



**THE LAW AND FGM**

**MALTA**

**DECEMBER 2021**

# National Legal Framework

## Overview of National Legal Framework in Malta

### National legislation:

- ✓ Specific law/provision criminalising FGM
- ✓ Provides a definition of FGM
- ✓ Criminalises the performance of FGM
- ✓ Criminalises the procurement, arrangement and/or assistance of acts of FGM
- ✓ Obligation to report incidents of FGM to the authorities
- ✓ Criminalises the participation of medical professionals in acts of FGM
- ✓ Extraterritorial application regardless of double criminality

## Introduction

Malta is an island country in southern Europe with an estimated population of 510,000. Malta is a unitary republic with a parliamentary democracy.<sup>1</sup> Its legal system is a mix of common law and civil law.<sup>2</sup>

### FGM Prevalence

There is no current or representative data available on the prevalence of female genital mutilation (FGM) in Malta. This is mostly due to confidentiality requirements for medical professionals and a low number of immigrants.<sup>3</sup>

Research conducted in 2016 by the European Institute for Gender Equality on FGM in the European Union estimated that 189 to 277 girls were at risk of FGM in Malta out of 486 girls below the age of 18. The majority of girls at risk of FGM originate from Somalia, Ethiopia, Eritrea, Sudan, Egypt, Nigeria and Sierra Leone.<sup>4</sup>

## National Legal Framework

### Specific Provision

FGM is criminalised in Malta in terms of a specific provision on FGM, which is set out in the **Criminal Code of the Republic of Malta (Chapter 9 of the laws of Malta) (1854, amended 2021)** (the *Criminal Code*), inserted in 2014 and amended in 2018 and 2019.

**Article 251E(1) of the Criminal Code** criminalises any person who, for non-medical reasons, performs an operation or any type of intervention to a woman's genitalia, causing damage or inflicting permanent changes to it.

**Article 251E(2)** prescribes that the consequence of death is an aggravating circumstance.

**Article 251E(3)** prescribes that consent does not justify exemption from punishment.

## Definition of FGM

**Article 251E(5) of the Criminal Code** defines 'FGM' as an operation or intervention to a woman's genitalia including excision, infibulation or mutilation of the genitalia. The law does not define the terms 'excision', 'infibulation', or 'mutilation', and, to date, there has been no judicial consideration relating to any of these terms. That being said, it is likely that the term 'excision' includes Types I and II FGM as prescribed by the WHO; 'infibulation' includes Type III FGM; and 'mutilation' includes all four types of FGM. The Criminal Code similarly does not define the term 'genitalia'.<sup>5</sup>

## Women and Girls of All Ages

The performance of FGM on women and girls of all ages has been criminalised in Malta.

**Article 251E(1) of the Criminal Code** criminalises the performance of FGM on a woman. **Article 251H(d)** qualifies the performance of FGM against a child as an aggravating circumstance with an increased penalty.

## Procuring, Aiding and Abetting

Procuring, aiding and abetting FGM have been criminalised in Malta.

Under **Article 251E(6) of the Criminal Code**, anyone who procures, aids, abets, counsels, incites, coerces or procures a woman to excise, infibulate or in any other way mutilate the whole or part of her own genitalia is subject to the sentence established for the crime.

## Allowing the Use of Premises

Allowing the use of premises for the purpose of FGM is criminalised in Malta in terms of **Article 251E(6) of the Criminal Code**. Accordingly, allowing the use of premises for the practice of FGM could be captured under the definition of 'aiding and abetting' that is criminalised under **Article 251E(6)**.

## Providing or Possessing Tools

Providing (specific) tools for the purpose of FGM has been criminalised in Malta. **Article 42(c) of the Criminal Code** prescribes that persons who procure instruments or other means to be used in the commission of a crime are deemed to be accomplices in that crime and, according to **Article 43**, are subject to the sentence established for the perpetrator. **Article 251E(6)** also prescribes that all persons involved in the crime are subject to criminal liability.

Providing (specific) tools for FGM falls under the definition of 'procuring instruments for the commission of a crime' that is criminalised under **Articles 42(c) and 43**. Providing (specific) tools for FGM could also fall under the definition of 'aiding and abetting' an offence that is criminalised under **Article 251E(6)**.

Possessing (specific) tools for the purpose of FGM is not criminalised in Malta as a preparation for a crime. There are no provisions under general criminal law criminalising preparation for a crime.

Possessing (specific) tools for FGM is not criminalised in Malta as an attempted offence. **Article 41** prescribes that any person who manifests an intent to commit a crime by overt acts that are then followed by the commencement of the commission of the crime is subject to lower penalties than established for the perpetrator, in case the crime was not completed because of an accidental cause, independent of the will of the perpetrator (**Article 41(1)(a)**), or because of the voluntary withdrawal of the perpetrator (**Article 41(1)(b)**). Simply possessing (specific) tools does not fall under the definition of 'manifesting an intention to commit a crime by overt acts' and is, therefore, not punishable by law.

## Failure to Report FGM

Failing to report FGM has been criminalised in Malta. Under **Article 251E(4) of the Criminal Code**, the failure to issue a formal complaint or any other form of reporting FGM, regardless of any duty of confidentiality, is punishable.

**Article 9(1) of the Act No. XXIII of 2019** (the *Child Protection Act*) prescribes that any person who has a reason to believe that a minor is at risk of or is already suffering significant harm has an obligation to report such circumstances to the police or other authorities, but no penalty is established for failing to do so.

## Medicalised FGM

Medicalised FGM is criminalised in Malta under a general provision (**Article 251E(1) in the Criminal Code**, which includes medical exemptions to the prohibition of FGM. Surgeries that could be qualified as FGM, but are medically necessary qualify as medical exemptions and are therefore not criminalised under **Article 251E(1)**. The Maltese Legislator fails to provide what needs to be considered 'a medical reason' to perform any kind of treatment.

## Extraterritoriality

**Article 251I of the Criminal Code** provides for the principle of extraterritoriality, which makes it possible to prosecute offences when committed outside Malta's borders by or upon nationals or residents of the country, or when only part of the offence took place in Malta. According to **Article 251I**, the Maltese courts also have jurisdiction over the said offences where:

- only part of the action giving execution to the offence took place in Malta; or
- the offender is a Maltese national or permanent or habitual resident in Malta; or
- the offence was committed against a Maltese national or permanent or habitual resident in Malta.

## Penalties

Penalties are dependent on the specifics of the bodily harm inflicted and whether any aggravating circumstances apply.

- **Article 251E(1) of the Criminal Code** prescribes a sentence of *five- to ten-years' imprisonment* for performing an operation on or any type of intervention to a woman's genitalia, either damaging or inflicting permanent changes to it.
- **Article 251E(2)(a)(i) of the Criminal Code** prescribes a sentence of *six- to twenty-years' imprisonment* if the death of a victim ensues as a direct consequence of harm from undergoing FGM, within 40 days from the day FGM was performed.
- **Article 251E(2)(a)(ii) of the Criminal Code** prescribes a sentence of *six- to twelve-years' imprisonment* if the death of a victim ensues as a direct consequence of harm from undergoing FGM, after 40 days but within one year from the day FGM was performed.
- **Article 251E(b) of the Criminal Code** prescribes a sentence of *six- to twelve-years' imprisonment* if the death of a victim ensues as a result of a supervening accidental cause and not directly as a result of the performance of FGM.

In the case of FGM, it is very likely that aggravating circumstances apply, since the victims are often minors (**Article 251H(d)**), have a kin relationship with the perpetrator or an accomplice of an offence (**Article 251H(a)**), or suffer from severe physical or psychological harm after undergoing FGM (**Article 251H(h)**).



If an aggravating circumstance is present, **Article 251H** prescribes *an increase of the penalty by one to two degrees*. A one-degree increase of a penalty is up to three months' imprisonment, whereas a two-degree increase is up to six months' imprisonment under **Articles 31(b) and 31(d)**.

Thus, the maximum sentence for FGM in Malta is *more than twenty years' imprisonment* (in case of the death of a victim).

Failure to issue a formal complaint or any other form of reporting FGM, regardless of any duty of confidentiality, is punishable by *a fine between €1,000 and €5,000 and/or a term of imprisonment of up to two years* under **Article 251E(4)**.

## Protection

### Protecting Uncut Girls and Women

**The 2020 Minor Protection (Alternative Care) Act (Chapter 602 of the laws of Malta)** introduces the concept of mandatory reporting whereby professionals working with children or working in a context that may influence children must always act in the child's best interests and are obliged to report any concerns that may place the child at risk of significant harm. The law states that professionals reporting in the child's best interest, hence in good faith, are protected against any form of legal liability; however, failing to report concerns that may jeopardise the child's welfare will result in a criminal offence pursuant to **Article 9(4) of the Minor Protection (Alternative Care) Act**, apart from any disciplinary action that may be taken according to any regulations specific to each profession.

**The 2020 Minor Protection (Alternative Care) Act** has been amended to include a wide-encompassing definition of 'significant harm', such that it specifically includes FGM. 'Significant harm' is the threshold at which children's social-care services have a duty to intervene in family life to protect a child.

## Implementation of The Law

### Court Cases

The local media recently reported on a court decision to uphold an injunction request filed by a Sudanese mother who was on holiday in Malta with her two daughters, aged three and five. The mother filed an application for international protection, given that her daughters were at high risk of undergoing Type III FGM in Sudan. The woman has been granted refugee status in Malta pending the outcome of the application.

# Conclusions and Recommendations

## Conclusions

FGM is criminalised in Malta under a specific provision on FGM in terms of the **Criminal Code**, namely **Article 251E(1)**.

The definition of 'FGM' maintained in the law corresponds fully to the definition given by the WHO and covers all **types of FGM**. **Medicalised FGM** is not specifically addressed, but is likely to be covered by the general criminality of FGM.

**Procuring, aiding and abetting** FGM are criminalised in Malta under Article 251E(6) of the Criminal Code.

The **failure to report** FGM has been criminalised in Malta. There is an obligation for any person who has a reason to believe that a minor is at risk of or is already suffering significant harm to report such circumstances to the police or other authorities.

The Criminal Code extends **extraterritorial application** of Maltese laws to the performance of FGM abroad, regardless of double criminality, if the perpetrator has Maltese nationality or is a permanent or habitual resident of Malta.

## Recommendations

We recommend that Malta extend extraterritorial application of Maltese criminal law to the performance of FGM abroad, regardless of double criminality, in cases where only the victim has Maltese nationality or is a habitual/permanent resident of Malta, and where the perpetrator is a habitual resident of Malta.

# Appendix I: International and Regional Treaties

MALTA	Signed	Ratified/ Acceded	Reservations on reporting?
<b>International</b>			
International Covenant on Civil & Political Rights (1966) ( <i>ICCPR</i> ) <sup>6</sup>	X	✓ 1990	No
International Covenant on Economic, Social & Cultural Rights (1966) ( <i>ICESCR</i> ) <sup>7</sup>	✓ 1968	✓ 1990	No
Convention on the Elimination of All forms of Discrimination Against Women (1979) ( <i>CEDAW</i> ) <sup>8</sup>	X	✓ 1991	No
Convention on the Rights of the Child (1989) ( <i>CRC</i> ) <sup>9</sup>	✓ 1990	✓ 1990	No
<b>Regional</b>			
Istanbul Convention <sup>10</sup>	✓ 2012	✓ 2014	No
European Convention on Human Rights <sup>11</sup>	✓ 1966	✓ 1967	No

**‘Signed’:** a treaty is signed by countries following negotiation and agreement of its contents.

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

**‘Acceded’:** when a country ratifies a treaty that has already been negotiated by other states.

# Appendix II: National Laws

## Criminal Code (Chapter 9 of the Laws of Malta)

### Article 5

- (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta;
- (a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;
  - (b) against any person who commits an offence on the sea beyond such limits on board any ship or vessel belonging to Malta;
  - (c) against any person who commits an offence on board any aircraft while it is within the air space of Malta or on board any aircraft belonging to Malta wherever it may be;

For the purposes of this paragraph the expression "airspace" means the air space above the land areas and territorial waters of Malta;

- (d) without prejudice to the preceding paragraphs of this sub-article, against any citizen of Malta or permanent resident in Malta who in any place or on board any ship or vessel or on board any aircraft wherever it maybe shall have become guilty of the offences mentioned in article 54A or of an offence against the safety of the Government or of the offences mentioned in articles 133, 139A, or of the offences mentioned in articles 188B, 188C, 188D, or of the offences mentioned in articles 311 to 318 and in article 320 when these are committed or are directed against or on a state or government facility, an infrastructure facility, a public place or a place accessible to the public, a public transportation system, or of forgery of any of the Government debentures referred to in article 166 or of any of the documents referred to in article 167, or of the offence mentioned in article 196, or of any other offence against the person of a citizen of Malta or of any permanent resident in Malta;

For the purposes of this paragraph: "permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the of the Immigration Act; "offence against the person" includes the offences mentioned in articles 86 to 90 and in articles 198 to 205; the expressions "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them respectively by article 314A(4);

- (e) against any person who being in Malta
  - (i) shall have become guilty of any offence under article 87(2) or articles 198, 199, 211, 214 to 218, 220, 249 to 251, 311, 312, 314A, 314B, 314C, 316 or 317 when committed or directed on or against the person of a protected person or to the prejudice or injury of such person or likely to endanger the life or to cause serious injury to the property, life or health of such a person, or in connection with an attack on any relevant premises or on any vehicle ordinarily used by a protected person or when a protected person is on or in the premises or vehicle; or
  - (ii) shall have committed any act which if committed in Malta would constitute an offence and such act involved the use of a bomb, grenade, rocket, automatic firearm, letter bomb or parcel bomb which endangered persons; or
  - (iii) shall have committed any of the offences under articles 188B to 188D, although the offences referred to in this paragraph shall have been committed outside Malta:



Provided that for the purposes of sub-paragraph (i) of this paragraph it shall be immaterial whether the offender knew that the person was a protected person.

- (f) against any person who –
  - (i) commits any offence in premises or in a building outside Malta having diplomatic immunity due to the fact that it is being used as an embassy, a residence or for such other purpose connected with the diplomatic service of Malta; or
  - (ii) commits an offence in a place outside Malta when such person enjoys diplomatic immunity by virtue of such service;
- (g) against any person who being in Malta, shall be a principal or an accomplice in any of the crimes referred to in article 87(2), or in articles 139A, 198, 199, 211, 214 to 218, 220, 249 to 251, 298, or in articles 311 to 318 or in article 320 when these are committed in the circumstances mentioned in paragraph (d) or (e) of this sub-article, or in a crime which is committed by any act as is mentioned in paragraph (e)(ii) of this sub-article, or conspires with one or more persons for the purpose of committing any of the said crimes, although the crimes shall have been committed outside Malta;
- (h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;
  - (i) against any person who commits an offence which, by express provision of law, constitutes an offence even when committed outside Malta;
  - (ii) Provided that no criminal action shall be prosecuted against the President of Malta in respect of acts done in the exercise of the functions of his office.

(2) For the purposes of sub-article (1)(b) and (c), a ship or vessel or an aircraft shall be deemed to belong to Malta if it is registered in Malta or, if it is not registered anywhere, is owned wholly by persons habitually resident in Malta or by bodies corporate established under and subject to the laws of Malta and having their principal place of business in Malta.

(3) For the purposes of sub-article (1)(e):

"a protected person" means, in relation to an alleged offence, any of the following:

- (a) a person who at the time of the alleged offence is a Head of State, a member of a body which performs the functions of Head of State under the constitution of the State, a Head of Government or a Minister for Foreign Affairs and is outside the territory of the State in which he holds office;
- (b) a person who at the time of the alleged offence is a representative or an official of a State or an official or agent of an international organisation of an inter-governmental character, is entitled under international law to special protection from attack on his person, freedom or dignity and does not fall within the preceding paragraph;
- (c) a person who at the time of the alleged offence is a member of the family of another person mentioned in either of the preceding paragraphs and (i) if the other person is mentioned in paragraph (a) above, is accompanying him, (ii) if the other person is mentioned in paragraph (b) above, is a member of his household;

"relevant premises" means premises at which a protected person resides or is staying or which a protected person uses for the purpose of carrying out his functions as such a person; and

"vehicle" includes any means of conveyance;

and if in any proceedings a question arises as to whether a person is or was a protected person, a certificate issued by or under the authority of the Minister responsible for foreign affairs and stating any fact relating to the question shall be conclusive evidence of that fact.

### **Article 31**

- (1) The ascent or descent from one degree of punishment to another shall be as follows:
- (a) subject to any special provision contained in this Code, from the punishment of imprisonment for life the descent shall be in accordance with the scale of punishments of imprisonment as specified in paragraph (b);
  - (b) subject to any special provision contained in this Code, the following shall be the scale of punishments of imprisonment:
    - (i) from ten years to forty years;
    - (ii) from eight years to thirty years,
    - (iii) from seven to twenty years,
    - (iv) from six to twelve years,
    - (v) from five to nine years
    - (vi) from four to six years,
    - (vii) from three to five years,
    - (viii) from two to four years,
    - (ix) from eighteen months to three years,
    - (x) from thirteen months to two years,
    - (xi) from nine to eighteen months,
    - (xii) from seven months to one year,
    - (xiii) from five to nine months
    - (xiv) from two to six months,
    - (xv) from one to three months;
  - (c) the descent from the fifteenth degree shall be to imprisonment for a term not exceeding twenty days, or to detention or to a fine (ammenda);
  - (d) in the ascent from one degree to another, the order shall be inverted, commencing from the fifteenth degree.

- (e) in default of an express provision to the contrary, the ascent from the first degree shall be made by adding to the punishment of imprisonment the punishment of solitary confinement for not more than twelve terms, or by adding other aggravations of punishment established by the prison regulations;
  - (f) the ascent from the punishment of a fine (multa) shall be to imprisonment for a term not exceeding three months, and the descent shall be to the punishments established for contraventions;
  - (g) the ascent from the punishments established for contraventions shall be to the punishment of a fine (multa) or imprisonment for a term not exceeding three months.
- (2) The law establishing in general terms a descent from one punishment to another, shall not be deemed to include cases of contraventions or of crimes liable to the punishments for contraventions.

#### **Article 41**

- (1) Whosoever with intent to commit a crime shall have manifested such intent by overt acts which are followed by a commencement of the execution of the crime, shall, save as otherwise expressly provided, be liable on conviction;
- (a) if the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;
  - (b) if the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to law.
- (2) An attempt to commit a contravention is not liable to punishment, except in the cases expressly provided for by law.

#### **Article 42**

A person shall be deemed to be an accomplice in a crime if he;

- (a) commands another to commit the crime; or
- (b) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or
- (c) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or
- (d) not being one of the persons mentioned in paragraphs(a), (b) and (c), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or
- (e) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid or reward after the fact.

#### **Article 43**

Unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal.

#### **Article 251E**

- (1) Whosoever, for non-medical reasons, performs an operation or carries out any intervention on a woman's genitalia that damages the genitalia or inflicts upon them permanent changes, shall be guilty of enforced female genital mutilation and shall be liable to the punishment of imprisonment for a term from five to ten years.

- (2) (a) Whosoever shall be guilty of female genital mutilation from which death shall ensue solely as a result of the nature or the natural consequences of the harm and not of any supervening accidental cause, shall be liable;
- (i) to imprisonment for a term from six to twenty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the operation or intervention;
  - (ii) to imprisonment for a term from six to twelve years, if death shall ensue after the said forty days, but within one year to be reckoned as above.
- (b) If death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the operation or intervention, the offender shall, on conviction, be liable to imprisonment for a term from six to twelve years.
- (3) Consent of the person undergoing the operation or intervention shall not justify exemption from punishment.
- (4) Whosoever shall wilfully fail to seek to avert, by formal complaint or in another manner, female genital mutilation, shall be liable to a fine (multa) of not less than one thousand euro (€1,000) and not exceeding five thousand euro (€5,000) or to a term of imprisonment for a term of six months to two years, or to both such fine and imprisonment:
- Provided that the duty to avert such an act shall apply regardless of any duty of confidentiality.
- (5) For purposes of this article the terms "operation" and "intervention" shall include the excision, infibulation or mutilation of the genitalia.
- (6) Whosoever aids, abets, counsels, incites, procures or coerces a female to excise, infibulate or otherwise mutilate the whole or any part of her own genitalia, shall be guilty of an offence and shall be liable, on conviction, to the punishment laid down under this article.

#### **Article 251H**

The punishment for the offences referred to in articles 251 to 251G, both inclusive, shall be increased by one to two degrees in each of the following cases:

- (a) the offence was committed against a former or current spouse or partner, by a member of the family, a person cohabiting with the victim, or a person having abused her or his authority:
- Provided that, in this paragraph spouse includes a person whose marriage with the accused has been dissolved or declared null.
- (b) the offence, or related offences, were committed repeatedly.
  - (c) the offence was committed against a vulnerable person within the meaning of article 208AC (2);
  - (d) the offence was committed against or in the presence of a minor.
  - (e) the offence was committed by two or more people acting together.
  - (f) the offence was preceded or accompanied by violence.
  - (g) the offence was committed with the use or threat of a weapon.
  - (h) the offence resulted in severe physical or psychological harm for the victim.

- (i) the offender has been previously convicted of offences of a similar nature

### **Article 251I**

- (1) The following provisions shall apply to the offences under articles 198, and 251 to 251G, both inclusive.
- (2) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the said offences where:
  - (a) only part of the action giving execution to the offence took place in Malta; or
  - (b) the offender is a Maltese national or permanent or habitual resident in Malta; or
  - (c) the offence was committed against a Maltese national or permanent or habitual resident in Malta.
- (3) Notwithstanding any other provision of this Code or of any other law, where the person against whom the offence is committed is a minor, the period of prescription shall run from the day on which the victim attains the age of majority.
- (4) For the purposes of this article the phrase "permanent resident" shall have the same meaning assigned to it by article5(1)(d).



## Minor Protection (Alternative Care) Act (Chapter 602 of the Laws of Malta)

### Article 4

- (1) There shall be a Director responsible for protecting minors at risk, who shall be known as Director (Child Protection) and who shall be appointed following a public call from amongst persons having at least five years' experience in services related to minors and competence in management.
- (2) The Director (Child Protection) shall be an officer of the Foundation for Social Welfare Services and shall exercise his functions through it:  
  
Provided that the Director (Child Protection) shall at all times act in an impartial manner in the exercise of his functions.
- (3) There shall also be other officers of the Director (Child Protection) who shall exercise and perform all such powers, functions and responsibilities as may be delegated or assigned to them by the Director (Child Protection).
- (4) In the exercise and performance of the powers, functions and responsibilities delegated or assigned to them as aforesaid, the officers of the Director (Child Protection) shall, save as otherwise apparent, have the same powers, functions and responsibilities as are by law imposed on or given to the Director (Child Protection).
- (5) In the exercise and performance of their powers, functions and responsibilities, the Director (Child Protection) and the officers referred to in sub-article (3) may request the assistance of the Executive Police in accordance with then Police Act, whenever they deem it required.
- (6) When the circumstances of a specific case require it, all powers given to the Director (Child Protection) under this Act may be exercised by the Chief Executive Officer of the Foundation for Social Welfare Services.

### Article 9

- (1) Any person who has reason to believe that a minor is suffering, or is at risk of suffering, significant harm, may report the circumstances according to which it holds such reason to the Director (Child Protection) or the Executive Police:  
  
Provided that any reports received by the Executive Police shall be forwarded to the Director (Child Protection) without delay.
- (2) Without prejudice to any other provision of any law and to his professional obligations which hold true notwithstanding this article, any professional who has knowledge of an act causing or which may cause significant harm on a minor as defined in sub-article (4) or which constitutes a criminal offense on a minor, or has knowledge that a minor is in need of care and protection shall immediately report to the Director (Child Protection) or the Executive Police and no such reporting made in bona fide may constitute a criminal offence or give rise to any right of action under any law whatsoever:  
  
Provided that if a report is made to an entity or institution other than the Director (Child Protection) or the Executive Police, such entity or institution shall register such report in writing and shall, without delay, and in any case not later than twenty-four hours from the receipt of the report, refer the report to the Director (Child Protection) or the Executive Police.
- (3) Where a report concerns a pregnant minor who is in need of care and protection, all efforts shall be made to keep mother and child together after birth, unless this is manifestly contrary to the safety and well-being of the baby.

- (4) Any professional who omits to submit a report as mentioned in sub-article (2) shall be guilty of an offence and upon being found guilty shall be subject to imprisonment for a period of not less than three months and not more than nine months, or a to a fine (multa) of not more than five thousand euro (€5,000), or to both such fine and imprisonment.
- (5) For the purposes of this article and other provisions of this Act, "significant harm" includes abuse, neglect, harassment, ill treatment, exploitation, abandonment, exposure, trafficking, fear of violence and female genital mutilation as defined and provided for in Book First of the Criminal Code. It also includes being a victim of domestic violence as defined and provided for in Gender-based Violence and Domestic Violence Act.
- (6) All reports made according to this article and to whomever they might have been made, shall be deemed as if protected by professional secrecy, if not already so protected by any law, and notwithstanding any other provision of any law said reports shall not be made accessible to the public, whether in their entirety or in part.

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- 1 Lino Briguglio (1999) 'Malta', *Britannica*. Available at <https://www.britannica.com/place/Malta> (accessed 26 July 2021).
  - 2 Patrick J. Galea (2008) *A brief overview of Malta, a Roman-civil law country, with common law adoption as rules of civil evidence*. Available at <https://sas-space.sas.ac.uk/5596/1/1869-2602-1-SM.pdf> (accessed 26 July 2021).
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 Olesia Bilkei (undated) *Portrait of a beautiful African-American woman in a trendy red dress posing on the street . . .* 123RF ID 164174296.

*Please note that the use of a photograph of any girl or woman in this report does not imply that she has, nor has not, undergone FGM.*

This report analyses and discusses the application of national (criminal) laws to the commission of FGM and any possible related crimes. It also explores other legal factors deemed relevant, such as legal obligations to report the commission or likely upcoming commission of FGM, available legal protective measures for girls and women at risk of FGM, and any obligations of national governments in relation to FGM.

The initial research conducted for this report consisted of a questionnaire developed by 28 Too Many and Ashurst LLP. The information contained in the responses to that questionnaire was then reviewed by Middelburg Human Rights Law Consultancy, updated and used as the basis of further research from relevant sources. This report is mainly based on primary legal sources such as legislation, case law and authoritative literature, but does use secondary sources such as government documents, journal articles and newspaper articles.

This report has been prepared as a work of legal research only and does not represent legal advice in respect of any of the laws of Malta. It does not purport to be complete or to apply to any particular factual or legal circumstance. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with any person or entity. Neither 28 Too Many, Ashurst LLP and Middelburg Human Rights Law Consultancy nor any other contributor to this report accepts responsibility for losses that may arise from reliance upon the information contained herein, or any inaccuracies, including changes in the law since the research was completed in August 2021. No contributor to this report holds himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in this project or contribution to this report. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction/s when dealing with specific circumstances. It should be noted, furthermore, that in many countries there is a lack of legal precedent for the penalties laid out in the law, meaning that, in practice, lesser penalties may be applied.

### **Acknowledgements:**

Ashurst LLP

Middelburg Human Rights Law Consultancy

Zammit Pace Advocates

### **Version 3, July 2022**

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