

United Nations  Nations Unies

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**United Nations Division for the Advancement of Women  
United Nations Economic Commission for Africa**

**Expert Group Meeting on good practices in legislation  
to address harmful practices against women**

United Nations Conference Centre  
Addis Ababa, Ethiopia  
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**LEGISLATION TO ADDRESS THE ISSUE OF  
FEMALE GENITAL MU**

## Contents

Introduction.....	3
Benin.....	

## **Introduction**

Female genital mutilation includes all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. According to WHO and UNICEF estimate, ever

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Law passed in 3rd March 2003 banning all forms of FGM: Law no. 2003-03 on the Repression of the Practice of FGM in the Republic of Benin:

*Article 2* prohibits all forms of FGM

*Article 4* imposes a prison term from 6 months to 3 years and a fine 100,000 to 2,000,000 francs

*Article 5* imposes a higher penalty for those who perform FGM on minors (persons below 18 yrs) by imposing a term of 3 yrs –5yrs imprisonment and a maximum fine of 3 million francs.

*Article 6* states that where the victim dies, the culprit will serve 5 to 20 years of hard labour and a fine of 3million to 6 million francs (Approx. \$12000)

*Article 7* states that accomplices will be punished as the actual circumciser

*Article 8* states that multiple offenders will be given the maximum penalty without any mitigation

*Article 9* states that persons who refuse to report the occurrence of FGM will receive the same penalty for 'refusing to report the crime'. Persons are supposed to report any occurrence of FGM to the Public Prosecutors office and failure to do so amount to a fine of 50,000-100,000 francs.

*Article 10* obliges the medical staff to assist the FGM victim/survivor and they must inform the public authorities.

**Lessons learned:** The only proof of a mild effectiveness of the law is that an exciser was jailed for 6 months in 2003.

## **Burkina Faso**

### ***FGM prevalence***

Burkina Faso with 13.6 million people and according to UNICEF's Multiple Indicator cluster survey (MICS) the estimated prevalence of FGM in girls and women of 15 to 49 years in Burkina Faso is 72.5 % in 2006. The practice is common all over the country's 45 provinces with types II and III predominating.

### ***Legislation***

Law no. 43/96/ADP was enacted on 13th November 1996:

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

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

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

**Lessons Learned:** The law is highly effective in Burkina Faso due primarily to the commitment of the government and the personal involvement of the First Lady Mrs. Chantal Compaore who is also IAC Goodwill Ambassador. The IAC National Committees CNLP and

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Voix de Femme mobilize communities and sensitize them on the provisions of the law, train the police, gendarmes and legal bodies to arrest and prosecute offenders. A hotline has been established to enable people report violators or those with intent to break the law. So far there have been 60 convictions of both excisers and accomplices.

## **Cameroon**

### ***FGM prevalence***

Cameroon has a population of 17.3 million with an estimated prevalence of FGM 1.4% according to the 2004 Demographic and Health Survey (DHS). FGM is found in the Far North province, some parts of Adamaoua Province, and South West Province with types I, II, and III commonly practiced.

### ***Legislation***

There is no FGM law in Cameroon. A draft law has been pending for over 10 years, waiting to be debated in parliament.

## **Central African Republic**

### ***FGM prevalence***

Central African Republic has a population of 4.3 million and according to the Multiple Indicator cluster survey (MICS), prevalence of FGM was 25.7% in 2005. FGM is localised in few communities and Types I and II quite common.

### ***Legislation***

The country had since 1996 promulgated a law against FGM. Penalty is one month to two years.

***Lessons learnt:*** Lawyers have criticised this law as being too lenient. To date there has been no enforcement of the legislation.

## **Chad**

### ***FGM prevalence***

Chad has a population of 10 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years is 44.9 % in 2004. Type II is common all over the country while Type III is practiced in Eastern part of the country.

### ***Legislation***

Law no 6/PR/2002 on the promotion of reproductive health has provisions prohibiting FGM. In this law, FGM is regarded as a form of violence against women and is prohibited. It has however, no provisions for sanctions, thus the national legislation is not complete yet. Also, FGM is not defined in this law and thus makes it subject to opinions of the perpetrators as well as law enforcement agents.

Sanctions for performing FGM can be found in the Penal Code, where *articles 252 - 254* can be applicable to FGM.

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*Article 252* states that any person who “intentionally strikes or wounds or commits any other act of violence or assault upon the person of another, shall be punished by imprisonment from 6 days to 1 year and a fine ranging from 500 – 500’000 CFA”.

*Article 253* is more specific and therefore better applicable in the case of FGM, stating: “The perpetrator shall be punished by imprisonment from 5 to 10 years and with a fine of 10’000 – 500’000 CFA when there is mutilation, amputation or privation of the use of a members, blindness, loss of an eye, or other infirmities or if the strikes or wounds, intentionally inflicted, result in unintended death...”.

*Article 254* provides that “ when the strikes or wounds are carried out against a child under the age of 13, the penalty shall be doubled”, with the prison sentence not exceeding 20 years and the fine not exceeding 1’000’000 CFA. (Approx. \$2000)

***Lessons learnt*** 1 76.8an



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***Lessons learnt:*** Death from FGM has strengthened government arm to deal with offenders. In April 2008, another medical practitioner had his license revoked when he was reported of



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2005-2006. FGM is widely practiced all over the country and all FGM types are carried out at infancy, childhood or at adolescence. FGM is done as an initiation rite, to maintain a girl's chastity, in obedience to religion and in keeping with tradition.

***Legislation***

There is no specific law against FGM in the Gambia.

**Ghana**

***FGM prevalence***

Ghana with a population of 22.6 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 3.8% in 2005. FGM carried out in the Upper East, Northern, Upper West, and Northern Volta Regions. Type I, II and III are found.

***Legislation***

The Constitution of Ghana provides for protection of women and girls against FGM. *Article 26.2* states that "all customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited".

The Constitution also contains a statement of its government policy through *article 39.2*: "...traditional practices which are injurious to the health and well-being of the person are abolished..."

The Criminal Code was amended in 1994, including FGM as a second-degree felony. *Article 69A* provides that:

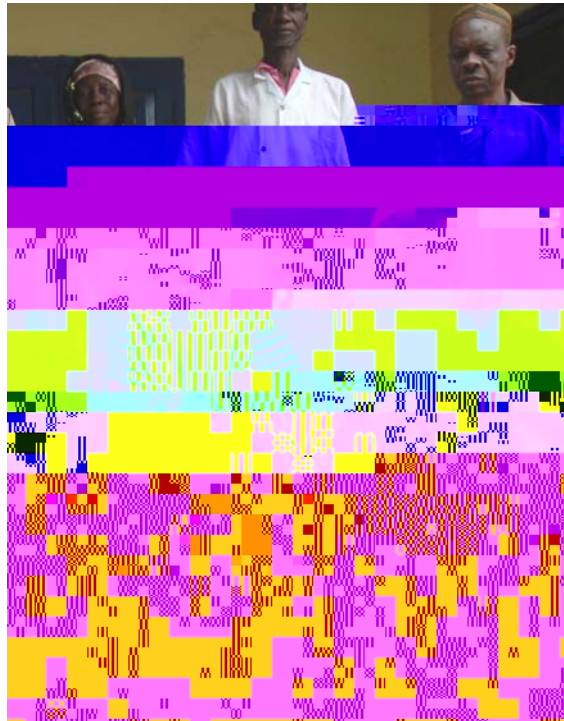
- 1) Whoever excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris or another person, commits an offence and shall be guilty of a second-degree felony and liable on conviction to imprisonment or not less than 3 years.
- 2) For the purposes 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.

Additionally, the Criminal Code Amendment Act 1998 (Act. 554), an Act to amend the 1960 Criminal Code, increases age of criminal and sexual responsibility, includes specific offence of indec2.1f Tc4.1(rpos.3476 -Tc4s TD- preTw)n76 -Tc 3TD0e2-5.4(of a013 Tc0eally)6.2,h6 Tw[hat sfp-1.15,h6

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Whoever participates in or is concerned with a ritual or customary activity that subjects a person to female genital mutilation commits an offence and is liable on summary conviction to imprisonment for a term of not less than five years and not more than ten years.”

***Lessons Leant:*** The FGM law is very effective. So far, the courts have successfully prosecuted and sentenced some practitioners. The first exciser to be jailed was Akologo, a male exciser who has since served five years in prison. Vigilante groups go round communities to report violators of the law to the police. Communities are highly aware of the FGM law. IAC-trained ex-excisers watch out for anyone who is still in the trade and report to IAC National Committee (GAWW).



*Ghana: Wa District, some ex-excisers who campaign against FGM*

### **Guinea (Conakry)**

#### ***FGM prevalence***

Guinea has a population of 9.8 mi

***Legislation***

In 2000, The National Assembly of Guinea deliberated law 2000/010/AN on reproductive health. *Article 13* of this law provides that anyone who inflicts genital mutilation upon another person shall be subject to punishment according to the Penal Law.

The Penal Law provides *article 265* that specifically addresses genital mutilation: “Castration is the ablation or the mutilation of the genital organs of either a man or a woman. Any person guilty of this crime shall be sentenced to the punishment of hard labor for life. If death results within 40 days after the crime, the perpetrator will be sentenced to death”.

***Lessons Learnt:*** No information about the implementation of the FGM law.

**Guinea Bissau**

***FGM prevalence***

The population of Guinea Bissau is 1.4 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 44.5 % in 2005. It is common in Foula, Mandinka and urban Bissau areas with types I and II prevalent and is carried out mainly as initiation rites, for religious reasons and as part of tradition.

***Legislation***

There is no FGM law in Guinea Bissau.

**Kenya**

***FGM prevalence***

Kenya has a population of 34.7 million and according to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 32.2% in 2003. However, in stronghold areas, FGM prevalence ranges from 75% to 98 %. Types I, II and III are common in the country and the reasons for the practice is religion, social acceptance and as a rite of passage from girlhood to adulthood.

***Legislation***

Although Kenya has a law addressing FGM performed on children, it is not complete as it excludes women over the age of 18 years. Passed by Parliament in 2001, the Children's Act outlaws various forms of violation against children, including FGM, for females 18 and younger. Perpetrators are punished with twelve month imprisonment and/or a fine not exceeding fifty thousand shillings (US\$700).

***Lessons learnt:*** Because the Children's Act protects only those 18 years and below, Kenya Parliament is currently reviewing the law to include protection of women above 18 years. There have been several prosecutions of excisers and many girls who are running away from FGM seek refuge at IAC- SETAT set-up rescue center in Kapenguria.

**Liberia**

***FGM prevalence***

The population of Liberia is 3.4 million. According to the Demographic and Health Survey

***Legislation***

On June 13, 2003, the Republic of Niger

### ***Legislation***

The Penal Code was amended in January 1999, adding an article that criminalizes FGM. Article 299 states: “Whosoever violates or attempts to violate the integrity of the genital organs of a female person by total or partial ablation of one or several of the organ's parts, by infibulation, by desensitization or by any other means will be punished with imprisonment of 6 months to 5 years”.

“The maximum penalty will be imposed when these sexual mutilations are performed or abetted by a member of the medical or paramedical corps. When they result in death, the penalty shall be hard labour for life. Any person who, through gifts, promises, influences, threats, intimidation, abuse of authority or of power, provokes these sexual mutilations or gives instructions for their commission shall be punished with the same penalties”.

***Lessons Learnt:*** Approaches to FGM elimination in Senegal have been more of community action rather than emphasis on law. Whole communities have abandoned FGM without threat of legislation. The law in Senegal may never need to be implemented.

## **Sierra Leone**

### ***FGM prevalence***

Sierra Leone has a population of 5.7 million and according to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 94% in 2005. FGM is practiced all over the country and all ethnic groups are involved, except the Creole Christians. It is shrouded in secrecy and is conducted in the Bondo bush by the Bondo society. Types I and II are commonly done by Soweis (excisers) who also wield considerable political power during elections.

### ***Legislation***

There is no federal law against FGM.

***Lessons Learnt:*** Traditional excisers (Soweis) visibly promote FGM using various methods. (a) Street rallies, (b) Threats to government authorities, NGOs, the Police, (c) Abduction of female journalists who write anti-FGM stories.

However public condemnation of FGM is gradually gaining momentum.

## **Somalia**

### ***FGM prevalence***

Somalia has a population of 8.9 Million but following the war, which broke out in 1991, the country disintegrated into 3 parts; Somalia with Mogadishu as capital, Somaliland with Hargeisha as capital and Puntland. According to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 98% in 2006. FGM is common across the country and is entrenched in Somali culture and custom. Type I has the prevalence of 9%, while Type III has 91% prevalence.

### ***Legislation***

There is no law against FGM in Somalia. Although the former government's policy on this practice was for its complete eradication, this policy was never translated into law before the war broke out in 1991.

## **Sudan**

### ***FGM prevalence***

Sudan has a population of 41.2 million. According to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 90% in Northern Sudan 2000. The Survey indicates that FGM prevalence varies largely across regional and ethnic lines. Levels of prevalence are significantly lower in Darfur (65%). More recently, in 2006, the Ministry of Health Survey on the Sudanese family indicated that the prevalence has lowered to 69.4 percent. Types I, II and III are found predominantly in the Northern and North Eastern parts of the country, while women and girls in North Western regions are mainly subjected to Type III. A shift from Type III to Type I is becoming visible. The practice is further complicated by medicalization in an attempt to reduce the immediate health risk associated with Type II and III.

### ***Legislation***

Sudan was the first African country to legislate against FGM in 1946. The Penal Code prohibited Infibulation but allowed the removal of the "free, projecting part of the clitoris". The punishment was 5 years imprisonment and/or a fine if someone performed infibulation upon a female person. However, although Sudan publicly denounces FGM, the Penal Code of 1991 contained no provisions prohibiting FGM.

In 2003, Sudan adopted a new Penal Code under 'the Laws of the New Sudan'. Section 284A of this Penal Code, provides for penalties in the case of FGM, but it is not very detailed. It provides: "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". The term "female circumcision" is not defined, nor is the amount of the fine.

However, in early 2009 The Sudanese cabinet dropped article (13) of the Children's Act 2009 that prohibited all forms of FGM.

***Lessons Learnt:*** Although a law prohibiting "Infibulation" in the Penal Code is currently under preparation, the decision to allow FGM Type I leaves room for abuse.

## **Tanzania**

### ***FGM prevalence***

Tanzania has a population of about 40 million. According to the Demographic and Health Survey (DHS) the estimated prevalence of FGM in girls and women of 15 to 49 years was 14.6% in 2004. FGM is practiced in nine Regions and in 20 ethnic groups out of 130. Types II and III are found and done during childhood to early adolescence as rites of passage from childhood to adulthood. The procedure is usually accompanied by much fanfare and feasting.

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### ***Legislation***

In 1998, Tanzania amended the Penal Code with a specific article prohibiting FGM. Article 169A “Cruelty to children” provides:

“1) 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 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.

(2) Any person who commits the offence of cruelty to children is liable on conviction to imprisonment for a term of not less than 5 years and not exceeding 15 years or to a fine not exceeding 300’000 shillings (US\$230) 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.”

***Lessons Learnt:*** As in the case of Kenya, Tanzania Children’s Act protects only children up to the age of 18 years. The FGM law is moderately implemented. Fifty-two (52) cases of FGM law violation have been reported, filed and prosecuted. At least 10 cases were convicted.

### **Togo**

#### ***FGM prevalence***

Togo has a population of 6.3 million. According to the Multiple Indicator cluster survey (MICS), the estimated prevalence of FGM in girls and women of 15 to 49 years was 5.8% in 2005. FGM is reported to be common in Golf, Kara and Central Regions and Type II is the prevalent form.

#### ***Legislation***

In 1998, Togo adopted law no. 98-016 prohibiting FGM.

*Article 1* forbids all forms of FGM, followed by *article 2* that gives a definition of FGM and excludes operations on genital organs performed for medical reasons.

*Article 3* states that all persons who perform, participate or promote FGM whether in the traditional or modern set up will be punished for ‘intentionally causing physical harm’.

*Article 4* provides punishment for the offence set forth in *article 3*, between 2 months to 5 years imprisonment or a fine of 100,000-1,000,000 CFA (US\$200-2’000) or one or both imprisonment and fine. Multiple offenders will receive a double penalty.

*Article 5* provides that where the FGM resultt8l5.3( in )5.3f1(m)-19ultt8b preval8he 2(ation )TJ/TT25one or bns





