigos Penal, de Procedimiento Penal, la Ley 294 de 1996 y se dictan otras disposiciones", available at [http://www.secretariassenado.gov.co/senado/basedoc/ley\\_1257\\_2008.html](http://www.secretariassenado.gov.co/senado/basedoc/ley_1257_2008.html) (last visited, January 20, 2020), unofficial translation, by FGM Compendium Team.

woman, as well as threats of such acts, coercion or arbitrary deprivation of freedom, whether it occurs in the public or private sphere.

*Article 3: Concept of harm against women*

To interpret this law, the following definitions of damage are established:

- a) Psychological damage: Consequence coming from an action or omission aimed to degrade or control the actions, behaviors, beliefs and decisions of other people, through intimidation, manipulation, direct or indirect threat, humiliation, isolation or any other conduct that implies a prejudice in psychological health, self-determination or personal development.
- b) Physical damage or suffering: Risk or decrease in the bodily integrity of a person.
- c) Harm or sexual suffering: Consequences that come from the action of forcing a person to maintain sexualized, physical or verbal contact, or to participate in other sexual interactions through the use of force, intimidation, coercion, blackmail, bribery, manipulation, threat or any other mechanism that annuls or limits the personal will.

**4.4.3 MEXICO**  
[Criminal Code<sup>117</sup>](#)

**Chapter I – Injuries**

*Article 288:* Injury is understood as, not only the wounds, abrasions, contusions, fractures, dislocations, burns, but any alteration in health and any other damage that leaves a material trace in the human body, if those effects are produced by an external cause.

*Article 291:* An act which causes a lesion that permanently impairs the eyesight, or diminishes the ability to hear, or that interferes or permanently weakens a hand, a foot, an arm, a leg, or any other organ, the use of speech or any of the mental faculties shall be punishable by a term of imprisonment of three to five years and a fine of three hundred to five hundred pesos

*Article 292:* Shall be punished by a term of imprisonment of five to eight years, anyone who inflicts an injury that results in an incurable or probably incurable illness, impaired vision or loss of an eye, an arm, a hand, a leg or one foot, or any other organ; when it is damaged forever, any organic function or when the offended becomes deaf, impotent or with an incorrigible deformity.

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<sup>117</sup> Penal Code, available at <https://mexico.justia.com/federales/codigos/codigo-penal-federal/> (last visited, January 20, 2020), unofficial translation by FGM Compendium Team.

Shall be punished with six to ten years in prison, anyone who inflicts an injury that causes the victim to be permanently incapable to work, mentally disoriented, loses vision or speech or sexual functions.

*Article 293:* Anyone who inflicts injuries that endanger life shall be punishable by a term of imprisonment of three to six years, in addition to the corresponding sanctions described in the previous articles.

*Article 295:* If the act is carried out by and individual exercising parental authority or guardianship against minors or pupils under his care, the judge may impose, in addition to the penalty for injuries, suspension or deprivation in the exercise of those rights.

*Article 298:* The person responsible for a qualified injury will be penalized up to twice the penalty for the simple injury caused.

#### Chapter V – Femicide<sup>118</sup>

*Article 325:* Commits the crime of femicide who deprives a woman of life for reasons of gender.

It is considered that there are gender reasons when one of the following circumstances occurs:

- I. The victim shows signs of sexual violence of any kind.
- II. The victim has been inflicted with degrading injuries or mutilations, previous or subsequent to the deprivation of life or acts of necrophilia.
- III. There is a history of violence in the family, work or school, practiced by the perpetrator against the victim.
- IV. There has been a sentimental, affective or trusting relationship between the perpetrator and the victim.
- V. There are data that establish that there were threats related to the criminal act, harassment or injury of the active subject against the victim.
- VI. The victim has been held incommunicado, whatever the time prior to the deprivation of life.
- VII. The body of the victim is exposed or displayed in a public place.

Whoever commits the crime of femicide shall be punished by a term of imprisonment of forty to sixty years and with a fine ranging from five hundred to a thousand days.

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<sup>118</sup> “Decreto por el que se reforman y adicionan diversas disposiciones del Código Penal Federal, de la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia, de la Ley Orgánica de la Administración Pública Federal y de la Ley Orgánica de la Procuraduría General de la República”, available at [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5253274&fecha=14/06/2012](http://www.dof.gob.mx/nota_detalle.php?codigo=5253274&fecha=14/06/2012) (last visited, January 20, 2020), unofficial translation by FGM Compendium Team.

In addition to the sanctions described in this article, the perpetrator will lose all rights in relation to the victim, including those of a succession nature.

#### Law of Violence Against Women<sup>119</sup>

*Article 6:* The types of violence against women are:

**Physical violence.** Any act that inflicts non-accidental damage, using physical force or some type of weapon or object that may or may not cause injuries whether internal, external, or both.

**Sexual violence.** Any act that degrades or damages the body and/or sexuality of the victim and therefore undermines their freedom, dignity and physical integrity. It is an expression of abuse of power that implies male supremacy over women, by denigrating and conceiving it as an object.

Any other analogous forms that injure or are likely to damage the dignity, integrity or freedom of women.

#### *Article 7: Family violence*

Is the abusive act of power or intentional omission, directed to dominate, submit, control, or physically, verbally, psychologically, financially, economically and sexually assault women, inside or outside the family home, whose aggressor has or has had a relationship of kinship by consanguinity or affinity, of marriage, cohabitation or maintains or has maintained a de facto relationship<sup>120</sup>.

#### *Article 21: Femicide*

Is the extreme form of gender violence against women, product of the violation of their human rights, in the public and private spheres, consisting of misogynistic conducts that can imply social and state impunity and can culminate in homicide and other forms of violent death of women.

#### **4.4.4 PANAMA**

##### Criminal Code 2007<sup>121</sup>

#### **Section 2 – Personal Injuries**

*Article 136:* Whoever, without intent to kill, causes physical or psychological injuries to another person that incapacitate for a time ranging between thirty and sixty days shall be

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<sup>119</sup> “Ley General de Acceso de las Mujeres a una Vida Libre de Violencia”, available at [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV\\_130418.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV_130418.pdf) (last visited, December 9, 2017), unofficial translation by FGM Compendium Team.

<sup>120</sup> FGM is usually committed against children by family members, that is why it can be considered a type of family violence.

<sup>121</sup> Penal Code, 2007, available at [http://www.oas.org/juridico/pdfs/mesicic5\\_pan\\_res\\_ane\\_act\\_corr\\_2.pdf](http://www.oas.org/juridico/pdfs/mesicic5_pan_res_ane_act_corr_2.pdf) (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

punished with imprisonment from two to three years or its equivalent in daily fines or weekend arrest.

*Article 137:* The penalty shall be six to ten years' imprisonment if the injury causes:

1. incapacity exceeding sixty days
2. physical deformity or permanent signs to the face visible to the naked eye
3. incurable physical or psychological damage
4. serious weakening or loss of a sense, an organ, or a limb
5. premature delivery
6. impotence or loss of capacity to procreate
7. permanent incapacity to work

If the injury results from the use of fire guns in a public space

When the injury occurs: as a result of the use of a firearm in a public place or where there is habitual transit of persons or nearby residential areas; due to inconsequent reasons or in order to facilitate another punishable act, such as domestic violence or violence against women; against a public servant in the exercise of their functions; or with the aim to extract a vital organ from the victim – the term of imprisonment will be of twelve to fifteen years.

*Article 138:* If any of the injuries described in the previous article causes the death of the person, the penalty shall be four to eight years' imprisonment, provided that the means used and the location of the wound should not have reasonably caused it. In any other cases, the author is liable for murder.

*Article 138-A:* Whoever commits psychological violence against a woman through the use of threats, intimidation, blackmail, persecution, or harassment or obliges her to do or not to do something, tolerates exploitation or threatens, demands her to be obedient, humiliates her, isolates her or submits her to any other similar conduct shall be punished with a term of imprisonment ranging from five to eight years.

If the conduct described in the previous paragraph results in psychological damage, the penalty shall be increased by one third or by half of the maximum of the penalty.

*Article 139:* Whoever, negligently, injures another causing incapacity from thirty to sixty days shall be punished with imprisonment from six months to a year or its equivalent in daily fines or weekend arrest. If the disability exceeds sixty days, the penalty shall be one to two years' imprisonment or its equivalent in daily fines or weekend arrest.

The penalty shall be increased by half if from the injury results any of the circumstances set out in Article 137 of this Code.

#### 4.4.5 PERU

##### Criminal Code<sup>122</sup>

###### *Article 121: Serious injury*

Serious damage to the body or health will be punished with a term of imprisonment of four to eight years. Serious injuries are considered:

2. Those that mutilate a member or principal organ of the body or impair its function, cause to a person incapacity for work, permanent disability or psychic anomaly or disfigure it in a serious and permanent way.

When the victim dies as a result of the injury and if the agent could anticipate this result, the penalty shall be no less than eight or more than twelve years.

###### *Article 121A: Aggravated forms. Serious injury when the victim is a minor, senior, or disabled person*

In the cases provided in the first part of article 121, where the victim is a minor, older than sixty-five years old or suffers physical or mental disability and the agent takes advantage of such condition, the offence shall be punishable by a term of imprisonment ranging between six and twelve years.

When the victim dies as a result of the injury, and the agent may have foreseen that result, the offence shall be punishable by a term of imprisonment of no less than twelve nor greater than fifteen years.

###### *Article 121-B: Aggravated forms. Serious injury from violence against women and their family environment*

In the cases provided in the first part of article 121, the offence shall be punishable by a term of imprisonment of not less than six years and no more than twelve years when the victim:

1. is a woman and is injured due to her condition as a woman, in any of the contexts provided in the first subparagraph of article 108-B.
2. is ascendant, descendant, natural or adoptive, spouse or agent's cohabitant.
3. Dependent or subordinated.

When the victim dies as a result of the injury and the agent may have foreseen that result, the offence shall be punishable by a term of imprisonment of no less than twelve nor greater than fifteen years.

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<sup>122</sup> Criminal Code, available at [http://spij.minjus.gob.pe/content/publicaciones\\_oficiales/img/CODIGOPENAL.pdf](http://spij.minjus.gob.pe/content/publicaciones_oficiales/img/CODIGOPENAL.pdf) (last visited, January 20, 2020), Unofficial translation by FGM Compendium Team.

#### 4.4.6 TRINIDAD AND TOBAGO

[Children Act, 2012](#)<sup>123</sup>

##### PART IV

##### OFFENCE OF FEMALE GENITAL MUTILATION

9. (1) Subject to subsection (2), a person who excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of a child commits an offence and is liable—

- (a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or
- (b) on conviction on indictment, to imprisonment for twenty years.

(2) A person shall not be liable under subsection (1) if—

- (a) the performance of a surgical operation on a child is necessary for her physical or mental health and the operation is performed by a medical practitioner; or
- (b) the surgical operation is performed on a child who is at any stage of labour, or who has just given birth, for purposes connected with the labour or birth, and the operation is performed by a medical practitioner or a person undergoing a course of training with a view to becoming such a practitioner.

(3) For the purpose of determining whether an operation is necessary for the mental health of a child, it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

10. A person who aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her labia majora, labia minora or clitoris is liable on conviction on indictment to imprisonment for fifteen years.

#### 4.5 NORTHERN AFRICA AND MIDDLE-EAST

##### 4.5.1 ALGERIA

[Code Pénal](#)<sup>124</sup>

*Article 265:*

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<sup>123</sup> Available at [https://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/46.01.pdf](https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/46.01.pdf) (last visited, January 20, 2020).

<sup>124</sup> Code Pénal, available at <http://www.iordp.dz/TRV/FPenal.pdf> (last visited, January 20, 2020), Unofficial translation by Compendium Team.

When there has been premeditation or ambush, the penalty is, if death has followed, of perpetual imprisonment; if the violence has been followed by mutilation, amputation or deprivation of the use of a limb, blindness, loss of an eye or other permanent infirmities, the penalty is of imprisonment from ten (10) to twenty (20) years; in the case provided for in paragraph 1 of article 264, the penalty is of imprisonment from five (5) to ten (10) years.

*Article 267(3):*

Anyone who voluntarily injures or hurts his father or mother, or other legitimate ascendant, shall be punished as follows:

3. imprisonment from ten (10) to twenty (20) years, if the wounds or injuries were followed by mutilation, amputation or deprivation of the use of a limb, blindness, loss of one eye or other permanent injuries.

[Law No. 15-19 of December 30, 2015](#)<sup>125</sup>

*Article 2(Art. 266.bis(3)):*

The provisions of Order No. 66-156 June 8, 1966, supra, are supplemented by Articles 266 bis and 266 bis 1, as follows:

*Art. 266. Bis:*

Whoever voluntarily causes injuries or blows his spouse is punished as follows:

3. imprisonment from ten (10) to twenty (20) years, if the wounds or injuries were followed by mutilation, amputation or deprivation of the use of a limb, blindness, loss of an eye or other permanent injuries.

#### **4.5.2 BAHRAIN**

[Penal Code, 1976](#) <sup>126</sup>

*Article 75:*

Subject to the cases where the law provides for special causes for aggravation, the following shall be considered as aggravating circumstances:

- Committing an offence for contemptible motives.
- Committing an offence by seizing the opportunity of the victim's inability to resist and in circumstances preventing others from defending him.
- Using atrocious methods for committing the offence or mutilating the victim's body.

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<sup>125</sup> Loi n° 15-19 du 30 décembre 2015, available at <http://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf> (last visited, January 20, 2020), Unofficial translation by FGM Compendium Team.

<sup>126</sup> Available at [https://www.unodc.org/res/cld/document/bhr/1976/bahrain\\_penal\\_code\\_html/Bahrain\\_Penal\\_Code\\_1976.pdf](https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf) (last visited, January 20, 2020).



- The committing of the offence by a civil servant by reason of or while performing his duties unless the law prescribes a special penalty in view of his capacity.

#### 4.5.3 EGYPT

##### [Law No. 78 for 2016 amending article 242-bis of the Penal Code and introducing a new article 242-bis\(a\)](#)<sup>127</sup>

###### *Article 242-bis of the Penal Code:*

Taking into account the provisions of Article (61) of the Penal Code, and without prejudice to any other more severe penalty stipulated in another law, whoever performs circumcision (*khitan*) on a female by removing any of her exterior genital organs, partially or totally, or inflicts an injury to these organs without any medical necessity will be punished by imprisonment for a period of time of not less than five years and not to exceed seven years.

This penalty becomes maximum security imprisonment in the event that the act caused permanent disability or death.

###### *Article 242-bis(a) of the Penal Code:*

Whoever requests a *khitan* for a female and the *khitan* took place based on his or her request as stipulated in the provisions of Article (242) bis of this law, shall be punished by imprisonment for a period of not less than one year and not to exceed three years.

#### 4.5.4 IRAN

##### [Penal Code of the Islamic Republic of Iran](#)<sup>128</sup>

###### *Article 614:*

Anyone who commits an assault and battery against someone else that results in damaging or disabling a victim's limb or results in permanent illness or loss of a sense or ability or loss of mind, in cases where *qisas* is not possible, if the act disrupts public order and the safety of the society or it is thought that it emboldens the offender or others [to commit assault again], shall be sentenced to two to five years' imprisonment; and if the victim applies for it, shall be sentenced to *diya* as well.

Note- If the injury does not result in the abovementioned consequences, and the assault is committed with the use of a gun, a knife or with a similar weapon,, the offender shall be sentenced to three months to one year of imprisonment.

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<sup>127</sup> Available at <https://genderation.xyz/r/b/bd/2016> لسنة 78 لقانون رقم 78 (last visited, January 20, 2020). Unofficial translation by FGM Compendium Team.

<sup>128</sup> Penal Code of the Islamic Republic of Iran, available at <https://www.refworld.org/docid/518a19404.html>. Unofficial translation by Compendium Team.

#### 4.5.5 IRAQ

[Act of Combating Domestic Violence in Kurdistan Region - Iraq – Act No. 8 \(2011\)](#) <sup>129</sup>

*Article 2:*

First, any person, bound by a family relationship, is prohibited to commit an act of domestic violence including physical, sexual and psychological violence within the family. The following acts are regarded as examples of domestic violence acts:

4. Female Genital Mutilation

Second, the victim of domestic violence shall have guarantees to protect him/her from violence.

#### 4.5.6 KUWAIT

[Law 21 of 2015 on Children's Rights has no specific provisions on FGM. It covers children's rights in general, including bodily integrity and the prohibition of all forms of violence](#) <sup>130</sup>.

#### 4.5.7 YEMEN

In April 2014, a Child Rights bill that criminalizes FGM and stipulates prison sentences and fines for offenders was submitted for ministerial review<sup>131</sup>.

In the absence of a functioning government, the draft Child Rights Law that would criminalize child marriage and female genital mutilation is still pending<sup>132</sup>.

### 4.6 NORTH AMERICA

#### 4.6.1 USA

##### 4.6.1.1 FEDERAL LAW ON FGM/C

[18 U.S.C.A. § 116](#)

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

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<sup>129</sup> Act no. 8 of Combating Domestic Violence in Kurdistan Region – Iraq of June 21, 2011, available at [http://www.ekrg.org/files/pdf/combat\\_domestic\\_violence\\_english.pdf](http://www.ekrg.org/files/pdf/combat_domestic_violence_english.pdf) (last accessed on January 20, 2020), official translation.

<sup>130</sup> Law 21 of 2015 on Children's Rights, available at

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101761/122759/F341630514/K1.pdf> (last visited, January 20, 2020).

<sup>131</sup> <https://www.hrw.org/news/2015/02/10/human-rights-watch-submission-cedaw-committee-yemens-periodic-report-62th-session> (last visited, January 20, 2020).

<sup>132</sup> See <https://www.hrw.org/world-report/2017/country-chapters/yemen> (last visited, January 20, 2020).

- (b) A surgical operation is not a violation of this section if the operation is: (1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or (2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.
- (c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.
- (d) Whoever knowingly transports from the United States and its territories a person in foreign commerce for the purpose of conduct with regard to that person that would be a violation of subsection (a) if the conduct occurred within the United States, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both<sup>133</sup>.

#### **4.6.1.2 ARIZONA** **Criminal Code (2014)**

##### **13-1214. Unlawful mutilation; classification; definition**

- A. It is unlawful for a person to:
  - 1. Mutilate a female who is under eighteen years of age.
  - 2. Knowingly transport a female who is under eighteen years of age to another jurisdiction for the purpose of mutilation.
  - 3. Recklessly transport a female who is under eighteen years of age to another jurisdiction where mutilation is likely to occur.
- B. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of this section to pay a fine of not less than twenty-five thousand dollars.
- C. Unlawful mutilation is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, unlawful mutilation is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E.  
The term for a first offense is as follows:

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<sup>133</sup>18 U.S.C.A. § 116 is available at <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap7-sec116.pdf>, (last visited October 11, 2017)

COMPENDIUM OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS ON  
FEMALE GENITAL MUTILATION/CUTTING

Minimum	Presumptive	Maximum
5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

Minimum	Presumptive	Maximum
7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

Minimum	Presumptive	Maximum
14 years	15.75 years	28 years

- D. The sentence imposed on a person for unlawful mutilation shall be consecutive to any other unlawful mutilation sentence imposed on the person at any time.
- E. The consent of the minor on whom the mutilation is performed or the parents of the minor is not a defense to a prosecution for unlawful mutilation.
- F. For the purposes of this section, "mutilate" or "mutilation" means the partial or total removal of the clitoris, prepuce, labia minora, with or without excision of the labia major, the narrowing of the vaginal opening through the creation of a covering seal formed by cutting and repositioning the inner or outer labia, with or without removal of the clitoris, or any harmful procedure to the genitalia, including pricking, piercing, incising, scraping or cauterizing. Mutilate and mutilation do not include procedures performed by a licensed physician that are proven to be medically necessary due to a medically recognized condition<sup>134</sup>.

#### 4.6.1.3 ARKANSAS

[Arkansas Code Title 5 Criminal Offenses](#) <sup>135</sup> and [Senate Bill 318, 92<sup>nd</sup> General Assembly, Regular Session 2019](#) <sup>136</sup>

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<sup>134</sup> Criminal Code, 13-1214 is available at <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/13/01214.htm> and Senate Bill 1342 to revise the Criminal Code (13-3620) relating to FGM <https://www.azleg.gov/legtext/51leg/2r/bills/sb1342s.htm> (last visited October 18, 2017)

<sup>135</sup> Arkansas Code, 2019; Title 5 Criminal Offenses; Subtitle 2 Offenses Against the Person; Chapter 14 Sexual Assault; Section 5-14-136 Unlawful Female Genital Mutilation of a Minor, available at <https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=0f3ad338-e640-4dc2-9ad7-5e71779d7c41&nodeid=AAFAADAAFAACABG&nodepath=%2FROOT%2FAAF%2FAAFAAD%2FAAFAADAAFAAC%2FAAFAADAAFAACABG&level=5&haschildren=&populated=false&title=5-14-136.+Unlawful+female+genital+mutilation+of+a+minor.&config=00JAA2ZiM2VhNS0wNTVlTQ3NzUtYjQzYy0yYwZmODJiODRmMDYKAFBvZENhdGFsb2FxiYCNsel0pIlggpYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5VV5-DJ90-R03M-X26Y-00008-00&ecomp=h3t7kkk&prid=621ec96e-8a7d-4b7c-8bbd-6c3966372528> (last visited on January 20, 2020).

<sup>136</sup> State of Arkansas, Senate Bill 318 (2019) – An act to prohibit unlawful female genital mutilation of a minor, available at <http://www.arkleg.state.ar.us/assembly/2019/2019R/Bills/SB318.pdf> (last visited on January 20, 2020).

Subtitle 2 Offenses Against the Person

Chapter 14 Sexual Offenses

Section 5-14-136 Unlawful Female Genital Mutilation of a Minor

(a) As used in this section, "female genital mutilation" means a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including without limitation:

- (1) A clitoridectomy;
- (2) The partial or total removal of the clitoris or the prepuce;
- (3) The excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;
- (4) The infibulation or 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;
- (5) Pricking, piercing, incising, scraping, or cauterizing the genital area; or
- (6) Any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

(b) A person commits the offense of unlawful female genital mutilation of a minor if he or she:

- (1) Knowingly performs female genital mutilation on a minor;
- (2) Is a parent or guardian or has immediate custody or control of a minor and knowingly consents to, permits, or facilitates female genital mutilation of the minor; or
- (3) Knowingly removes or causes, permits, or facilitates the removal of a minor from this state for the purpose of facilitating the female genital mutilation of the minor.

(c) Unlawful female genital mutilation of a minor is a Class C felony.

(d) It is not a defense under this section that:

- (1) The unlawful conduct is required as a matter of religion, custom, ritual, or standard practice; or
- (2) The minor's parent or guardian consented to the female genital mutilation.

(e) It is not a violation of this section if the acts or conduct that otherwise would be considered female genital mutilation occurred in the furtherance of a surgical or other lawful medical procedure, performed by a licensed medical professional, and:

- (1) Was necessary to preserve or protect the physical health of the minor upon whom the surgical or other lawful medical procedure was performed; or
- (2) Was part of a sex reassignment procedure as requested by the minor who was the patient in the sex reassignment procedure.

(f) The statute of limitation for an offense under this section does not begin to run until the victim of the offense reaches eighteen (18) years of age or when the violation of this section is first reported to a law enforcement agency, whichever occurs first.

**4.6.1.4 CALIFORNIA**

[Penal Code \(1997\)](#)

273.4.

- (a) If the act constituting a felony violation of subdivision (a) of Section 273a was female genital mutilation, as defined in subdivision (b), the defendant shall be punished by an additional term of imprisonment in the state prison for one year, in addition and consecutive to the punishment prescribed by Section 273a.
- (b) "Female genital mutilation" means the excision or infibulation of the labia majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.
- (c) Nothing in this section shall preclude prosecution under Section 203, 205, or 206 or any other provision of law<sup>137</sup>.

**4.6.1.5 COLORADO**  
**[Criminal Code \(1999\)](#)**

**18-6-401. Child abuse**

- (1) (a) A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.
- (b) (I) Except as otherwise provided in subparagraph (III) of this paragraph (b), a person commits child abuse if such person excises or infibulates, in whole or in part, the labia majora, labia minora, vulva, or clitoris of a female child. A parent, guardian, or other person legally responsible for a female child or charged with the care or custody of a female child commits child abuse if he or she allows the excision or infibulation, in whole or in part, of such child's labia majora, labia minora, vulva, or clitoris.
- (II) Belief that the conduct described in subparagraph (I) of this paragraph (b) is required as a matter of custom, ritual, or standard practice or consent to the conduct by the child on whom it is performed or by the child's parent or legal guardian shall not be an affirmative defense to a charge of child abuse under this paragraph (b).

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<sup>137</sup>Penal Code, 273.4. is available at [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=273.4](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=273.4) (last visited October 13, 2017) and California State Prohibition of Female Genital Mutilation Act (1996) [http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab\\_2101-2150/ab\\_2125\\_bill\\_960923\\_chaptered.html](http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_2101-2150/ab_2125_bill_960923_chaptered.html) (last visited October 11, 2017)

- (III) A surgical procedure as described in subparagraph (I) of this paragraph (b) is not a crime if the procedure: (a) Is necessary to preserve the health of the child on whom it is performed and is performed by a person licensed to practice medicine under article 36 of title 12, C.R.S.; or (b) Is performed on a child who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed to practice medicine under article 36 of title 12, C.R.S.<sup>138</sup>.

#### **4.6.1.6 DELAWARE** [Criminal Code \(1996\)](#)

##### **780. Female genital mutilation**

- (A) A person is guilty of female genital mutilation when:
- (1) A person knowingly circumcises, excises or infibulates the whole or any part of the labia majora, labia minora or clitoris of a female minor; or
  - (2) A parent, guardian or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision or infibulation, in whole or in part, of such minor's labia majora, labia minora or clitoris.
- (B) Female genital mutilation is a class E felony.
- (C) It is not a defense to a violation that the conduct described in subsection (a) of this section above is required as a matter of custom, ritual or standard practice, or that the minor on whom it is performed or the minor's parent or legal guardian consented to the procedure.
- (D) A surgical procedure is not a violation of this section if the procedure is:
- (1) Necessary to the health of the minor on whom it is performed and is performed by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician; or
  - (2) Performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician, or a licensed midwife under § 3336 of Title 18<sup>139</sup>.

#### **4.6.1.7 FLORIDA** [Criminal Code \(2007\)](#)

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<sup>138</sup>Criminal Code, 18-6-401 is available at <https://leg.colorado.gov/sites/default/files/images/olls/crs2016-title-18.pdf> (last visited October 16, 2017)

<sup>139</sup>Criminal Code, 780 is available at <http://www.delcode.delaware.gov/title11/c005/sc02/index.shtml> (last visited October 16, 2017)

*794.08. Female genital mutilation*

- (1) As used in this section, the term “female genital mutilation” means the circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of a female person.
- (2) A person who knowingly commits, or attempts to commit, female genital mutilation upon a female person younger than 18 years of age commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) A person who knowingly removes, or causes or permits the removal of, a female person younger than 18 years of age from this state for purposes of committing female genital mutilation commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (4) A person who is a parent, a guardian, or in a position of familial or custodial authority to a female person younger than 18 years of age and who knowingly consents to or permits the female genital mutilation of that female person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (5) This section does not apply to procedures performed by or under the direction of a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a registered nurse licensed under part I of chapter 464, a practical nurse licensed under part I of chapter 464, an advanced registered nurse practitioner licensed under part I of chapter 464, a midwife licensed under chapter 467, or a physician assistant licensed under chapter 458 or chapter 459 when necessary to preserve the physical health of a female person. This section also does not apply to any autopsy or limited dissection conducted pursuant to chapter 406.
- (6) Consent of a female person younger than 18 years of age or the consent of a parent, guardian, or person who is in a position of familial or custodial authority to the female person younger than 18 years of age is not a defense to the offense of female genital mutilation<sup>140</sup>.

**4.6.1.8 GEORGIA**  
**[Criminal Code \(2005\)](#)**

*16-5-27. Female Genital Mutilation*

- a. Any person: (1) Who knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under 18 years of age; (2)

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<sup>140</sup> Criminal Code, 794.08 is available at [http://www.leg.state.fl.us/STATUTES/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0700-0799/0794/Sections/0794.08.html](http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0794/Sections/0794.08.html) (last visited October 16, 2017 and [http://laws.firules.org/files/Ch\\_2007-245.pdf](http://laws.firules.org/files/Ch_2007-245.pdf) (last visited October 18, 2017)



Who is a parent, guardian, or has immediate custody or control of a female under 18 years of age and knowingly consents to or permits the circumcision, excision, or infibulation, in whole or in part, of the labia majora, labia minora, or clitoris of such female; or (3) Who knowingly removes or causes or permits the removal of a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female shall be guilty of female genital mutilation.

- b. A person convicted of female genital mutilation shall be punished by imprisonment for not less than five nor more than 20 years.
- c. This Code section shall not apply to procedures performed by or under the direction of a physician, a registered professional nurse, a certified nurse midwife, or a licensed practical nurse licensed pursuant to Chapter 34 or 26, respectively, of Title 43 when necessary to preserve the physical health of the female. This Code section shall also not apply to any autopsy or limited dissection as defined by Code Section 45-16-21 which is conducted in accordance with Article 2 of Chapter 16 of Title 45.
- d. Consent of the female under 18 years of age or the parent, guardian, or custodian of the female under 18 years of age shall not be a defense to the offense of female genital mutilation. Religion, ritual, custom, or standard practice shall not be a defense to the offense of female genital mutilation.
- e. The statutory privileges provided by Chapter 5 of Title 24 shall not apply to proceedings in which one of the parties to the privilege is charged with a crime against a female under 18 years of age, but such person shall be compellable to give evidence only on the specific act for which the accused is charged<sup>141</sup>.

#### 4.6.1.9 IDAHO

[Idaho Statutes; Title 18 Crimes and Punishments](#) <sup>142</sup>

##### Chapter 15 Children and Vulnerable Adults

Section 18-1506B. FEMALE GENITAL MUTILATION — EXCLUSIONS — PENALTIES — DEFINITION. (1) Except as provided in subsection (2) of this section, whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a child shall be guilty of a felony.

(2) A surgical operation shall not be a violation of this section if the operation is:

- (a) Necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner; or

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<sup>141</sup> Criminal Code, 16-5-27 is available at <http://ga.elaws.us/law/section16-5-27>

<sup>142</sup> Legislature of the State of Idaho, 2019; Title 18 Crimes and Punishments; Chapter 15 Children and Vulnerable Adults; Section 18-1506B Female Genital Mutilation, available at <https://legislature.idaho.gov/statutesrules/idstat/Title18/T18CH15/SECT18-1506B/> (last visited on January 20, 2020).

(b) Performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

(3) In applying subsection (2)(a) of this section, no account shall be taken of the effect on the person on whom the operation is to be performed or any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

(4) Any person convicted of a violation of this section shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than life.

(5) For the purposes of this section, "child" means any person under eighteen (18) years of age.

#### **4.6.1.10 ILLINOIS** **[Criminal Code \(1998\)](#)**

*Sec. 12-34. Female genital mutilation.*

- A. Except as otherwise permitted in subsection (b), whoever knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of another commits female genital mutilation. Consent to the procedure by a minor on whom it is performed or by the minor's parent or guardian is not a defense to a violation of this Section.
- B. A surgical procedure is not a violation of subsection (a) if the procedure is performed by a physician licensed to practice medicine in all its branches and: (1) is necessary to the health of the person on whom it is performed; or (2) is performed on a person who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.
- C. Sentence. Female genital mutilation is a Class X felony.<sup>143</sup>

#### **4.6.1.11 IOWA** **[Iowa Code; Title XVI – Criminal Law and Procedure](#) <sup>144</sup>**

Chapter 708 Assault

708.16 Female genital mutilation

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<sup>143</sup> Criminal Code, 12-34 is available at <http://ilga.gov/legislation/ilcs/ilcs4.asp?DocName=072000050HArt%2E+12%2C+Subdiv%2E+25&ActID=1876&ChapterID=53&SeqStart=29700000&SeqEnd=30300000> (last visited October 11, 2017)

<sup>144</sup> Iowa Code, 2020; Title XVI Criminal law and Procedure; Chapter 708 Assault, Section 16 Female genital mutilation, available at <https://www.legis.iowa.gov/docs/code/708.pdf> (last visited ...)

1. Except as otherwise provided in subsection 2, a person who knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a minor commits a class “D” felony.
2. A surgical procedure is not a violation of subsection 1 if the procedure is performed  
Thu Dec 05 12:14:36 2019 Iowa Code 2020, Chapter 708 (26, 2)  
11 ASSAULT, §708.16  
by a medical professional who holds a current license in this state necessary to perform the surgical procedure under any of the following circumstances:
  - a. When necessary to protect the health of the minor on whom the procedure is performed.
  - b. When performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.
3. In determining whether a surgical procedure performed pursuant to subsection 2, paragraph “a”, is a violation of subsection 1, consideration shall not be given to any belief the minor or any other person holds that the surgical procedure is required based on custom or ritual.
4. A person who knowingly transports a minor within or outside of this state for the purpose of performing a procedure that would be a violation of subsection 1 if the procedure occurred in this state, commits a class “D” felony.  
2019 Acts, ch 47, §1 Required education campaign to increase awareness and to develop educational programming for physicians; 2019 Acts, ch 47, §2, 3

#### **4.6.1.12 KANSAS**

##### **Criminal Code (2013)**

###### *21-5431. Female genital mutilation*

- (a) Female genital mutilation is:
  - (1) Knowingly circumcising, excising, or infibulating the whole or any part of the labia majora, labia minora or clitoris of a female under 18 years of age;
  - (2) removing a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating the whole or any part of the labia majora, labia minora or clitoris of such female; or
  - (3) causing or permitting another to perform the conduct described in subsection (a)(1) or (a)(2) when the person causing or permitting such conduct is the parent, legal guardian or caretaker of the victim.
- (b) Female genital mutilation is a severity level 3, person felony.
- (c) The provisions of this section shall not apply if:
  - (1) the physical health of the female under 18 years of age makes circumcising, excising or infibulating the whole or any part of her labia majora, labia minora or clitoris medically necessary pursuant to the order of a physician, and such procedure is performed by a physician; or
  - (2) the female under 18 years of age is in labor or has just given birth, and such labor or birth makes circumcising, excising or infibulating the whole or any part of her labia majora, labia minora or clitoris medically necessary

pursuant to the order of a physician, and such procedure is performed by a physician.

- (d) It shall not be a defense that the conduct described in subsection (a):
  - (1) is required as a matter of custom, ritual or religious practice; or
  - (2) that the victim, or such victim's parent, legal guardian or caretaker consented to the procedure.
- (e) As used in this section:
  - (1) "Caretaker" means any person that willfully assumes responsibility for the care of a female under the age of 18; and
  - (2) "physician" means any person licensed by the state board of healing arts to practice medicine and surgery<sup>145</sup>.

**4.6.1.13 LOUISIANA**  
**Criminal Code (2012)**

*43.4. Female genital mutilation*

- A. A person is guilty of female genital mutilation when any of the following occur:
  - (1) The person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a female minor.
  - (2) The parent, guardian, or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision, or infibulation, in whole or in part, of such minor's labia majora, labia minora, or clitoris.
  - (3) The person knowingly removes or causes or permits the removal of a female minor from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female.
- B. It shall not be a defense to prosecution for a violation of this Section that the conduct described in Subsection A of this Section is required as a matter of custom, ritual, or religious practice, or that the minor on whom it is performed, or the minor's parent or legal guardian, consented to the procedure.
- C. If the action described in Subsection A of this Section is performed by a licensed physician during a surgical procedure, it shall not be a violation of this Section if either of the following is true:
  - (1) The procedure is necessary to the physical health of the minor on whom it is performed.

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<sup>145</sup>Criminal Code,21-5431 is available at [http://www.ksrevisor.org/statutes/chapters/ch21/021\\_054\\_0031.html](http://www.ksrevisor.org/statutes/chapters/ch21/021_054_0031.html)  
(last visited December 20, 2017)

- (2) The procedure is performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.
- D. Whoever commits the crime of female genital mutilation shall be punished by imprisonment, with or without hard labor, for not more than fifteen years<sup>146</sup>.

#### 4.6.1.14 MARYLAND

##### [Maryland Health Statutes \(1998\)](#)

###### *20–601. Health General Section*

- (a) Except as provided in § 20-602 of this subtitle, a person who knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of an individual who is under the age of 18 years is guilty of female genital mutilation.
- (b) Except as provided in § 20-602 of this subtitle, a parent, guardian, or other individual is guilty of female genital mutilation if the individual:
  - (1) Is legally responsible and charged with the care or custody of a child under the age of 18 years; and
  - (2) Knowingly consents to the circumcision, excision, or infibulation of the whole or any part of the labia majora or labia minora or clitoris of the child<sup>147</sup>.

#### 4.6.1.15 MICHIGAN

##### [Penal Code \(2017\)](#)

###### *750.136. Female genital mutilation*

- (1) A person shall not knowingly circumcise, excise, or infibulate the whole or any part of the labia majora or labia minora or clitoris of another person who is less than 18 years of age.
- (2) A surgical operation is not a violation of this section if the operation is either of the following:
  - (a) Necessary to the health of the person on whom it is performed and is performed by a person licensed to perform that operation under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
  - (b) Performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed

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<sup>146</sup> Criminal Code, 43.4 is available at <https://legis.la.gov/Legis/Law.aspx?d=78535> (last visited October 16, 2017)

<sup>147</sup> Maryland Health Statutes §20-601 is available at <http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=ghg&section=20-601&ext=html&session=2018RS&tab=subject5> (last visited October 16, 2017)

to perform that operation under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

- (3) A person shall not knowingly facilitate a violation of subsection (1).
- (4) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 15 years.
- (5) It is not a defense to prosecution under this section that the person on whom the operation is performed, or any other person, believes that the operation is required as a matter of custom or ritual, or that the person on whom the operation is performed, or that person's parent or guardian, consented to the operation.
- (6) A violation of this section by a person licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, is grounds for permanent revocation of that license.
- (7) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of this section.

*750.136a: Transportation of person for purposes of circumcision, excision, or infibulation of labia majora, labia minora, or clitoris; prohibitions*

- (1) A person shall not knowingly transport a person from this state for the purpose of conduct with regard to that person that would be a violation of section 1361 if the conduct occurred in this state.
- (2) A person shall not knowingly facilitate a violation of subsection (1).
- (3) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 15 years.
- (4) It is not a defense to prosecution under this section that the person on whom the operation is performed, or any other person, believes that the operation is required as a matter of custom or ritual, or that the person on whom the operation is performed, or that person's parent or guardian, consented to the operation.
- (5) A violation of this section by a person licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, is grounds for permanent revocation of that license.
- (6) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of this section<sup>148</sup>.

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<sup>148</sup>Penal Code, 750.136 available at [http://www.legislature.mi.gov/\(S\(qfje5akro1nni31hv3vvh3yb\)\)/mileg.aspx?page=getobject&objectname=mcl-750-136-added&query=on&highlight=female%20AND%20genital%20AND%20mutilation](http://www.legislature.mi.gov/(S(qfje5akro1nni31hv3vvh3yb))/mileg.aspx?page=getobject&objectname=mcl-750-136-added&query=on&highlight=female%20AND%20genital%20AND%20mutilation) and Public Health Code (Section 333.9159. added Development of educational program and dissemination of information on female genital mutilation): [http://www.legislature.mi.gov/\(S\(qfje5akro1nni31hv3vvh3yb\)\)/mileg.aspx?page=getobject&objectname=mcl-333-9159-added&query=on&highlight=female%20AND%20genital%20AND%20mutilation](http://www.legislature.mi.gov/(S(qfje5akro1nni31hv3vvh3yb))/mileg.aspx?page=getobject&objectname=mcl-333-9159-added&query=on&highlight=female%20AND%20genital%20AND%20mutilation) (last visited October 18, 2017)

#### 4.6.1.16 MINNESOTA

##### Criminal Code (1994)

###### *609.2245. Female genital mutilation; Penalties*

###### **Crime**

Except as otherwise permitted in subdivision 2, whoever knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of another is guilty of a felony. Consent to the procedure by a minor on whom it is performed or by the minor's parent is not a defense to a violation of this subdivision.

###### **Permitted activities**

A surgical procedure is not a violation of subdivision 1 if the procedure:

- (1) is necessary to the health of the person on whom it is performed and is performed by: (i) a physician licensed under chapter 147; (ii) a physician in training under the supervision of a licensed physician; or (iii) a certified nurse midwife practicing within the nurse midwife's legal scope of practice; or
- (2) is performed on a person who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth: (i) by a physician licensed under chapter 147; (ii) a physician in training under the supervision of a licensed physician; or (iii) a certified nurse midwife practicing within the nurse midwife's legal scope of practice<sup>149</sup>.

#### 4.6.1.17 MISSOURI

##### Criminal Code (2000)

###### *568.065. Genital mutilation of a female child, penalty — affirmative defenses*

1. A person commits the offense of genital mutilation if he or she:
  - (1) Excises or infibulates, in whole or in part, the labia majora, labia minora, vulva or clitoris of a female child less than seventeen years of age; or
  - (2) Is a parent, guardian or other person legally responsible for a female child less than seventeen years of age and permits the excision or infibulation, in whole or in part, of the labia majora, labia minora, vulva or clitoris of such female child.
2. The offense of genital mutilation is a class B felony.
3. Belief that the conduct described in subsection 1 of this section is required as a matter of custom, ritual or standard practice, or consent to the conduct by the child on whom it is performed or by the child's parent or legal guardian, shall not be an affirmative defense to a charge pursuant to this section.

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<sup>149</sup>Criminal Code, 609.2245 is available at <https://www.revisor.mn.gov/statutes/?id=609.2245> (last visited October 12, 2017)

4. It is a defense if the conduct which constitutes genital mutilation was:
  - (1) Necessary to preserve the health of the child on whom it is performed and is performed by a person licensed to practice medicine in this state; or
  - (2) Performed on a child who is in labor or who has just given birth and is performed for medical purposes connected with such labor or birth by a person licensed to practice medicine in this state<sup>150</sup>.

#### **4.6.1.18 NEVADA**

##### **Criminal Code (1997)**

###### *NRS 200.5083. Mutilation of genitalia of female child: Penalties; definitions*

1. A person who willfully:
  - (a) Mutilates, or aids, abets, encourages or participates in the mutilation of the genitalia of a female child; or
  - (b) Removes a female child from this State for the purpose of mutilating the genitalia of the child, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.
2. It is not a defense that:
  - (a) The person engaging in the conduct prohibited by subsection 1 believes that the conduct is necessary or appropriate as a matter of custom, ritual or standard practice; or
  - (b) The child, the parent or legal guardian of the child, or another person legally responsible for the child has consented to the conduct prohibited by subsection 1.
3. As used in this section:
  - (a) "Child" means a person who is under 18 years of age.
  - (b) "Mutilates the genitalia of a female child" means the removal or infibulation in whole or in part of the clitoris, vulva, labia major or labia minor for nonmedical purposes<sup>151</sup>.

#### **4.6.1.19 NEW HAMPSHIRE**

##### **Title LXII Criminal Code**<sup>152</sup>

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<sup>150</sup>Criminal Code, 568.065 is available at <http://revisor.mo.gov/main/OneSection.aspx?section=568.065&bid=29515&hl>, (last visited October 12, 2017)

<sup>151</sup> Criminal code, NRS200.5083 is available at <https://www.leg.state.nv.us/NRS/NRS-200.html#NRS200Sec5083> (last visited October 12, 2017)

<sup>152</sup> New Hampshire Revised Statutes, 2019; Title LXII Criminal Code; Chapter 632-A Sexual Assault and Related Offenses; Section 632-A:10-d Female Genital Mutilation, available at <http://www.gencourt.state.nh.us/rsa/html/LXII/632-A/632-A-10-d.htm> (last visited ...)



## Chapter 632-A Sexual Assault and related Offenses

### Section 632-A:10-d Female Genital Mutilation.

I. A person is guilty of a class A felony if:

(a) The person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a female minor.

(b) The parent, guardian, or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision, or infibulation, in whole or in part, of such minor's labia majora, labia minora, or clitoris.

(c) The person knowingly removes or causes or permits the removal of a female minor from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female.

II. It shall not be a defense to prosecution for a violation of this section that the conduct described in paragraph I is required as a matter of custom, ritual, or religious practice, or that the minor on whom it is performed, or the minor's parent or legal guardian, consented to the procedure.

III. If the action described in paragraph I is performed by a licensed physician during a surgical procedure, it shall not be a violation of this section if:

(a) The procedure is necessary to the physical health of the minor on whom it is performed; or

(b) The procedure is performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.

IV. Any child subjected to conduct prohibited by paragraph I, but which is not justified pursuant to paragraph III, shall be considered an abused child pursuant to RSA 169-C:3, II

#### **4.6.1.20 NEW JERSEY**

##### **[Criminal Code \(2014\)](#)**

#### *2C:24-10: Female genital mutilation of females under 18 years of age, third degree crime*

1.a. Except as otherwise provided in this section, a person is guilty of a crime of the third degree if the person:

(1) knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under 18 years of age;

(2) is a parent, guardian, or has immediate custody or control of a female under 18 years of age and knowingly consents to, or permits the circumcision, excision, or infibulation, in whole or in part of, the labia majora, labia minora, or clitoris of a female under 18 years of age; or

(3) knowingly removes or permits the removal of a female under 18 years of age from the State for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of the female under 18 years of age.

- b. The provisions of subsection a. of this section shall not apply if the circumcision, excision, or infibulation is:
- (1) necessary to the health of the female on whom it is performed and it is performed by a licensed health care professional acting within the scope of the professional's license; or
  - (2) performed on a female in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed health care professional acting within the scope of the professional's license or by a person in training to become such a licensed health care professional.
- c. It shall not be a defense to a prosecution under this section that:
- (1) the person engaging in the conduct prohibited by subsection a. of this section believed that the procedure was necessary or appropriate as a matter of custom, ritual, or standard practice; or
  - (2) the female on whom the circumcision, excision, or infibulation was performed, or the female's parent, guardian, or person who had immediate custody or control over the female, consented to the procedure<sup>153</sup>.

#### **4.6.1.21 NEW YORK**

##### **Penal Law (1997)**

###### *130.85 Female genital mutilation*

1. A person is guilty of female genital mutilation when:
  - (a) a person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not reached eighteen years of age; or
  - (b) being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than eighteen years old, he or she knowingly consents to the circumcision, excision or infibulation of whole or part of such child's labia majora or labia minora or clitoris.
2. Such circumcision, excision, or infibulation is not a violation of this section if such act is:
  - (a) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or
  - (b) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

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<sup>153</sup>Criminal Code, 2C:24-10 is available at <https://law.justia.com/codes/new-jersey/2014/title-2c/section-2c-24-10/> (last visited October 17, 2017)

3. For the purposes of paragraph (a) of subdivision two of this section, no account shall be taken of the effect on the person on whom such procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual.

Female genital mutilation is a class E felony<sup>154</sup>

#### **4.6.1.22 NORTH CAROLINA**

[Senate Bill DRS45008-ML-19A – Session 2019](#)<sup>155</sup>

A BILL TO BE ENTITLED AN ACT TO CLARIFY THE PROHIBITION ON THE MUTILATION OF THE GENITALS OF A FEMALE UNDER THE AGE OF 18 YEARS.<sup>156</sup>

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-28.1. Female genital mutilation.

(a) Violation; Penalty. – Except as provided in subsection (b) of this section, it is a Class C felony to do any of the following:

(1) Knowingly circumcise, excise, or infibulate the whole or any part of the labia majora, labia minora, or clitoris of another person who has not attained the age of 18 years.

(2) For a parent, guardian, or other person responsible for the care of a minor, consent to the circumcision, excision, or infibulation, in whole or in any part, of the labia majora, labia minora, or clitoris of the minor.

(3) For a parent, guardian, or other person responsible for the care of a minor, knowingly remove or cause or permit the removal of the minor from the State for the purpose of having the minor's labia majora, labia minora, or clitoris circumcised, excised, or infibulated.

(b) Exception. – A surgical operation is not a violation of subsection (a) of this section if the operation meets either of the following requirements:

(1) The operation is necessary to the health of the person on whom it is performed and is performed by a person licensed in the State as a medical practitioner.

(2) The operation is performed on a person in labor who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in this State as a medical practitioner or certified nurse midwife, or a person in training to become licensed as a medical practitioner or certified nurse midwife.

(c) No Defense. – It is not a defense to prosecution under subsection (a) of this section that the person on whom the circumcision, excision, or infibulation is performed, or any other

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<sup>154</sup> Penal law 130.85 is available at <https://law.justia.com/codes/new-york/2015/pen/part-3/title-h/article-130/130.85/> (last visited January 23, 2018)

<sup>155</sup> General Assembly of North Carolina, 2019; Female Genital Mutilation/Clarify Prohibition, available at <https://webservices.ncleg.net/ViewBillDocument/2019/35/0/DRS45008-ML-19A> (last visited ...)

<sup>156</sup> This is the senate bill text because the online NC Statutes do not yet reflect this addition to the Criminal Law chapter at the time of this writing.

person, believes that the circumcision, excision, or infibulation is required as a matter of custom or ritual, or that the person on whom the circumcision, excision, or infibulation is performed consented to the circumcision, excision, or infibulation."

SECTION 2. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 3. This act becomes effective December 1, 2019, and applies to offenses committed on or after that date.

#### **4.6.1.23 NORTH DAKOTA**

##### **Criminal Code (1995) –**

###### *Section 12.1-36-01. Female Genital Mutilation*

1. Except as provided in subsection 2, any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony.
2. A surgical operation is not a violation of this section if a licensed medical practitioner performs the operation to correct an anatomical abnormality or to remove diseased tissue that is an immediate threat to the health of the female minor. In applying this subsection, any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration<sup>157</sup>.

#### **4.6.1.24 OHIO**

##### **Senate Bill 214** <sup>158</sup>

*Short Title:* **Prohibit female genital mutilation**

*Long Title:* **To amend sections 149.43 and 149.45 and to enact section 2903.32 of the Revised Code to exclude from the definition of public record under the Public Records Law any depiction by photograph, film, videotape, or digital, visual, or printed material of victims of crime under specified circumstances dealing with the victims' bodily privacy, to exclude from that definition specified residential and familial information regarding county or multicounty corrections officers, prohibit female genital mutilation.**

**Title 29 Crimes – Procedure, Chapter 2903 Homicide and assault**

*Sec. 2903.32.*

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<sup>157</sup>Criminal Code, 12.2-36-01 is available at <http://www.legis.nd.gov/cencode/t12-1c36.html> (last visited October 12, 2017)

<sup>158</sup> Ohio Legislature – Senate Bill 214: Prohibit female genital mutilation, available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-214> (last visited 1/25/2019)

- (A) (1) No person shall knowingly circumcise, excise, or infibulate any part of the labia majora or labia minora or clitoris of another person who is under the age of eighteen. Am. S. B. No. 214 132nd G.A. 17
- (A) (2) No person shall knowingly transport a minor to a facility or location for the purpose of facilitating the commission of an offense prohibited by division (A)(1) of this section.
- (B) Whoever violates this section is guilty of female genital mutilation, a felony of the second degree. In addition to any prison term authorized by section 2929.14 of the Revised Code and any fine authorized by section 2929.18 of the Revised Code, the court shall impose on the offender an additional fine of up to twenty-five thousand dollars.
- (C) This section does not apply to a procedure performed for medical purposes if the act is performed by a physician or licensed health care professional and the act is within the scope of the actor's license.
- (D) None of the following are defenses to a violation of this section: (1) Cultural or ritual necessity; (2) Consent of the minor; (3) Consent of the parent or guardian of the minor.
- (E) As used in this section: (1) "Physician" means a person authorized under Chapter 4731 of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery. (2) "Licensed health care professional" means an individual, other than a physician, who is authorized under Title XLVII of the Revised Code to practice a health care profession.

**4.6.1.25 OKLAHOMA**  
**[Criminal Code \(2013\)](#)**

*21-760. Female Genital Mutilation*

- A. Female genital mutilation shall be unlawful in the State of Oklahoma. Whoever knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of another shall, upon conviction, be guilty of a felony punishable by incarceration in the custody of the Department of Corrections for a term of not less than three (3) years nor more than life and a fine of not more than Twenty Thousand Dollars (\$20,000.00). Consent to the procedure by a minor on whom it is performed or by the parent or parents of the minor is not a defense to a violation of this subsection.
- B. A surgical procedure is not a violation of subsection A of this section if the procedure:
  - 1. Is necessary as a recognized treatment for a known disease or for purposes of cosmetic surgery to repair a defect or injury for the person on whom it is performed and is performed by:
    - (a) a licensed physician, or
    - (b) a physician in training under the supervision of a licensed physician;
  - or

2. Is necessary in the assistance of childbirth or for medical purposes connected with that labor or birth and is performed by:
  - (a) a licensed physician,
  - (b) a physician in training under the supervision of a licensed physician, or
  - (c) a certified nurse-midwife.
- C. Any physician, physician in training, certified nurse-midwife or any other medical professional who performs or participates in a female genital mutilation procedure shall, in addition to the penalties in subsection A of this section, have the professional license or certification of the person permanently revoked<sup>159</sup>.

#### **4.6.1.26 OREGON**

##### **Criminal Procedure (1999)**

###### *163.207. Female Genital Mutilation*

- (1) A person commits the crime of female genital mutilation if the person:
  - (a) Knowingly circumcises, excises or infibulates the whole or any part of the labia majora, labia minora or clitoris of a child; or
  - (b) Is the parent, guardian or other person legally responsible for the care or custody of a child and knowingly allows the circumcision, excision or infibulation of the whole or any part of the child's labia majora, labia minora or clitoris.
- (2) Female genital mutilation is a Class B felony.
- (3) (a) A person who circumcises, excises or infibulates the whole or any part of a child's labia majora, labia minora or clitoris does not violate subsection (1) of this section if:
  - (A) The person is a physician, licensed to practice in this state; and
  - (B) The surgery is medically necessary for the physical well-being of the child.
- (b) In determining medical necessity for purposes of paragraph (a)(B) of this subsection, a person may not consider the effect on the child of the child's belief that the surgery is required as a matter of custom or ritual<sup>160</sup>.

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<sup>159</sup> Criminal Code, 21-760 is available at <https://law.justia.com/codes/oklahoma/2014/title-21/section-21-760/> (last visited October 17, 2017)

<sup>160</sup> Criminal Procedure, 163.207 available at <https://www.oregonlaws.org/ors/163.207> (last visited October 12, 2017).

Note: [163.207 \(Female genital mutilation\)](#) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

#### 4.6.1.27 PENNSYLVANIA

##### [Title 18 Crimes and Offenses](#) <sup>161</sup>

##### Chapter 31 Sexual Offenses Subchapter B Definition of Offenses

##### § 3132. Female mutilation.

(a) Offense defined.--A person commits the offense of female mutilation if the person:

(1) knowingly circumcises, excises or infibulates the whole or any part of the genitalia of a minor;

(2) is a parent of a minor and the parent knowingly consents or permits the circumcision, excision or infibulation of the whole or any part of the minor's genitalia; or

(3) knowingly removes or permits the removal of a minor from this Commonwealth for the purpose of circumcising, excising or infibulating, in whole or in part, the genitalia of the minor.

(b) Grading.--Female mutilation is a felony of the first degree.

(c) Exception.--The provisions of subsection (a) shall not apply if the circumcision, excision or infibulation is:

(1) necessary to the health of the minor on whom it is performed and either is performed by a physician or is performed in the presence of a physician by a person in training to become a physician in accordance with the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, or the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985; or

(2) performed on a minor in labor or who has just given birth and is performed for medical reasons connected with that labor or birth by a physician or in the presence of a physician by a person in training to become a physician in accordance with the Osteopathic Medical Practice Act or the Medical Practice Act of 1985.

(d) Custom or consent not a defense.--It shall not be a defense to a prosecution under this section that:

(1) the actor believed that the procedure was necessary or appropriate as a matter of custom, ritual or standard practice; or

(2) the minor upon whom the circumcision, excision or infibulation was performed consented to the procedure or that the minor's parent consented to the procedure.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Minor." A natural person who is a female under 18 years of age.

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<sup>161</sup> Statutes of Pennsylvania, 2019; Title 18 Crimes and Offenses; Chapter 31 Sexual Offenses; § 3132. Female mutilation, available at <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=31&sctn=32&subsctn=0> (last visited January 20, 2020).

"Parent." The term includes a natural parent, stepparent, adoptive parent, guardian or custodian of the minor.

(June 28, 2019, P.L.210, No.21, eff. 60 days)

2019 Amendment. Act 21 added section 3132

#### **4.6.1.28 RHODE ISLAND**

##### **Felony Assault, part of the Criminal Offenses Statute (1996)**

###### *11-5-2. Felony assault:*

- (a) Every person who shall make an assault or battery, or both, with a dangerous weapon, or with acid or other dangerous substance, or by fire, or an assault or battery which results in serious bodily injury, shall be punished by imprisonment for not more than twenty (20) years.
- (b) Where the provisions of "The Domestic Violence Prevention Act", chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in § 12-29-5.
- (c) "Serious bodily injury" means physical injury that:
  - (1) Creates a substantial risk of death;
  - (2) Causes protracted loss or impairment of the function of any bodily part, member or organ; or
  - (3) Causes serious permanent disfigurement or circumcises, excises or infibulates the whole or any part of the labia majora or labia minora or clitoris of a person<sup>162</sup>.

#### **4.6.1.29 SOUTH CAROLINA**

##### **Title 16 – Crimes and Offenses**<sup>163</sup>

###### Chapter 3 – Offenses Against the Person

###### Article 20 - Female Genital Mutilation

###### SECTION 16-3-2210. Definitions.

For purposes of this article:

- (1) "Facilitate" means to raise, solicit, collect, or provide material support or resources with intent that such will be used, in whole or in part, to plan, prepare, carry out, or aid in any act of female genital mutilation or hindering the prosecution of an act of female genital mutilation, or the concealment of an act of female genital mutilation.

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<sup>162</sup> Felony Assault, part of the Criminal Offenses Statute (1996)11-5-2 available at <http://webserver.rilin.state.ri.us/Statutes/TITLE11/11-5/11-5-2.HTM> (last visited December 24, 2017)

<sup>163</sup> South Carolina Code of Laws Unannotated, 2019; Title 16 Crimes and Offenses; Chapter 3 Offenses Against the Person; Article 20 Female Genital Mutilation, Section 16-3-2210, available at <https://www.scstatehouse.gov/code/t16c003.php> (last visited on January 20, 2020).



- (2) "Female genital mutilation" or "mutilation" means:
- (a) the partial or total removal of the clitoris, prepuce, or labia minora, with or without excision of the labia majora; or
  - (b) the narrowing of the vaginal opening through the creation of a covering seal formed by cutting and repositioning the inner or outer labia, with or without the removal of the clitoris.
- (3) "Health care professional" means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.
- (4) "Hindering the prosecution of female genital mutilation" means actions to include, but not be limited to:
- (a) harboring or concealing a person who is known or believed to be planning to commit an act of female genital mutilation;
  - (b) warning a person who is known or believed to be planning to commit an act of female genital mutilation of impending discovery or apprehension; or
  - (c) suppressing any physical evidence that might aid in the discovery or apprehension of a person who is known or believed to be planning to commit an act of female genital mutilation.
- (5) "Material support or resources" means currency or other financial securities, financial services, instruments of value, lodging, training, false documentation or identification, medical equipment, computer equipment, software, facilities, personnel, transportation, or other physical assets.
- (6) "Mutilate" means to commit female genital mutilation or mutilation.
- (7) "Unable to consent" means unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item.

SECTION 16-3-2220. Female mutilation; penalty.

- (A) It is unlawful for a person to:
- (1) knowingly mutilate or attempt to mutilate a female who is under eighteen years of age or who is unable to consent;
  - (2) knowingly facilitate the mutilation of a female who is under eighteen years of age or who is unable to consent; or
  - (3) knowingly transport or facilitate the transportation of a female who is under eighteen years of age or who is unable to consent from this State for the purpose of mutilation.

(B) Any person who violates the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than twenty thousand dollars or imprisoned not more than twenty years, or both.

(C) Section 63-5-330 does not apply to this chapter.

SECTION 16-3-2230. Defenses not applicable to violations of this article; procedures excepted from this article; revocation of professional license or certification.

(A) It is not a defense to prosecution for a violation of this article that a female genital mutilation procedure is:

(1) required as a matter of belief, custom, or ritual;

(2) consented to by the minor or female who is unable to consent on whom the procedure is performed; or

(3) consented to by the parent or legal guardian of the minor or female who is unable to consent on whom the procedure is performed.

(B) A procedure involving female genital mutilation is not a violation of this article if it is:

(1) necessary to the physical health of the minor or female who is unable to consent on whom it is performed; or

(2) performed on a minor or female who is unable to consent who is in labor or who has just given birth for medical purposes connected with that labor or birth.

(C) A physician, physician-in-training, nurse, certified nurse-midwife, or any other medical professional who performs, participates in, or facilitates a female genital mutilation procedure which does not fall under one of the exceptions listed in subsection (B), in addition to the criminal penalties provided in this article, shall have his professional license or certification permanently revoked.

SECTION 16-3-2240. Charges, conviction, or punishment for other violations of law arising out of same occurrence.

The provisions of this article do not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction or occurrence as the violation of this article.

#### **4.6.1.30 SOUTH DAKOTA**

##### **[Criminal Code \(2015\)](#)**

*22-18-37. Female genital mutilation--Felony. It is a Class 4 felony for any person:*

(1) To knowingly circumcise, excise, mutilate, or infibulate, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of eighteen years;

(2) Who is a parent, guardian, or has immediate custody or control of a female under the age of eighteen years to knowingly consent to or permit the circumcision, excision, mutilation, or infibulation, in whole or in part, of the labia majora, labia minora, or clitoris of such female; or

(3) To knowingly remove, cause, or permit the removal of a female under the age of eighteen years from this state for the purpose of circumcising, excising, mutilating,

or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female<sup>164</sup>.

#### **4.6.1.31 TENNESSEE**

##### **Criminal Offenses (1996)**

###### *39-13-110 Female genital mutilation*

- (a) Except as otherwise permitted in subsection (b), whoever knowingly circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of another commits a Class D felony. Consent to the procedure by a minor on whom it is performed or by the minor's parent is not a defense to a violation of this section.
- (b) A surgical procedure is not a violation of subsection (a), if the procedure is:
  - (1) Necessary to the health of the person on whom it is performed and is performed by a licensed physician or physician-in-training under supervision of a licensed physician; or
  - (2) Performed on a person who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed physician or a physician-in-training under the supervision of a licensed physician<sup>165</sup>.

#### **4.6.1.32 TEXAS**

##### **Health and Safety Code (1999)**

###### **Chapter 167. Female genital mutilation**

###### *167.001. Female Genital Mutilation Prohibited*

- (a) A person commits an offense if the person knowingly circumcises, excises, or infibulates any part of the labia majora or labia minora or clitoris of another person who is younger than 18 years of age.
- (b) An offense under this section is a state jail felony.
- (c) It is a defense to prosecution under Subsection (a) that:
  - (1) the person performing the act is a physician or other licensed health care professional and the act is within the scope of the person's license; and
  - (2) the act is performed for medical purposes.
- (d) It is not a defense to prosecution under this section that:
  - (1) the person on whom the circumcision, excision, or infibulation was performed or was to be performed, or another person authorized to consent

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<sup>164</sup> Criminal Code, 22-18-37 is available at <https://law.justia.com/codes/south-dakota/2015/title-22/chapter-18/section-22-18-37> (last visited December 24, 2017)

<sup>165</sup> Criminal Offenses, 39-13-110 is available at <http://www.lexisnexis.com/hottopic/tncode/> (last visited December 24, 2017)

- to medical treatment of that person, including that person's parent or legal guardian, consented to the circumcision, excision, or infibulation;
- (2) the circumcision, excision, or infibulation is required by a custom or practice of a particular group; or
  - (3) the circumcision, excision, or infibulation was performed or was to be performed as part of or in connection with a religious or other ritual<sup>166</sup>.

#### **4.6.1.33 UTAH**

##### **Title 76 Criminal Code** <sup>167</sup>

##### Chapter 5 Offenses Against the Person Part 7 Genital Mutilation

###### 76-5-701. Female genital mutilation definition.

(1) As used in this part, female genital mutilation means any procedure that involves partial or total removal of the external female genitalia, or any harmful procedure to the female genitalia, including:

- (a) clitoridectomy;
- (b) the partial or total removal of the clitoris or the prepuce;
- (c) excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;
- (d) infibulation or 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;
- (e) pricking, piercing, incising, or scraping, and cauterizing the genital area; or
- (f) any other actions intended to alter the structure or function of the female genitalia for non-medical reasons.

(2) Female genital mutilation is considered a form of child abuse for mandatory reporting under Section 62A-4a-403.

###### 76-5-702. Prohibition on female genital mutilation -- Exceptions.

(1) It is a second degree felony for any person to:

- (a) perform a procedure described in Section 76-5-701 on a female under 18 years of age;
- (b) give permission for or permit a procedure described in Section 76-5-701 to be performed on a female under 18 years of age; or
- (c) remove or cause, permit, or facilitate the removal of a female under 18 years of age from this state for the purpose of facilitating the performance of a procedure described in Section 76-5-701 on the female.

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<sup>166</sup> Health and Safety Code, 167.001 is available at <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.167.htm> (last visited October 12, 2017)

<sup>167</sup> Utah Code, 2019; Title 76 Criminal Code; Chapter 5 Offenses Against the Person; Part 7 Genital Mutilation, available at <https://le.utah.gov/xcode/Title76/Chapter5/76-5-P7.html> (last visited ...)

(2) It is not a defense to female genital mutilation that the conduct described in Section 76-5-701 is required as a matter of religion, custom, ritual, or standard practice, or that the individual on whom it is performed or the individual's parent or guardian consented to the procedure.

(3) A surgical procedure is not a violation of Section 76-5-701 if the procedure is performed by a physician licensed as a medical professional in the place it is performed and is:

(a) medically advisable;

(b) necessary to preserve or protect the physical health of the person on whom it is performed; or

(c) requested for sex reassignment surgery by the person on whom it is performed.

(4) A medical professional licensed in accordance with Title 58, Chapter 31b, Nurse Practice Act, Chapter 67, Utah Medical Practice Act, Chapter 68, Utah Osteopathic Medical Practice Act, or Chapter 70a, Utah Physician Assistant Act, who is convicted of a violation of this section shall have their license permanently revoked by the appropriate licensing board.

76-5-703. Community Education Program.

(1) The director of the Department of Health shall develop a community education program regarding female genital mutilation.

(2) The program shall include:

(a) education, prevention, and outreach materials regarding the health risks and emotional trauma inflicted by the practice of female genital mutilation;

(b) ways to develop and disseminate information regarding recognizing the risk factors associated with female genital mutilation; and

(c) training materials for law enforcement, teachers, and others who are mandated reporters under Section 62A-4a-403, encompassing:

(i) risk factors associated with female genital mutilation;

(ii) signs that an individual may be a victim of female genital mutilation;

(iii) best practices for responses to victims of female genital mutilation; and

(iv) the criminal penalties associated with the facilitation or commission of female genital mutilation.

76-5-704. Civil cause of action.

(1) A victim of female genital mutilation may bring a civil action in any court of competent jurisdiction for female genital mutilation any time within 10 years of:

(a) the procedure being performed; or

(b) the victim's 18th birthday.

(2) The court may award actual, compensatory, and punitive damages, and any other appropriate relief.

(3) A prevailing plaintiff shall be awarded attorney fees and costs.

(4) Treble damages may be awarded if the plaintiff proves the defendant's acts were willful and malicious.

(5) If a health care provider is charged and prosecuted for a violation of Section 76-5-702, Section 78B-3-416 may not apply to an action against the health care provider under this section.

#### **4.6.1.34 VIRGINIA**

##### **Crimes and Offenses (2017)**

###### *18.2-51.7. Female genital mutilation*

- A. Any person who knowingly circumcises, excises, or infibulates, in whole or in any part, the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years is guilty of a Class 1 misdemeanor.
- B. Any parent, guardian, or other person responsible for the care of a minor who consents to the circumcision, excision, or infibulation, in whole or in any part, of the labia majora or labia minora or clitoris of such minor is guilty of a Class 1 misdemeanor.
- C. Any parent, guardian, or other person responsible for the care of a minor who knowingly removes or causes or permits the removal of such minor from the Commonwealth for the purposes of committing an offense under subsection A is guilty of a Class 1 misdemeanor.
- D. A surgical operation is not a violation of this section if the operation is: (i) necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner or (ii) performed on a person in labor who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife<sup>168</sup>.

#### **4.6.1.35 WEST VIRGINIA**

##### **Crimes and Their Punishment (1999)**

###### *61-8D-3a. Female genital mutilation; penalties; definitions*

- (a) Except as otherwise provided in subsection (b) of this section, any person who circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of a female under the age of eighteen, or any parent, guardian or custodian of a female under the age of eighteen who allows the circumcision, excision or infibulation, in whole or in part, of such female's labia majora, labia minora or clitoris, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and fined not less than one thousand dollars nor more than five thousand dollars.
- (b) A surgical procedure is not a violation of this section if the procedure:
  - (1) Is necessary to preserve the health of the child on whom it is performed and is performed by a licensed medical professional authorized to practice medicine in this state; or

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<sup>168</sup>Crimes and Offenses,18.2-51.7. is available at<https://law.lis.virginia.gov/vacode/18.2-51.7>, Bill – SB 1060 Female genital mutilation, <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=171&typ=bil&val=SB1060> (last visited October 18, 2017)

- (2) The procedure is performed on a child who is in labor or has just given birth and is performed for legitimate medical purposes connected with that labor or birth by a licensed medical professional authorized to practice medicine in this state.
- (c) A person's belief that the conduct described in subsection (a) of this section: (i) is required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female on which the circumcision, excision or infibulation was performed shall not constitute a defense to criminal prosecution under subsection (a) of this section<sup>169</sup>.

#### **4.6.1.36 WISCONSIN**

##### **Public Health Code (1996)**

###### *146.35. Female genital mutilation prohibited*

- (1) In this section, "infibulate" means to clasp together with buckles or stitches.
- (2) Except as provided in sub. (3), no person may circumcise, excise or infibulate the labia majora, labia minora or clitoris of a female minor.
- (3) Subsection (2) does not apply if the circumcision, excision or infibulation is performed by a physician, as defined in s. 448.01 (5), and is necessary for the health of the female minor or is necessary to correct an anatomical abnormality.
- (4) None of the following may be asserted as a defense to prosecution for a violation of sub. (2):
  - (a) Consent by the female minor or by a parent of the female minor to the circumcision, excision or infibulation.
  - (b) The circumcision, excision or infibulation is required as a matter of custom or ritual.
- (5) Whoever violates sub. (2) is guilty of a Class H felony<sup>170</sup>.

#### **4.6.2 CANADA**

##### **Criminal Code**<sup>171</sup>

###### **Part VIII (Offences against the Person and Reputation)**

###### *Section 215. Duties Tending to Preservation of Life*

###### *Duty of persons to provide necessities*

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<sup>169</sup> Crimes and Their Punishment 61-8D-3a is available at <http://www.legis.state.wv.us/wvcode/chapterentire.cfm?chap=61&art=8D&section=3a#01> and [http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=61&art=8D\\_](http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=61&art=8D_) (last visited October 13, 2017)

<sup>170</sup> Public Health Code, 146.35 is available at <https://docs.legis.wisconsin.gov/statutes/statutes/146/35> (last visited December 24, 2017)

<sup>171</sup> Criminal Code, available at <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-51.html - h-74> (last visited, October 15, 2017)

- (1) Every one is under a legal duty:
  - (a) as a parent, foster parent, guardian or head of a family, to provide necessaries of life for a child under the age of sixteen years;
  - (b) to provide necessaries of life to their spouse or common-law partner; and
  - (c) to provide necessaries of life to a person under his charge if that person:
    - (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
    - (ii) is unable to provide himself with necessaries of life.

*Offence*

- (2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if
  - (a) with respect to a duty imposed by paragraph (1)(a) or (b),
    - (i) the person to whom the duty is owed is in destitute or necessitous circumstances, or
    - (ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or
  - (b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

*Punishment*

- (3) Every one who commits an offence under subsection (2):
  - (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
  - (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

*Presumptions*

- (4) For the purpose of proceedings under this section,
  - (a) [Repealed, 2000, c. 12, s. 93]
  - (b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child;
  - (c) evidence that a person has failed for a period of one month to make provision for the maintenance of any child of theirs under the age of sixteen years is, in the absence of any evidence to the contrary, proof that the person has failed without lawful excuse to provide necessaries of life for the child; and



- (d) the fact that a spouse or common-law partner or child is receiving or has received necessities of life from another person who is not under a legal duty to provide them is not a defence.

*Section 220: Causing death by criminal negligence*

Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable:

- (a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- (b) in any other case, to imprisonment for life.

*Section 221: Causing bodily harm by criminal negligence*

Every one who by criminal negligence causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

*Section 268:*

*Aggravated assault*

- (1) Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.

*Punishment*

- (2) Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

*Excision*

- (3) For greater certainty, in this section, “wounds” or “maims” includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where:
  - (a) a surgical procedure is performed, by a person duly qualified by provincial law to practise medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or
  - (b) the person is at least eighteen years of age and there is no resulting bodily harm.

*Consent*

- (4) For the purposes of this section and section 265, no consent to the excision, infibulation or mutilation, in whole or in part, of the labia majora, labia minora or clitoris of a person is valid, except in the cases described in paragraphs (3)(a) and (b).

*Section 273.3: Removal of child from Canada*

- (1) No person shall do anything for the purpose of removing from Canada a person who is ordinarily resident in Canada and who is
  - (a) under the age of 16 years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 151 or 152 or subsection 160(3) or 173(2) in respect of that person;
  - (b) 16 years of age or more but under the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 153 in respect of that person;
  - (c) under the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 155 or 159, subsection 160(2) or section 170, 171, 267, 268, 269, 271, 272 or 273 in respect of that person; or
  - (d) under the age of 18 years, with the intention that an act be committed outside Canada that, if it were committed in Canada, would be an offence against section 293.1 in respect of that person or under the age of 16 years, with the intention that an act be committed outside Canada that, if it were committed in Canada, would be an offence against section 293.2 in respect of that person.

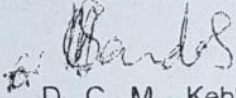
*Punishment*

- (2) Every person who contravenes this section is guilty of
  - (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
  - (b) an offence punishable on summary conviction.


**ANNEX TO COMPENDIUM**

**GAMBIAN LEGISLATION**

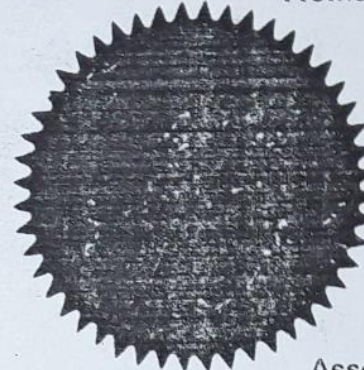
PASSED in the National Assembly this 28th day of December, in the year of Our Lord Two Thousand and Fifteen.

  
D. C. M. Kebbeh  
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

  
D. C. M. Kebbeh  
Clerk of the National Assembly.

Women's (Amendment) Act, 2015




THE GAMBIA  
NO. 11 OF 2015

Assented to by The President,

this 27<sup>th</sup> day of December, 2015



  
YAHYA A. J. J. JAMMEH.  
President

**AN ACT** to amend the Women's Act 2010 to prohibit female circumcision and for connected matters.

**ENACTED** by the President and the National Assembly.

**1. Short title**

This Act may be cited as the Women's (Amendment) Act, 2015.



## 2. Amendment of Act No. 12 of 2010

The Women's Act (in this Act referred to as "the Principal Act") is amended as set out in this Act.

### 3. Insertion of Section 32A

The Principal Act is amended by inserting immediately after section 32, the following new section-

#### "32A. Prohibition of female circumcision

- (1) A person shall not engage in female circumcision
- (2) A person who engages in female circumcision commits an offence and liable on conviction -
  - (a) to imprisonment for a term of three years or a fine of fifty thousand dalasis or to both; and
  - (b) where female circumcision causes death, to life imprisonment.
- (3) Female circumcision includes-
  - (a) the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);
  - (b) the partial or total excision of the labia minora;
  - (c) the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;

- (d) 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;
- (e) symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or
- (f) engaging in any form of female genital mutilation or cutting."

### 4. Insertion of Section 32B

The Principal Act amended by inserting immediately after the new section 32A, the following new section-

#### "32B. Accomplices to female circumcision

- (1) A person who requests, incites or promotes female circumcision by providing tools or by any other means commits an offence and is liable on conviction to imprisonment for a term of three years or a fine of fifty thousand Dalasis or to both.
- (2) A person who knows that female circumcision is about to take place or has taken place, and fails, without good cause, to warn or inform, as the case may be, the proper authorities promptly, commits an offence and is liable on conviction to a fine of ten thousand Dalasis."



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