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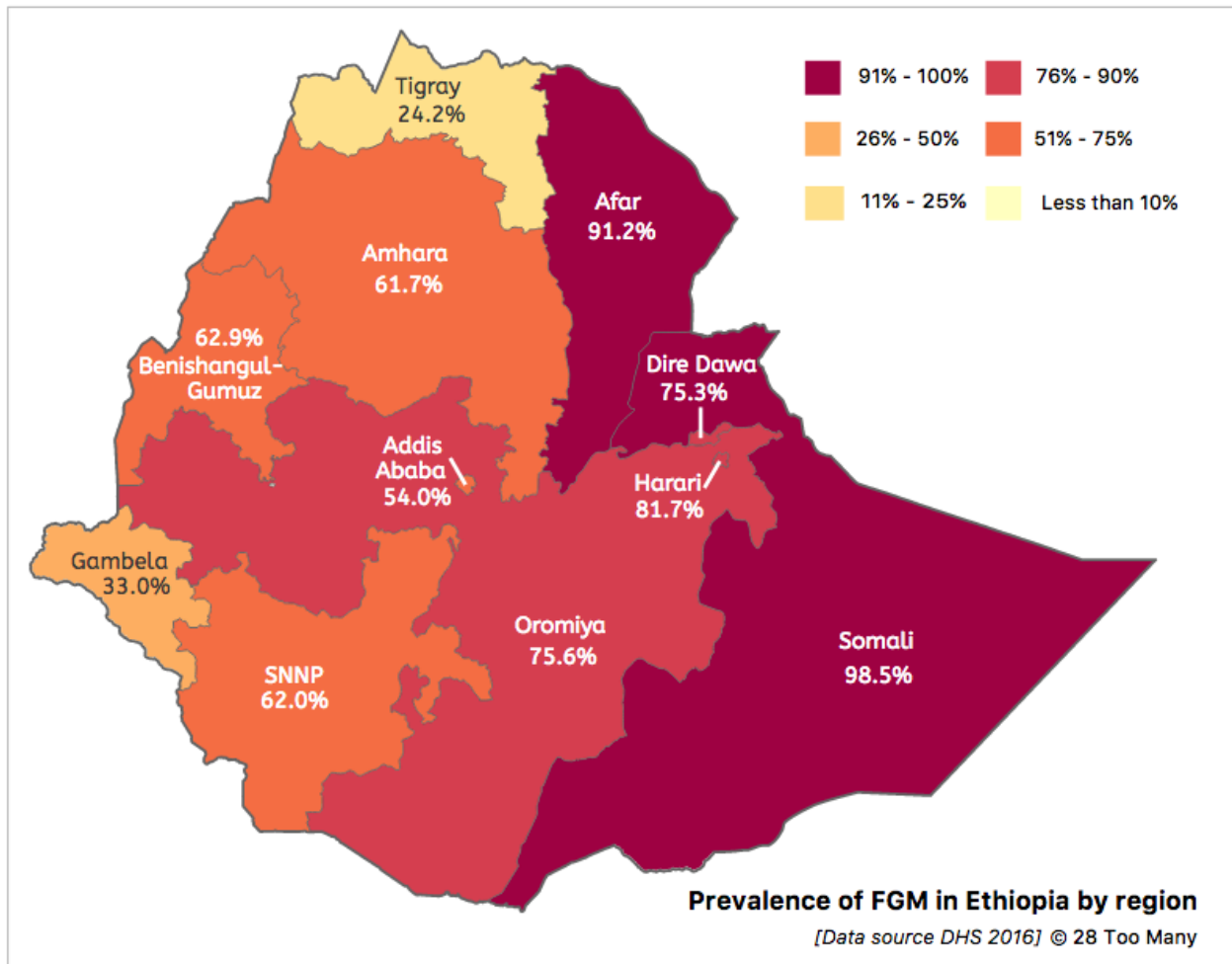
# ETHIOPIA: THE LAW AND FGM

July 2018

**In Ethiopia, the prevalence of FGM in women aged 15–49 is 65.2%.**

With a population of nearly 104.5 million, Ethiopia is second to Egypt in the total number of women and girls who have experienced FGM.

The regions with the highest prevalence are in the east.



- Approximately 64% of daughters of women aged 15–49 who have undergone FGM were cut before the age of four.
- ‘Cut, flesh removed’ is the most common type of FGM practised.
- Almost all FGM is carried out by ‘traditional practitioners’.

Source of data: Central Statistical Agency (CSA) [Ethiopia] and ICF (2016) *Ethiopia Demographic and Health Survey 2016: Key Indicators Report*. Addis Ababa, Ethiopia, and Rockville, Maryland, USA. CSA and ICF. Available at <https://dhsprogram.com/pubs/pdf/FR328/FR328.pdf>.

For further information on FGM in Ethiopia, see <https://www.28toomany.org/ethiopia/>.

# Domestic Legal Framework

Overview of Domestic Legal Framework in Ethiopia	
<i>The Constitution explicitly prohibits:</i>	
X	Violence against women and girls
✓	Harmful practices
X	Female genital mutilation (FGM)
<i>National legislation:</i>	
X	Provides a clear definition of FGM
✓	Criminalises the performance of FGM
✓	Criminalises the procurement, arrangement and/or assistance of acts of FGM
X*	Criminalises the failure to report incidents of FGM
X*	Criminalises the participation of medical professionals in acts of FGM
X*	Criminalises the practice of cross-border FGM
✓	<b>Government has a strategy in place to end FGM</b>

\* Not specifically criminalised; offences are addressed more generally by the national legislation (see below).

## What is The Law Against FGM?

An overview of the international and regional treaties signed and ratified by Ethiopia can be found in Appendix I of this report.

Ethiopia has a civil law system, with some Islamic and customary law; civil procedure is influenced by UK common-law principles.

**The Constitution of the Federal Democratic Republic of Ethiopia (1995)**<sup>1</sup> does not directly address FGM but contains several statements relevant to the practice:

- **Article 16** protects all citizens against ‘bodily harm’.
- **Article 18(1)** states, ‘Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.’
- **Article 25** addresses the ‘Right to Equality’.
- **Article 35** addresses the ‘Rights of Women’.

- **Article 35(4)** asserts, 'The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.'
- **Article 36** sets out the 'Rights of Children' and states that all actions 'shall be in the best interest of the child'.

Ethiopia comprises nine states, each with its own constitution. It is noted that '[i]n their content, most are similar. The human rights provisions of most are also similar, sometimes even identical, to those of the federal constitution.'<sup>2</sup> These may also have provisions relevant to FGM and/or harmful practices in general; for example, the **Constitution of the Southern Nations, Nationalities and Peoples State in south-west Ethiopia** reflects the Federal Constitution by prohibiting practices that oppress women or cause bodily or mental harm.<sup>3</sup>

**The main law governing FGM in Ethiopia is Proclamation No. 414/2004, also known as The Criminal Code of the Federal Democratic Republic of Ethiopia 2004 (the *Criminal Code* ).<sup>4</sup> This is a federal act that makes it a criminal offence to perform or procure FGM in Ethiopia.**

In addition, as well as being a criminal offence, performing any action that causes bodily harm is a civil offence under the **Ethiopian Civil Code (1960)**.<sup>5</sup>

## What The Law Covers

**Articles 561–570 of Chapter III of the Criminal Code** deal with 'Crimes Committed Against Life, Person and Health through Harmful Traditional Practices'. They criminalise the performance and procurement of FGM in Ethiopia, but do not provide a clear definition of the practice.

Specifically, the **Criminal Code** sets out the following offences:

- **Articles 561 and 562** refer to endangering life or causing bodily injury or mental impairment of a pregnant woman or new-born child as a result of the application of harmful traditional practices known by the medical profession to be harmful.
- **Articles 565 and 566** respectively set out punishments for the performance of FGM on 'a woman of any age' and infibulation of 'the genitalia of a woman'.
- **Article 568** states that the transmission of communicable disease through harmful traditional practices is subject to penalties.
- **Articles 569 and 570** cover the procurement of, and aiding and abetting, FGM by making it a criminal offence for 'a parent or any other person' to commission the practice or encourage someone to disregard the legislation prohibiting harmful traditional practices. They also criminalise organising or taking part in any movement that promotes FGM.

**The Criminal Code** does not specifically criminalise the failure to report FGM, whether it is planned or has taken place. However, more generally, **Article 443** sets out the punishments for failing to report certain crimes (see Penalties below). The Criminal Code also fails to protect uncut women (and their families) from verbal abuse or exclusion from society, which is included in the laws of some other countries in East Africa (such as Kenya and Uganda).

Regarding the liability of traditional practitioners, **Article 2067(1) of the Civil Code** may be applied to FGM performed on women and girls. It states the principle, 'A person shall be liable where by his act he inflicts bodily harm on another'. As such, under Ethiopian law, victims of FGM could bring about actions that seek compensation from practitioners.

### ***Medicalised FGM***

The medicalisation of FGM does not appear to be significant across most of Ethiopia, according to recent data: only 1% of women aged 15–49 who have had FGM are reported to be cut by a health professional. However, among girls aged 0–14, the percentage is slightly higher, at 1.9%.<sup>6</sup> It has also been previously reported at more than 10% in some cities and as much as 20% in Addis Ababa.<sup>7</sup>

FGM carried out by health professionals or in a medical setting is not specifically addressed in the **Criminal Code**. However, given the wide scope of **Articles 561–570**, the law does appear to apply universally and thus should encompass all medical practitioners who perform harmful practices. The prohibition and criminalisation in the Criminal Code of 'traditional practices known by the medical profession to be harmful' also implies that health professionals who condone FGM in any way will also be criminally liable.

### ***Cross-Border FGM***

In some countries where FGM has become illegal, the practice has been pushed underground and across borders to avoid prosecution. Ethiopia shares borders with several other countries where the existence and enforcement of laws varies widely, including Kenya, which has a comprehensive FGM law, and Somalia, where there is no current legislation in place.

The movement of families across borders to perform FGM remains a complex challenge to the campaign to end FGM in East Africa. While the law in Ethiopia does not directly address cross-border FGM, **Articles 11–22 of the Criminal Code** deal with crimes specified in the Code that are carried out by either a foreigner acting in Ethiopian territory or nationals acting in another country.

Specifically, **Article 11** states, 'This Code shall apply to any person whether a national or a foreigner who has committed one of the crimes specified in this Code on the territory of Ethiopia.'

**Article 18** provides that the Code shall apply to any person who commits a crime outside Ethiopia against an Ethiopian national and to any Ethiopian national who commits a crime under the Code outside of Ethiopia, with provision for extradition.

## **Penalties**

The **Criminal Code** establishes the following penalties for its violation:

- **Article 565:** Performing FGM on a woman of any age is punishable by imprisonment (where performance of this sentence can be suspended by the courts) for not less than three months or a fine of not less than 500 Birr (US\$18<sup>8</sup>).
- **Article 566(1):** Infibulating the genitalia of a woman carries a punishment of imprisonment (which cannot be suspended) for a period of three to five years.
- **Article 566(2):** Where FGM results in injury to body or health, the punishment is imprisonment (which cannot be suspended) for a period of five to ten years.

- **Article 569:** A parent or any other person who participates in the commission of FGM is punishable by imprisonment (which can be suspended) for a period not exceeding three months or a fine not exceeding 500 Birr (US\$18).
- **Article 570:** Encouraging another to disregard the law prohibiting FGM or organising or taking part in any movement that promotes FGM is punishable by imprisonment (which can be suspended) for a period of not less than three months or a fine of not less than 500 Birr (US\$ 18), or both.

(The fines set out in the Criminal Code of 2004 have not been updated, however, to reflect dramatic inflation in Ethiopia since that date, and this undermines any fine's punitive role.)

Regarding obligations to report a crime generally, **Article 443(1)(a)** states that anyone who has knowledge of any crime that is punishable by death or imprisonment (which would include FGM), or who knows the identity of perpetrators of the crime, is punishable by a fine not exceeding 1,000 Birr (US\$36) or imprisonment (which can be suspended) for up to six months.

## Implementation of The Law

### Cases

There have been intermittent reports regarding law enforcement and FGM in Ethiopia over recent years, but detailed information on cases is not widely available. In 2012, for instance, a cutter and the parents of six girls were arrested and charged. The cutter received a six-month sentence and the parents were fined 500 Birr (equivalent to US\$27 at the time). Isolated cases were also reported in 2011 and 2010.<sup>9</sup>

It appears that, although the number of arrests may have increased, law enforcement is weak and very few cases proceed to court in Ethiopia. The UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation (*UNJP*) report for 2015 noted that, although 279 arrests had been recorded in Ethiopia that year, there was only one conviction.<sup>10</sup> In 2016, again, only one conviction was recorded.<sup>11</sup>

### Relevant Government Authorities and Strategies

The implementation of Ethiopia's national strategy on FGM is overseen by the **Ministry of Women, Children and Youth Affairs**.

In 2013, Ethiopia established the **National Implementation and Monitoring Platform**, tasked with coordinating and implementing the **National Strategy and Action Plan on Harmful Traditional Practices against Women and Children**.<sup>12</sup> Key tasks of the Strategy include awareness-raising through community dialogue, developing support networks, providing safe spaces for girls, developing integrated services to ensure accessibility to quality education and health services, and working with leaders from different faiths.

Specifically, regarding the law, **Section 3.2.2 of the National Strategy**, which deals with the protection of women and children, sets out the main objective as strengthening and improving the national policy and legal framework through interventions, including:

- regularly assessing the legal and policy framework in light of international and regional commitments;
- harmonising and reconciling civil and customary laws from federal to local level and strengthening implementation, with involvement from all members of the community;
- adopting new policies and laws to respond to newly emerging situations and commitments;
- strengthening the capacity of key actors from federal through to local level, as well as community policing structures;
- bringing together key staff within the justice system to share experiences of law enforcement and best practice and plan for the future;
- strengthening collaboration between all actors (including those from the education and health sectors) to enhance law enforcement and protect women and children;
- providing technical support, including training, for all actors; and
- undertaking surveys and using data effectively to enhance law enforcement.

Working in partnership with the **UNJP** since 2008, the Government has in recent years included a dedicated budget-line on ending HTPs, including FGM. In 2013 it announced, as part of its goal to end FGM and child marriage by 2025, that it will commit to increasing the budget allocation by 10%.<sup>13</sup>

## Civil Society Observations

Through the National Strategy, Ethiopia has committed to eliminating FGM using a range of measures, in partnership with the UNJP, and evidence suggests that the Government has elected to prioritise those activities designed to bring about attitudinal and social-norm changes, as opposed to strictly enforcing existing laws. For instance, over the past five years, specialised training and various capacity-building programmes have been provided to professionals in communities.<sup>14</sup>

In 2015, the **Ethiopian Midwives Association** provided a two-day training to 254 midwives, to teach them how to prevent FGM and resist the pressure on them to cut girls.<sup>15</sup>

Ethiopia is also strengthening protection systems within communities to detect and report FGM cases. Available data suggests a gradual trend towards lower prevalence among younger women in Ethiopia in response to government and civil society efforts.<sup>16</sup>

Despite national legislation being in place, those working in communities to end FGM report continuing challenges around knowledge and enforcement of the law. Awareness of the law and its content is very poor, even among those in law-enforcement agencies, and there is a reluctance by local officials to fully enforce the law. Some local community leaders still support traditional practitioners who cut girls, even though FGM is illegal. It is also reported that in many rural communities, it is not the police or courts that people naturally turn to: disputes are more likely to be settled through traditional or informal justice systems such as those run by elders.

Reports suggest, too, that rural families have increasingly carried out FGM in secret to avoid the law and that this can put girls at even greater risk (for example, because the practice often takes place at night with poor lighting and using less-experienced practitioners).<sup>17</sup> Women and girls are further disadvantaged in respect of awareness of the law and their rights by the low level of literacy in Ethiopia (estimated to be 41.1% for women in 2015).<sup>18</sup>

The media continues to report limited application of the law in Ethiopia; however, regulations on press freedom and civil-society activity around human rights, including work to promote gender equality, remain in place. These restrict access to and exchanges of information, which in turn reduce the ability to gather data and share knowledge in the work to end FGM.

As well as low awareness of the law in remote rural communities, further concerns raised by civil society during the course of this research include the fear women and girls have of reporting FGM and that the whole mechanism and structure around the law makes it inaccessible. It is not felt that education around the law has yet had a lasting impact on behaviour, and the challenges of adherence to Sharia law and the practice of *sunna*<sup>19</sup> as a form of FGM remain a barrier to law enforcement.



# Conclusions and Suggestions for Improvement

## Conclusions

- The Criminal Code of the Federal Democratic Republic of Ethiopia criminalises and punishes the performance and procurement of FGM on women and girls of any age. Penalties are set higher for the most severe type of FGM (Type III/infibulation).
- Current national legislation does not specifically criminalise medicalised FGM, cross-border FGM, or the failure to report the practice, although the Criminal Code does address such crimes in more general terms.
- Although arrests have been made, enforcement of the law appears weak and few cases reach court. There is limited publicly-available information on any cases that have been taken to court and their outcomes, and cases appear to be settled more often through local, traditional justice systems.
- Ethiopia has a defined National Strategy in place and has committed public funds to tackling FGM, and public awareness of the harms of the practice continues to increase. Knowledge of the content and meaning of the law, however, remains limited in many practising communities.

## Suggestions for Improvement

### *National Legislation*

- The Criminal Code should be amended to include a clear definition of all types of FGM practised across Ethiopia.
- The law needs further strengthening around medicalised FGM to clearly define and strictly punish any member of the medical profession who performs, attempts to perform or assists FGM in any location or premises.
- Further information on cross-border FGM needs to be collected to understand the extent of the problem and what needs to be strengthened in the legislation to punish the crime.
- The law needs to set out the punishment for failure to specifically report FGM, whether it has taken place, is taking place or is planned.
- The law needs to clearly protect all victims of FGM; women and girls who are pressured by society into agreeing to FGM should not be subject to prosecution and further punishment.
- Uncut women and girls (and their families) should also be protected by the law from abusive language and actions that exclude them from society.
- The fines set out in the Criminal Code should be revised to take into account inflation since 2004.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

### *Implementation of the Law*

The level of knowledge of the law and opportunities to improve its enforcement vary between the larger cities and the remote, rural areas of Ethiopia. In the short term, there appears to be more opportunities to strengthen law enforcement (including improving training for the judiciary and the police) and to publicise the law and any prosecutions in the cities (particularly Addis Ababa), compared to rural areas, where raising awareness of the law needs to be integrated appropriately into community projects.

The work to end FGM in the more frequently practising communities of Ethiopia would benefit from the following:

- adequate monitoring and reporting of FGM cases and informing policy makers, the judiciary, the police, civil society and all those working to implement and enforce the law;
- anti-FGM programmes disseminating clear, easy-to-understand and accurate information around the law (where literacy rates are low, information around the law needs to be made available through different media channels and resources);
- a focus on further strengthening partnerships across borders, where illegal activity continues to take place;
- increasing the involvement of local and religious leaders in education around the law, including their responsibilities and the importance of the law in protecting women and girls in their communities;
- providing adequate support and training for judges and local law enforcers around the law, and encouraging them to fully apply the sentences provided for by the legislation;
- encouraging tribunals to make sure any prosecutions relating to FGM are clearly reported, including through local media such as community radio, and made available in local languages;
- increasing support and protection for victims and witnesses in FGM cases;
- training all professions around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM;
- implementing mandatory reporting of instances of FGM by medical staff in hospitals and health centres; and
- where they are currently unavailable and a need is identified, putting in place appropriate protection measures (for example, emergency telephone helplines or safe spaces) for girls at risk of FGM.

# Appendix I: International and Regional Treaties

ETHIOPIA	Signed	Ratified	Acceded	Reservations on reporting?
<b>International</b>				
International Covenant on Civil & Political Rights (1966) ( <i>ICCPR</i> )			✓ 1993	
International Covenant on Economic, Social & Cultural Rights (1966) ( <i>ICESCR</i> )			✓ 1993	
Convention on the Elimination of All forms of Discrimination Against Women (1979) ( <i>CEDAW</i> )	✓ 1980	✓ 1981		Not considered bound by paragraph 1 of Article 29
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) ( <i>CTOCIDTP</i> )			✓ 1994	
Convention on the Rights of the Child (1989) ( <i>CRC</i> )			✓ 1991	
<b>Regional</b>				
African Charter on Human & Peoples' Rights (1981) ( <i>ACHPR</i> ) (Banjul Charter)		✓ 1998		
African Charter on the Rights and Welfare of the Child (1990) ( <i>ACRWC</i> )		✓ 2000		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) ( <i>ACHPRRWA</i> ) (Maputo Protocol)	✓ 2004			

**'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.

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Girl Generation Ethiopia

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- 2 Tsegaye Regassa (2004) *State Constitutions in Federal Ethiopia: A Preliminary Observation (A Summary for the Bellagio Conference, March 22-27, 2004)*. Available at [https://www.researchgate.net/publication/258152597\\_State\\_constitutions\\_in\\_federal\\_Ethiopia](https://www.researchgate.net/publication/258152597_State_constitutions_in_federal_Ethiopia).
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- 9 28 Too Many, *op. cit.*, p.55.
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- 18 Central Intelligence Agency (2018) *The World Factbook: Ethiopia*, 13 June. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html>.
- 19 *Sunna means 'path' or 'way'. It refers to the traditions of Muhammad, and many Muslims in Ethiopia believe that the less-severe forms of FGM (i.e. not Type III) are sunna. However, sunna traditions and practices are not required within Islamic law.*

**Cover image:** Rod Waddington (2014) *Sisters, Wollaita, Ethiopia*. Available at <https://flic.kr/p/paEjCD>.  
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*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*

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