



**THE LAW AND FGM**

**PORTUGAL**

**DECEMBER 2021**

# National Legal Framework

## Overview of National Legal Framework in Portugal

### 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
- X 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

Portugal is a country in south-western Europe with an estimated population of 10.3 million.<sup>1</sup> Portugal is unitary republic with a parliamentary democracy and a civil-law legal system.

### FGM Prevalence

A 2016 study published in *Public Health* (an official journal of The Royal Society for Public Health) estimates that 6,576 women and girls aged 15 and over who have undergone female genital mutilation (FGM) are living in Portugal. In addition, the study estimates that 1,830 girls aged 14 or younger who have undergone FGM or are at risk of undergoing FGM are living in Portugal.<sup>2</sup>

## National Legal Framework

### Specific Provision in General Law

FGM is criminalised in Portugal under a specific provision in general criminal law, **Article 144-A of the Portuguese Penal Code** (the *Criminal Code*). **Article 149(3) of the Criminal Code** prescribes that consent is irrelevant to the criminality of FGM.

### Definition of FGM

**Article 144-A(1) of the Criminal Code** defines FGM as 'genitally mutilating', in whole or in part, a female person through clitoridectomy, infibulation, excision or any other practice harmful to the female genital organs for non-medical reasons. This definition corresponds to the World Health Organization's definition.<sup>3</sup>

## Women and Girls of All Ages

The performance of FGM on women and girls of all ages has been criminalised in Portugal. **Article 144-A of the Criminal Code** does not contain an age limit for the victim. However, **Article 145(2)**, in conjunction with **Article 132(2)(c)**, does prescribe that it is an aggravating circumstance to perform FGM on a person who is particularly defenceless due to, *inter alia*, age.

## Procuring, Aiding and Abetting

Procuring, aiding and abetting FGM are criminalised in Portugal through general criminal law. Procuring FGM – when someone has a cutter (or any other person) perform FGM on a victim – most likely qualifies as either ‘committing an offence through an intermediary’, ‘intentionally causing another to commit an offence’ or ‘taking part on the execution of the fact, alongside others’, as set out in **Article 26 of the Criminal Code**. Article 26 prescribes that all options qualify someone as a ‘perpetrator’.

It is unclear whether abetting FGM would be defined as ‘intentionally causing another to commit an offence’ under **Article 26** or as ‘helping another to commit an offence’ under **Article 27(1)**. The latter would qualify an abettor as an ‘accomplice’ as prescribed by **Article 27**. The answer is likely dependent on the intensity of the person’s involvement and the specifics of the case.

Aiding FGM would be defined as ‘intentionally helping another to commit an offence’, which would qualify someone as an ‘accomplice’ under **Article 27(1)**. Under **Article 27(2)**, the sentence as prescribed for the perpetrator is mitigated for accomplices in accordance with **Article 73**.

## Allowing the Use of Premises

Allowing the use of premises for the purpose of FGM is (most likely) criminalised in Portugal through general criminal law. Allowing the use of premises could be categorised as ‘intentionally helping another to commit an offence’, thus qualifying someone who allows the use of premises as an ‘accomplice’ under **Article 27(1) of the Criminal Code**.

## Providing or Possessing Tools

Providing (specific) tools for the purpose of FGM is (most likely) criminalised in Portugal through general criminal law. Providing (specific) tools could be categorised as ‘intentionally helping another to commit an offence’, thus qualifying someone who provides (specific) tools and as an ‘accomplice’ under **Article 27(1) of the Criminal Code**.

Possessing (specific) tools for the purpose of FGM is (most likely) criminalised in Portugal through **Article 144-A of the Criminal Code**. **Article 144-A(2)** prescribes that preparatory acts for FGM are also punishable (against the general rule that establishes that these acts are not punishable – Article 21). No further definition of ‘preparatory acts’ is provided in the Criminal Code, but possessing (specific) tools would seem to be a clear example of a preparatory act.

## Obligation to Report FGM

Any member of the Portuguese police is obliged to report any crime that he/she is aware of. Employees of a public entity that become aware of the commission of a crime while performing their professional functions and because of those functions are also subject to a duty to report it to the competent criminal authorities (**Article 242 of the Portuguese Criminal Procedure Code**). Members of the supervisory boards and presidents of the audit committees in commercial companies are also obliged to report any public crimes (the ones that are not subject to a mandatory complaint of the victim) (**Articles 422(3) and 423-G(3) of the Portuguese Companies Act**).

Portugal has particularly strict professional secrecy laws. **Article 195 of the Criminal Code** criminalises breaching professional secrecy without mentioning any exemptions. **Article 32 of the Regulation of Medical Deontology** prescribes that professional secrecy for physicians may only be waived without the consent of the patient in case of (i) a birth, death or disease that must be reported or (ii) to protect the dignity, honour or legitimate interest of the patient or third party, but only with prior authorisation from the president of the Bar Association. **Article 4(2) of the Regulation on Waiver of Professional Secrecy** repeats this in regard to the choice made by the president of the Bar Association and does not define when, or in what situations, it is legitimate to authorise a waiver of professional secrecy to protect the honour, dignity or legitimate interest of a patient or third party. The Regulation also does not mention anything on reporting offences. However, one could imagine that if a physician observes that a girl has undergone FGM and knows she has younger sisters, he would be protecting the legitimate interests of her and of third parties by reporting this.

**Article 13-A of the Law for the Protection of Children and Young People in Danger** (the *Child Protection Law*) prescribes that even the Protection Committee needs the consent of a subject, the subject's legal representative(s) or whoever has the *de facto* custody of the subject to access 'sensitive personal data' such as 'clinical data'. The Child Protection Law also states that, when a situation reported for the purposes of the law constitutes a crime, the entities and institutions involved are obliged to report it to the Public Prosecutor's Office or to the police. It also states that the police and judiciary authorities are obliged to communicate to the Protection Commissions any dangerous situation that they are aware of, as is any entity that works on child-related matters, if they believe their own intervention is not sufficient. Finally, any person can report a dangerous situation, but the report of any situation that endangers the life of a child or young person or his/her physical or psychological integrity or freedom is mandatory for everyone.

### Medicalised FGM

Medicalised FGM is criminalised in Portugal under **Article 144-A of the Criminal Code**. There is no specific provision on medicalised FGM in the Criminal Code. It would fall under the general prohibition.

There is a general provision on medical malpractice, **Article 150(2)**, which criminalises physicians who cause danger or serious harm to body or health by not complying with the *leges artis* (using correct practice for the procedure), but this does not seem to appropriately apply to medicalised FGM.

**Article 150(1)** does contain a medical exemption to violating physical integrity, prescribing that, *inter alia*, operations that, according to the state of medical knowledge and experience, prove to be indicated and are carried out in accordance with the required *leges artis* by a physician or other legally authorised person, with the intention of preventing, diagnosing, alleviating or mitigating illness, suffering, injury, bodily fatigue or mental disturbance are not offences.

### Extraterritoriality

The **Criminal Code** extends extraterritorial application of Portuguese criminal law to the commission of FGM abroad, regardless of double criminality. **Article 5(1)(c)** prescribes that Portuguese criminal law is applicable to, *inter alia*, offences under **Article 144-A** committed outside the national territory if the perpetrator is found in Portugal and cannot be extradited or surrendered as a result of the execution of a European arrest warrant or other international cooperation instrument. There is no requirement regarding nationality, status or place of residence of either the victim or the perpetrator.

## Penalties

There are penalties for FGM and crimes related to FGM in Portugal.

- **Article 144-A(1) of the Criminal Code** prescribes a sentence of *two- to ten-years' imprisonment* for performing FGM, and most likely also for procuring FGM.
- **Article 145(1)(c) of the Criminal Code** prescribes a sentence of *three- to twelve-years' imprisonment* if aggravating circumstances are present.
- **Article 144-A(2) of the Criminal Code** prescribes a sentence of *up to three years' imprisonment* for preparing FGM, which may include possessing tools.

**Article 27(2) of the Criminal Code** prescribes that 'accomplices' (most likely those who aid in and abet FGM) receive a specially mitigated sentence. **Article 73(1)** prescribes that, in the case of a specially mitigated sentence, the *maximum term of imprisonment is reduced by one-third, the minimum term of imprisonment is reduced to one-fifth if the minimum term is three years or more, and to the minimum if inferior to three years, and that if the maximum term is three years or less, it may be replaced by a fine.* Therefore:

- **Article 144-A(1)** in conjunction with **Article 73(1)** prescribes a sentence of *one month to six-and-a-half years of imprisonment* for complicity in performing FGM.
- **Article 145(1)(c)** in conjunction with **Article 73(1)** prescribes a sentence of *six-months' to eight-years' imprisonment* for complicity in performing FGM when aggravating circumstances are present.
- **Article 144-A(2)** in conjunction with **Article 73(1)** prescribes a sentence of *one month's to two years' imprisonment or a fine* for complicity in preparing FGM.

## Protection

### Protecting Uncut Girls and Women

There do not seem to be specific or general laws protecting uncut girls, aside from general criminal law.

**Article 3(1) of the Child Protection Law** prescribes that authorities may legitimately intervene to protect a 'child in danger' if the child is put in danger due to the actions or omissions of the parents, the legal representatives or whoever has *de facto* custody, or by any third party, or even the child, if those persons do not act to remove the danger.

**Article 3(2)** provides a list of scenarios in which a child is considered to be 'in danger', which neither explicitly nor implicitly includes uncut girls at risk of FGM; however, these examples are only indicative. Under **Article 3(2)(b)**, a child must have been physically abused to be considered in danger. It is not mentioned whether this also includes being at risk of being physically abused or being at risk of becoming the victim of an offence.

**Article 3(2)(b)** does, however, also include psychological abuse, and **Article 3(2)(f)** also states that a child that is subject, directly or indirectly, to behaviours that seriously affect their safety or emotional balance is considered in danger. One could argue that being at risk of FGM would constitute psychological abuse or harm to the safety and emotional balance of the child. If such an argument were to be accepted, **Article 35 of the Child Protection Law** provides the possibility of supporting measures and out-of-home placement.

## Government Obligations

Portugal's most recent action plan on FGM is the **Action Plan for the Prevention and Fight Against Violence against women and domestic violence** (the *Action Plan*), which is an integral part of the *National Strategy for Equality and Non-Discrimination 2018–2030*.

The Commission for Citizenship and Gender Equality is responsible for the coordination of the Action Plan. Although the Action Plan rather extensively covers relevant goals in relation to prevention, training and cooperation, it is limited to commitments, rather than including hard obligations for the Government or officials.<sup>4</sup>

# Implementation of The Law

## Court Cases

There is one court case in Portugal concerning FGM.

The case concerns a 21-year-old mother from Guinea Bissau who, in 2019, during a trip to Guinea Bissau, had her then one-and-a-half-year-old daughter undergo FGM. The mother was 19 years old at the time. On 8 January 2021 she was sentenced to three years' imprisonment by a court in Sintra.

The defendant and her lawyer appealed this verdict. In July, the Court of Appeals in Lisbon suspended the prison sentence for four years. The Court argued that the sentence would present a 'new punishment' for the child, who is vulnerable and needs her mother. The Court also took note of the circumstances of the case and particularly the situation of the defendant: she is a very young mother and a migrant living in Portugal, and, as a young woman living with her family, she had not been able to resist the pressure of her family or the imposed social norm of FGM they exerted.<sup>5</sup>

# Conclusions and Recommendations

## Conclusions

FGM is criminalised in Portugal under a specific provision in general criminal law, **Article 144-A of the Criminal Code**.

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 Portugal under general criminal law.

There are some general **reporting obligations** in Portugal and specific ones related to child protection (concerning relevant professionals and institutions), which can be considered to include FGM.

The Criminal Code extends **extraterritorial application** of Portuguese criminal law to the commission of FGM abroad, regardless of double criminality. There is no requirement regarding nationality, status or place of residence of either the victim or the perpetrator.

## Recommendations

We urgently recommend that Portugal instate a system similar to the British Female Genital Mutilation Protection Orders to guarantee the efficient protection of girls and women at risk of FGM and other harmful traditional practices, as it seems that the current general child protection laws do not protect girls at risk of FGM.

# Appendix I: International and Regional Treaties

PORTUGAL	Signed	Ratified Acceded	Reservations on reporting?
<b>International</b>			
International Covenant on Civil & Political Rights (1966) ( <i>ICCPR</i> ) <sup>6</sup>	✓ 1976	✓ 1978	No
International Covenant on Economic, Social & Cultural Rights (1966) ( <i>ICESCR</i> ) <sup>7</sup>	✓ 1976	✓ 1978	No
Convention on the Elimination of All forms of Discrimination Against Women (1979) ( <i>CEDAW</i> ) <sup>8</sup>	✓ 1980	✓ 1980	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>	✓ 2011	✓ 2013	No
European Convention on Human Rights <sup>11</sup>	✓ 1976	✓ 1978	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

### Art. 5

- (1) Salvo tratado ou convenção internacional em contrário, a lei penal portuguesa é ainda aplicável a factos cometidos fora do território nacional:
- a) Quando constituírem os crimes previstos nos artigos 221.º, 262.º a 271.º, 308.º a 321.º, e 325.º a 334.º, 336.º a 345.º;
  - b) Contra portugueses, por portugueses que viverem habitualmente em Portugal ao tempo da sua prática e aqui forem encontrados.
  - c) Quando constituírem os crimes previstos nos artigos 144.º-A, 154.º-B e 154.º-C, 159.º a 161.º, 278.º a 280.º, 335.º, 372.º a 374.º desde que o agente seja encontrado em Portugal e não possa ser extraditado ou entregue em resultado de execução de mandado de detenção europeu ou de outro instrumento de cooperação internacional que vincule o Estado Português;
  - d) Quando constituírem os crimes previstos nos artigos 171.º, 172.º, 174.º, 175.º e 176.º a 176.º-B e, sendo a vítima menor, os crimes previstos nos artigos 144.º, 163.º e 164.º:
    - i) Desde que o agente seja encontrado em Portugal e não possa ser extraditado ou entregue em resultado de execução de mandado de detenção europeu ou de outro instrumento de cooperação internacional que vincule o Estado Português; ou
    - ii) Quando cometidos por portugueses ou por quem resida habitualmente em Portugal; ou
    - iii) Contra menor que resida habitualmente em Portugal;
  - e) Por portugueses, ou por estrangeiros contra portugueses, sempre que:
    - i) Os agentes forem encontrados em Portugal;
    - ii) Forem também puníveis pela legislação do lugar em que tiverem sido praticados, salvo quando nesse lugar não se exercer poder punitivo; e
    - iii) Constituírem crime que admita extradição e esta não possa ser concedida ou seja decidida a não entrega do agente em execução de mandado de detenção europeu ou de outro instrumento de cooperação internacional que vincule o Estado Português;
  - f) Por estrangeiros que forem encontrados em Portugal e cuja extradição haja sido requerida, quando constituírem crimes que admitam a extradição e esta não possa ser concedida ou seja decidida a não entrega do agente em execução de mandado de detenção europeu ou de outro instrumento de cooperação internacional que vincule o Estado Português;
  - g) Por pessoa colectiva ou contra pessoa colectiva que tenha sede em território português.
- (2) A lei penal portuguesa é ainda aplicável a factos cometidos fora do território nacional que o Estado Português se tenha obrigado a julgar por tratado ou convenção internacional.

### Art. 26

É punível como autor quem executar o facto, por si mesmo ou por intermédio de outrem, ou tomar parte directa na sua execução, por acordo ou juntamente com outro ou outros, e ainda quem, dolosamente, determinar outra pessoa à prática do facto, desde que haja execução ou começo de execução.

## **Art. 27**

- (1) É punível como cúmplice quem, dolosamente e por qualquer forma, prestar auxílio material ou moral à prática por outrem de um facto doloso.
- (2) É aplicável ao cúmplice a pena fixada para o autor, especialmente atenuada.

## **Art. 73**

- (1) Sempre que houver lugar à atenuação especial da pena, observa-se o seguinte relativamente aos limites da pena aplicável:
  - a) O limite máximo da pena de prisão é reduzido de um terço;
  - b) O limite mínimo da pena de prisão é reduzido a um quinto se for igual ou superior a 3 anos e ao mínimo legal se for inferior;
  - c) O limite máximo da pena de multa é reduzido de um terço e o limite mínimo reduzido ao mínimo legal;
  - d) Se o limite máximo da pena de prisão não for superior a 3 anos pode a mesma ser substituída por multa, dentro dos limites gerais.
- (2) A pena especialmente atenuada que tiver sido em concreto fixada é passível de substituição, nos termos gerais.

## **Art. 132**

[. . .]

- (2) É susceptível de revelar a especial censurabilidade ou perversidade a que se refere o número anterior, entre outras, a circunstância de o agente:
  - (a) Ser descendente ou ascendente, adoptado ou adoptante, da vítima;  
[. . .]
  - (c) Praticar o facto contra pessoa particularmente indefesa, em razão de idade, deficiência, doença ou gravidez
  - (d) Empregar tortura ou acto de crueldade para aumentar o sofrimento da vítima;  
[. . .]

## **Art. 144-A**

- (1) Quem mutilar genitalmente, total ou parcialmente, pessoa do sexo feminino através de clitoridectomia, de infibulação, de excisão ou de qualquer outra prática lesiva do aparelho genital feminino por razões não médicas é punido com pena de prisão de 2 a 10 anos.
- (2) Os atos preparatórios do crime previsto no número anterior são punidos com pena de prisão até 3 anos.

## **Art. 145**

- (1) Se as ofensas à integridade física forem produzidas em circunstâncias que revelem especial censurabilidade ou perversidade do agente, este é punido:
  - a) Com pena de prisão até quatro anos no caso do artigo 143.º;
  - b) Com pena de prisão de 1 a 5 anos no caso do n.º 2 do artigo 144.º-A;
  - c) Com pena de prisão de 3 a 12 anos no caso do artigo 144.º e do n.º 1 do artigo 144.º-A.
- (2) São susceptíveis de revelar a especial censurabilidade ou perversidade do agente, entre outras, as circunstâncias previstas no n.º 2 do artigo 132.º

### **Art. 149**

- (1) Para efeito de consentimento a integridade física considera-se livremente disponível.
- (2) Para decidir se a ofensa ao corpo ou à saúde contraria os bons costumes tomam-se em conta, nomeadamente, os motivos e os fins do agente ou do ofendido, bem como os meios empregados e a amplitude previsível da ofensa.
- (3) O consentimento da vítima do crime do crime previsto no artigo 144.º-A não exclui em caso algum a ilicitude do facto.

### **Art. 150**

- (1) As intervenções e os tratamentos que, segundo o estado dos conhecimentos e da experiência da medicina, se mostrarem indicados e forem levados a cabo, de acordo com as *leges artis*, por um médico ou por outra pessoa legalmente autorizada, com intenção de prevenir, diagnosticar, debelar ou minorar doença, sofrimento, lesão ou fadiga corporal, ou perturbação mental, não se consideram ofensa à integridade física.
- (2) As pessoas indicadas no número anterior que, em vista das finalidades nele apontadas, realizarem intervenções ou tratamentos violando as *leges artis* e criarem, desse modo, um perigo para a vida ou perigo de grave ofensa para o corpo ou para a saúde são punidas com pena de prisão até 2 anos ou com pena de multa até 240 dias, se pena mais grave lhes não couber por força de outra disposição legal.

### **Art. 195**

Quem, sem consentimento, revelar segredo alheio de que tenha tomado conhecimento em razão do seu estado, ofício, emprego, profissão ou arte é punido com pena de prisão até 1 ano ou com pena de multa até 240 dias.

## Regulation of Medical Deontology

### Art. 32

Excluem o dever de segredo médico:

- a) O consentimento do doente ou, em caso de impedimento, do seu representante legal, quando a revelação não prejudique terceiros pessoas com interesse na manutenção do segredo médico;
- b) O que for absolutamente necessário à defesa da dignidade, da honra e dos legítimos interesses do médico, do doente ou de terceiros, não podendo em qualquer destes casos o médico revelar mais do que o necessário, nem o podendo fazer sem prévia autorização do Bastonário;
- c) O que revele um nascimento ou um óbito;
- d) As doenças de declaração obrigatória.

## Regulation on Waiver of Professional Secrecy

### Art. 4

- (1) A dispensa do segredo profissional tem caráter de excecionalidade.
- (2) A autorização para revelar factos abrangidos pelo segredo profissional, apenas é permitida quando seja inequivocamente necessária para a defesa da dignidade, da honra e dos legítimos interesses do próprio médico, do doente ou de terceiros.
- (3) A decisão do Bastonário, ou daquele em quem tenha sido delegada a competência, aferirá da essencialidade, atualidade, exclusividade e imprescindibilidade do meio de prova sujeito a segredo, considerando e apreciando livremente os elementos de facto trazidos aos autos pelo requerente da dispensa.

# Law for the Protection of Children and Young People at Risk

## Art. 3

- (1) A intervenção para promoção dos direitos e proteção da criança e do jovem em perigo tem lugar quando os pais, o representante legal ou quem tenha a guarda de facto ponham em perigo a sua segurança, saúde, formação, educação ou desenvolvimento, ou quando esse perigo resulte de ação ou omissão de terceiros ou da própria criança ou do jovem a que aqueles não se oponham de modo adequado a removê-lo.
- (2) Considera-se que a criança ou o jovem está em perigo quando, designadamente, se encontra numa das seguintes situações:
  - a) Está abandonada ou vive entregue a si própria;
  - b) Sofre maus tratos físicos ou psíquicos ou é vítima de abusos sexuais;
  - c) Não recebe os cuidados ou a afeição adequados à sua idade e situação pessoal;
  - d) Está aos cuidados de terceiros, durante período de tempo em que se observou o estabelecimento com estes de forte relação de vinculação e em simultâneo com o não exercício pelos pais das suas funções parentais;
  - e) É obrigada a atividades ou trabalhos excessivos ou inadequados à sua idade, dignidade e situação pessoal ou prejudiciais à sua formação ou desenvolvimento;
  - f) Está sujeita, de forma direta ou indireta, a comportamentos que afetem gravemente a sua segurança ou o seu equilíbrio emocional;
  - g) Assume comportamentos ou se entrega a atividades ou consumos que afetem gravemente a sua saúde, segurança, formação, educação ou desenvolvimento sem que os pais, o representante legal ou quem tenha a guarda de facto se lhes oponham de modo adequado a remover essa situação.
  - h) Tem nacionalidade estrangeira e está acolhida em instituição pública, cooperativa, social ou privada com acordo de cooperação com o Estado, sem autorização de residência em território nacional.

## Art. 13-A

- (1) A comissão de proteção pode, quando necessário para assegurar a proteção da criança ou do jovem, proceder ao tratamento de dados pessoais sensíveis, designadamente informação clínica, desde que consentida pelo titular dos dados ou, sendo este menor ou interdito por anomalia psíquica, pelo seu representante legal, nos termos da alínea h) do artigo 3.º e do n.º 2 do artigo 7.º da Lei da Proteção de Dados Pessoais, aprovada pela Lei n.º 67/98, de 26 de outubro.
- (2) Para efeitos de legitimação da comissão de proteção, nos termos do previsto no número anterior, o titular dos dados pessoais sensíveis deve prestar, por escrito, consentimento específico e informado.
- (3) O pedido de acesso ao tratamento de dados pessoais sensíveis por parte da comissão de proteção deve ser sempre acompanhado da declaração de consentimento a que alude o número anterior.
- (4) Sempre que a entidade detentora da informação a que se refere o n.º 1 for uma unidade de saúde, o pedido da comissão de proteção deve ser dirigido ao responsável pela sua direção clínica, a quem cabe a coordenação da recolha de informação e sua remessa à comissão requerente.

## Art. 35

- (1) As medidas de promoção e proteção são as seguintes:
  - a) Apoio junto dos pais;
  - b) Apoio junto de outro familiar;
  - c) Confiança a pessoa idónea;
  - d) Apoio para a autonomia de vida;
  - e) Acolhimento familiar;

- f) Acolhimento residencial;
  - g) Confiança a pessoa selecionada para a adoção, a família de acolhimento ou a instituição com vista à adoção.
- (2) As medidas de promoção e de proteção são executadas no meio natural de vida ou em regime de colocação, consoante a sua natureza, e podem ser decididas a título cautelar, com exceção da medida prevista na alínea g) do número anterior.
- (3) Consideram-se medidas a executar no meio natural de vida as previstas nas alíneas a), b), c) e d) do n.º 1 e medidas de colocação as previstas nas alíneas e) e f); a medida prevista na alínea g) é considerada a executar no meio natural de vida no primeiro caso e de colocação, no segundo e terceiro casos.
- (4) O regime de execução das medidas consta de legislação própria.

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- 1 Statistics Portugal (2021) *Population*. Available at [https://www.ine.pt/xportal/xmain?xpgid=ine\\_tema&xpid=INE&tema\\_cod=1115&xlang=en](https://www.ine.pt/xportal/xmain?xpgid=ine_tema&xpid=INE&tema_cod=1115&xlang=en) (accessed 30 July 2021).
  - 2 A.L. Teixeira and M. Lisboa (2016) 'Estimating the prevalence of female genital mutilation in Portugal', *Public Health*, 139, pp.53–60. Available at <https://pubmed.ncbi.nlm.nih.gov/27267250/> (accessed 30 July 2021).
  - 3 World Health Organization (2020) *Factsheet: Female Genital Mutilation*. Available at <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (accessed 30 July 2021).
  - 4 Presidência do Conselho de Ministros (2013) *Resolução do Conselho de Ministros n.º 102/2013 Aprova o V Plano Nacional de Prevenção e Combate à Violência Doméstica e de Género 2014–2017*. Diário da República n.º 253/2013, Série I de 2013-12-31. Available at <https://dre.pt/web/guest/pesquisa/-/search/483890/details/normal?q=preven%C3%A7%C3%A3o+da+MGF> (accessed 30 July 2021).
  - 5 The Community of Practice on Female Genital Mutilation (2021) *Portugal: A first FGM sentence is suspended after appeal*. Available at <https://copfgm.org/2021/08/portugal-a-first-fgm-sentence-is-suspended-after-appeal> (accessed 8 April 2022).
  - 6 *International Covenant on Civil and Political Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en) (accessed 30 July 2021).
  - 7 *International Covenant on Economic, Social and Cultural Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4) (accessed 30 July 2021).
  - 8 *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4&clang=\\_en#9](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#9) (accessed 30 July 2021).
  - 9 *Convention on the Rights of the Child* (1989) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en) (accessed 30 July 2021).
  - 10 - Council of Europe (2021) *Chart of signatures and ratifications of Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/?module=signatures-by-treaty&treatynum=210> (accessed 30 July 2021).  
- Council of Europe (2021) *Reservations and Declarations for Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/?module=declarations-by-treaty&numSte=210&codeNature=0> (accessed 30 July 2021).
  - 11 - Council of Europe (2021) *Chart of Signatures and Ratifications of Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?module=signatures-by-treaty&treatynum=005> (accessed 30 July 2021).  
- Council of Europe (2021) *Reservations and Declarations for Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/?module=declarations-by-treaty&numSte=005&codeNature=0> (accessed 30 July 2021).

**Cover images:** Image of Portugal from Canva photo library.  
Seven Shooter (2018) *Woman wearing black spaghetti strap top standing near plants*. Available at <https://unsplash.com/photos/wOnXnciV6pl>.

*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 and PLMJ Advogados, SP, RL, 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 Portugal. 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, Middelburg Human Rights Law Consultancy, PLMJ Advogados, SP, RL 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.

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