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FGM...  
let's end it.



# FGM MODEL LAW

March 2020

**Cover image:** Anton\_Ivanov (2012) Accra, Ghana – March 6, 2012: Unidentified Ghanaian girl and her little brother in the street in Ghana. Children of Ghana suffer of poverty due to the unstable economic situation. Shutterstock ID: 433803607.

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## About 28 Too Many

28 Too Many is an international research organisation created to end female genital mutilation ('FGM') in the 28 African countries where it is practised and in other countries across the world where members of those communities have migrated. Founded in 2010 by Dr Ann-Marie Wilson and registered as a charity in the UK in 2012, 28 Too Many aims to provide a strategic framework where evidence-based knowledge and tools enable both policy-makers and in-country anti-FGM campaigners to be successful and make a sustainable change to end FGM.

**The vision of 28 Too Many is a world where every woman and girl is safe, healthy and lives free from FGM and other human-rights violations.**

28 Too Many carries out all its work thanks to donations and is an independent, objective voice unaffiliated with any government or large organisation. We are grateful to TrustLaw, the Thomson Reuters Foundation's legal pro bono service, which has enabled this research to take place, and to the teams of international lawyers who have supported us to develop this FGM Model Law. It follows the successful completion of **our series of reports on FGM and the law** across 28 African countries in 2018.

*The FGM Model Law is the culmination of years of dedication and resourcefulness by the team at 28 Too Many and the lawyers who worked pro bono on this series of international reports on the law and FGM. It has been truly inspirational to work with people who care so deeply and are working so hard to eliminate FGM from the world.*

~ TrustLaw, March 2020

All reports and resources published by 28 Too Many are available to download for free at [www.28toomany.org](http://www.28toomany.org).



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TrustLaw's success is built on the generosity and commitment of the legal teams who volunteer their skills to support the NGOs and social enterprises at the frontlines of social change. By facilitating free legal assistance and fostering connections between the legal and development communities we have made a huge impact globally.

We have supported grassroots organisations to employ their first staff members, helped vulnerable women access loans to start their first businesses and brought renewable-energy lighting to slums. Free legal assistance on these small projects has had a big impact on local communities working to overcome poverty and discrimination.

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Our resource library can be found at

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28 Too Many

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**Driving progress  
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Danica Issell

Lead Editor, 28 Too Many

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# INTRODUCTION

## Female Genital Mutilation: The Practice and Global Prevalence

**Female genital mutilation** ('FGM') (sometimes called female genital cutting and female genital mutilation/cutting) is defined by the World Health Organization (the 'WHO') as comprising 'all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.' FGM is a form of gender-based violence and has been recognised as a harmful practice and a violation of the human rights of women and girls.

At least 200 million women and girls alive today have had FGM. The practice has been reported in 28 countries in Africa, mainly along a belt stretching from Senegal in West Africa, to Egypt in North Africa, to Somalia in East Africa and to the Central African Republic. 28 Too Many estimates that, across these 28 African countries, 55 million girls who are under the age of 15 have experienced or are at risk of FGM.<sup>i</sup>

FGM also occurs in some countries in Asia and the Middle East and certain diaspora communities in North and South America, Australasia and Europe. As with many ancient practices, FGM is carried out by communities as a heritage of the past and is often associated with ethnic identity. Communities may not even question the practice or may have long forgotten the reasons for it.

FGM is often motivated by beliefs about what is considered appropriate sexual behaviour. Some communities consider that it ensures and preserves virginity and marital faithfulness and prevents promiscuity/prostitution. There is a strong link between FGM and marriageability, with FGM often being a prerequisite to marriage. FGM is sometimes a rite of passage into womanhood and necessary for a girl to go through in order to become a responsible adult member of society. FGM is also considered to make girls 'clean' and aesthetically beautiful. Although no religious text requires the practice, practitioners often believe it has religious support. Girls and women will often be under strong social pressure to undergo FGM, including pressure from their peers, and risk victimisation and stigma if they refuse to be cut. FGM can take place at any age, and the age of cutting will depend upon the practising community (from infancy, immediately following birth, through to adolescence, and to adult women who are giving birth themselves).

FGM is always traumatic. Immediate complications can include severe pain, shock, haemorrhage (bleeding), tetanus or sepsis (bacterial infection), urine retention, open sores in the genital region and injury to nearby genital tissue. Long-term consequences can include recurrent bladder and urinary tract infections, incontinence, cysts, psychological problems, infertility, an increased risk of new-born deaths and childbirth complications including fistula, and the need for later surgeries. For example, a woman with Type III infibulation will likely need to be cut open later to allow for sexual intercourse and childbirth.

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<sup>i</sup> This estimate is based on 2017 World Bank population estimates and data on the prevalence of FGM among 15–19-year-olds from the latest DHS and MICS surveys for the 28 African countries.

The vision of 28 Too Many is a world where every girl and woman is safe, healthy and lives free from FGM and other human-rights violations. A key strategic objective is to provide detailed, comprehensive research for each of the 28 countries in Africa where FGM is practised, and beyond. Developing this Model Law, from the research to date, has been a key part of this strategy.

## Developing an FGM Model Law

In 2019, 28 Too Many, in collaboration with TrustLaw, the Thomson Reuters Foundation’s global, legal pro bono service, partnered with international law firms Reed Smith LLP, Cleary Gottlieb Steen & Hamilton LLP and Latham & Watkins LLP to draft a **model law on FGM**. It builds on the success in 2018 of this partnership in publishing a report entitled **The Law and FGM: An Overview of 28 African Countries**, together with accompanying reports identifying the current legislative frameworks in individual countries. These reports identified examples of good practice as well as highlighting where gaps in legislation remain.

Our research made it clear that countries are at different stages of developing anti-FGM laws. Of the 28 African countries in the study, 22 have some form of national legislation criminalising FGM and six remain without laws, meaning FGM is effectively still legal. Approximately 30% of the 55 million at-risk girls live in the six countries that have no legislation in place to prohibit FGM (Chad, Liberia, Mali, Sierra Leone, Somalia and Sudan). Five out of six of these countries have either draft legislation waiting to be passed or have expressed an intention to pass a law to ban FGM.

In most countries with anti-FGM laws, existing legislation is failing to protect women and girls from the practice. Laws are under-enforced and prosecutions are rare. There are few examples of what can be considered fully comprehensive laws – many need enhancing and tightening – and some of the very real challenges to ending FGM worldwide, such as medicalised FGM and cross-border FGM, are currently neglected in most legal frameworks.

Our research to date has identified the features of an anti-FGM law that are considered essential for inclusion in all domestic and regional legislative frameworks to protect women and girls and their families. This document brings together those essential features into an FGM Model Law for the first time.

## Structure and Basis of the FGM Model Law

This Model Law serves as a comprehensive guide for policy makers and stakeholders, as well as NGOs and activists. It highlights the key features that any anti-FGM law (whether regional or national) should include and provides a benchmark for assessing the strengths and weaknesses of current legislative frameworks in different jurisdictions where FGM is still practised.

The Model Law is divided into two parts:

- I. **Offences and Penalties;** and
- II. **State Obligations.**

Part I of the Model Law is based around **six features** that 28 Too Many identifies as the minimum necessary for anti-FGM legislation to be effective. These are as follows:

**1. Provide a clear definition of FGM**

Although a clear definition including all relevant types of FGM should be a fundamental feature of legislation, 28 Too Many's research has shown that current laws vary in respect of this key detail.

Only a few countries give fully comprehensive definitions of all types of FGM, while most countries give more general, shorter definitions, which are less detailed and may not cover all types of FGM. Some countries' laws do not include a definition of FGM at all.

**2. Criminalise the performance of FGM**

The priorities of the 22 African countries that so far either have a specific law prohibiting FGM or make reference to FGM in another law have been to target those who *directly perform* the physical act of FGM. Most countries criminalise the performance of FGM on all women and girls, irrespective of age, but there are exceptions (for example, Mauritania and Tanzania only prohibit the performance of FGM on girls under 18 years of age).

**3. Criminalise procuring, arranging and/or assisting acts of FGM**

As well as prohibiting the performance of FGM, legislation needs to prohibit the act of *requesting and arranging (procuring) or assisting, aiding and abetting the practice*. This may include the actions of family members of the victims, or community and religious leaders who play a role in bringing about FGM. FGM practitioners are often accompanied by one or more assistants or younger trainees who may be family members or members of the local community (whose actions often include physically restraining the victim during the procedure). Members of the wider community may also take actions that fall into this category, such as allowing premises to be used for acts of FGM or providing cutting tools.

**4. Criminalise the failure to report incidents of FGM**

Our research shows that currently only half of the 22 African countries that have anti-FGM laws actually require FGM to be reported to the relevant authorities. This lack of societal responsibility to report a crime is failing to protect millions of women and girls who are still at risk of FGM.

This Model Law distinguishes between (a) **collective responsibility** (i.e. the general responsibility of a community, including a woman's or girl's own family, friends and other members of her community, to report that FGM has taken place, is taking place, or is planned); and (b) **positional responsibility** (i.e. the specific responsibility of those in positions of authority to report women and girls at risk, including those who carry a duty of care such as health professionals, social workers, teachers, youth workers, and community and religious leaders).

## 5. Criminalise the participation of medical professionals in acts of FGM

One of the significant challenges to the current worldwide campaign to end FGM is the trend towards medicalised FGM in some countries. Medicalised FGM not only constitutes a continuing threat to the health and wellbeing of women and girls, but also it contradicts medical professionals' commitments to 'do no harm' and enables a practice that represents a deeply rooted form of gender inequality and abuse.

Our research indicates that of the 22 African countries with anti-FGM laws currently in place, only nine specifically address medicalised FGM and set out associated penalties for FGM performed by members of the medical or paramedical profession. This is a significant oversight: 99% of women and girls who have been cut by a health professional live in just three countries – Egypt, Nigeria and Sudan – and these countries do not yet clearly and comprehensively criminalise and punish acts of medicalised FGM in their national or state laws.

## 6. Criminalise the practice of cross-border FGM

In some countries where FGM has become illegal, the practice has been pushed underground and across borders to avoid prosecution. The movement of families and traditional practitioners across national borders for the purpose of FGM remains a complex challenge for the campaign to end the practice. As a result, women and girls living in border communities are particularly vulnerable.

Of the 22 African countries with anti-FGM legislation, only three – Guinea Bissau, Kenya and Uganda – specifically criminalise and punish cross-border FGM. This omission from the majority of legislative frameworks continues to undermine efforts of government authorities and civil society to tackle the problem.

## Use of the FGM Model Law

Anti-FGM laws are important because they are a statement of intent and they demonstrate a commitment to eradicate FGM. The absence of a law banning FGM sends out a message that the practice is legal and 'acceptable'. 28 Too Many recognises that laws alone cannot end FGM, but their absence fundamentally undermines the efforts of NGOs and activists to eradicate it. Laws need to be applied alongside education on the rights of women and girls and form part of an ongoing effort to engage practising communities and change cultural and social norms.

It is recognised that this Model Law may need some adaptation depending on each individual country's legal, political and social context, and its current legislative framework around FGM. However, it is presented as a flexible tool for policy and decision-makers to refer to moving forwards and for activists to challenge current legal environments that may not be supporting their efforts to end FGM.

The following features of the Model Law merit particular mention:

- **A single, coherent piece of legislation:** The Model Law is a single, coherent piece of legislation that could be adopted and implemented wholesale, regardless of whether the country in question operates civil law, common law or other legal systems (including mixed legal systems). It aims to be capable of adoption with minimal amendments needed to adapt it to different countries' legal systems. That said, the Model Law leaves open the possibility to tailor financial or custodial sanctions in each country, given differences in purchasing power parity and differing attitudes towards sentencing.
- **Individual chapters that can be used on a standalone basis:** Although prepared as a single piece of legislation, the Model Law is split into different chapters, each containing the relevant article and an accompanying 'Explanatory Note' that describes what the article aims to achieve and why it is drafted in a particular way. Moreover, articles aim for simple, straightforward drafting; for instance, a country legislature wanting to supplement national rules with an FGM reporting obligation could look to Chapter VIII of the Model Law for inspiration without having to replace the country's existing anti-FGM legislation wholesale.
- **Examples from current African legislation:** Although the Model Law intends to provide 'gold standard' legislation, each article, wherever possible, is accompanied by two or three examples of similar provisions from existing legislation in African countries. It thereby provides policy makers with examples to draw from and illustrates the different approaches to issues such as secondary liability and medicalised FGM. It avoids using examples from other jurisdictions whose legislative provisions might be impracticable in the 28 African countries on which the Model Law and previous research has focused. Certain penalties and sanctions may not be appropriate for a number of reasons, and the Model Law has been specifically drafted to avoid the inclusion of prescriptive penalties. As such, specific monetary fines and/or terms of imprisonment within the African law examples have been removed from this Model Law.
- **Innovative solutions to emerging issues:** The Model Law goes beyond synthesising existing legislation. It offers innovative solutions to some of the most pressing and challenging issues in addressing FGM. For example:
  - *Addressing medicalised FGM* – in certain countries, such as Egypt and Sudan, a significant proportion of FGM procedures are carried out by medical professionals. This development risks giving FGM the appearance of acceptability, without reducing the damage it causes. Chapter V specifically addresses FGM performed by a medical professional. While it creates a defence where a registered medical professional can show a reasonable belief that the procedure was medically necessary for the physical or mental well-being of a person (for example, where the surgery aims to mitigate the effects of a prior FGM procedure or facilitate childbirth), the burden of proving that defence rests on the medical professional concerned.

- *Targeting individuals in positions of influence* – the Model Law creates the notion of a ‘Restricted Occupation’. People performing these Restricted Occupations are likely to have positions of particular influence and their actions or pronouncements could disproportionately affect the likelihood of women in their communities being subjected to FGM. Examples include community leaders, religious leaders, clinicians, teachers, police officers and other holders of public offices. Holders of Restricted Occupations are therefore subject to higher penalties for not intervening – or making a report to relevant authorities – when they suspect that a particular act of FGM is likely to occur (see Chapter VIII). They are also subject to additional prohibitions, such as a ban on encouraging the performance of FGM, even if this falls short of the other heads of secondary liability (namely aiding, abetting, counselling or procuring FGM, which are covered in Chapter III).
- *Addressing disparagement of FGM victims* – an ongoing concern of anti-FGM strategies (including legislation) is the use of disparaging or derogatory language or actions to demean or ostracise women who have not undergone FGM, thereby reinforcing social pressure to sustain the practice. While this concern is as valid as ever – and is reflected in the Model Law – a parallel concern has emerged about the need not to disparage women who have undergone FGM. In particular, campaigns against FGM need to avoid worsening the damage that victims of FGM have already suffered. This does not aim in any way to dampen public health messages about the dangers of FGM; it instead aims to avoid victims of FGM being socially ostracised (for example, being treated as unworthy of marriage as social norms in practising communities change). Therefore, both Chapters IX and X contain provisions regarding the derogatory use of language and actions based on a woman’s ‘cut’ or ‘uncut’ status.

28 Too Many welcomes feedback on the content and future use of this Model Law. We will continue to support all those working to end FGM through the provision of much-needed research and resources.

Extracts from this publication may be freely reproduced, provided that due acknowledgement is given to the source, TrustLaw and 28 Too Many.

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Available at <https://www.28toomany.org/thematic/law-and-fgm/>.



# THE FGM MODEL LAW

# Interpretation (Glossary)

Capitalised terms throughout this law have the following meanings:

**Aiding/Abetting** means helping and/or encouraging the perpetrator in the carrying out of an act of Female Genital Mutilation on a Female

**Aggravated Female Genital Mutilation** means an act of Female Genital Mutilation that:

results in the death of the Female;

is carried out by the Female's parent, step-parent, Guardian, any person with Parental or Familial Responsibility for the Female or any person with control over the Female;

results in the Female suffering from any form of disability, including a chronic or incurable medical condition or infection such as HIV; and/or

is performed by a Healthcare Professional

**Board** means the anti-female genital mutilation board established by a government in accordance with Article 15 of this Model Law

**Female** means a girl or woman of any age

**Female Genital Mutilation** or **FGM** means any form of female genital mutilation falling within the WHO definition (see Article 1(1) of this Model Law)

**Familial Responsibility** means the duties and responsibilities of a person directly related to a Female (such as a sibling, aunt, uncle, grandparent or cousin) or a person related to a Female through marriage (such as a step-parent, a husband or the husband's sibling/s, parent/s, aunt/s, uncle/s, grandparent/s or cousin/s)

**Healthcare Professional/s** means any member of the medical, surgical, midwifery, psychology, nursing or pharmacy professions, or any individual undertaking training to enter into any such profession

**Guardian** means any person with responsibility for the health and welfare of a female child that is not biologically related to the child

**Medicalised Female Genital Mutilation** or **Medicalised FGM** refers to Female Genital Mutilation as defined by the WHO (see Article 1(2) of this Model Law) carried out by any Healthcare Professional

**Parental Responsibility** means the rights, duties, powers, responsibilities and authority that a parent, Guardian or other individual taking on the functions and responsibilities of a parent has over a Female in their care

**Partner State** in the context of the East African Community Act means the Republic of Uganda, the Republic of Kenya, the United Republic of Tanzania, the Republic of Burundi, the Republic of Rwanda, the Republic of South Sudan and any other country granted membership of the East African Community as established by the Treaty for the Establishment of the East African Community

**Premises** means all forms of buildings and land, whether residential, commercial or other, including buildings used for medical purposes

**Protection Order** means an order issued by a competent court, tribunal or other judicial authority for the purpose of protecting a Female where there is an ongoing or imminent risk of physical, mental or emotional harm as a result of an act of Female Genital Mutilation that has taken place or is planned to take place or to protect a Female where there is an ongoing or imminent risk that she will be transported from one jurisdiction to another with the intention that the Female will be subjected to Female Genital Mutilation

**Publication** means any communication of a message or statement by any means including print, video, audio or electronically online

**Restricted Occupation** means any religious leader, community leader, public official, teacher, police officer, Healthcare Professional, elected politician or other person holding a public office, whether or not they receive compensation for the performance of that role

**Support Services** means appropriate physical, physiological and psychological healthcare services, as well as rehabilitation and integration services, for Females who have suffered from Female Genital Mutilation. These may include shelter, safe spaces, psychosocial support, advice centres and telephone hotlines available 24 hours a day offering help and advice

**Tools** means any instrument, equipment or implement of any kind that is used for the performance of Female Genital Mutilation, whether or not that is its intended purpose

**WHO** refers to the World Health Organization



# PART I

## OFFENCES AND PENALTIES

# Chapter I: Definition of FGM

## Article 1 – Definition of Female Genital Mutilation

- (1) For the purpose of this law, **Female Genital Mutilation** comprises ‘all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons’, as defined by the World Health Organization (the ‘WHO’), and includes
- (a) **Type I** – The partial or total removal of the clitoris (clitoridectomy) and/or the prepuce;
  - (b) **Type II** – The partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision);
  - (c) **Type III** – The narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation);
  - (d) **Type IV** – All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, pulling, piercing, incising, scraping and cauterization;
  - (e) **Re-infibulation** – The procedure to narrow the vaginal opening in a woman after she has been deinfibulated (i.e. after childbirth); also known as re-suturing.
- (2) **Medicalised Female Genital Mutilation**, as defined by the WHO, shall refer ‘to situations in which the procedure (including re-infibulation) is practised by any category of health-care provider, whether in a public or a private clinic, at home or elsewhere, at any point in time in a woman’s life’.

## Explanatory Note

Article 1 gives a full definition of the main types of FGM according to the WHO.<sup>ii</sup> It also provides a definition of ‘Medicalised Female Genital Mutilation’.

Governments should also seek to include any further terms or definitions of FGM that are contextually relevant to their jurisdictions. Activists speak of many more sub-types of FGM within different practising communities. It should not be possible for a community to deny that it practises FGM because it simply uses different terminology or does not conform to a specific type. For example, there is a lack of understanding and agreement about types and definitions of FGM in the Islamic communities of Somalia and Sudan; FGM is commonly referred to there as either ‘Pharoanic’ (Type III/infibulation) or ‘sunna’ (incorporating all other, ‘less severe’, types); and in West Africa, local variations such as ‘angurya’ (the scraping of tissue surrounding the opening of the vagina) and ‘gishiri’ (cutting of the vagina) are known to be practised in Nigeria.

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<sup>ii</sup> World Health Organization (2016) *WHO guidelines on the management of health complications from female genital mutilation*, pp.2–4 and 8. Available at <https://www.who.int/reproductivehealth/topics/fgm/management-health-complications-fgm/en/>.

## Chapter II: Performance of FGM

### Article 2 – Performance of Female Genital Mutilation

- (1) A person who performs Female Genital Mutilation on a Female, for whatever reason or motivation, commits an offence.
- (2) A person who attempts to perform Female Genital Mutilation on a Female, for whatever reason or motivation, commits an offence.
- (3) It is no defence under Article 2(1) or (2) that a Female on whom Female Genital Mutilation was performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that the person performing Female Genital Mutilation believed such consent had been given.
- (4) A person who commits an offence under Article 2(1) or (2) and causes the death of the Female will be subject to the maximum penalty under Article 11.
- (5) For the purposes of determining whether an offence has been committed under Article 2(1) or (2), a person's culture, religion or other custom, tradition or practice shall be of no effect.

### Explanatory Note

Article 2 creates a criminal offence for performing, or attempting to perform, FGM of any type on a Female.

Any reason or motivation for performing FGM does not provide a defence, including reasons based on religious or cultural tradition. The Article 2 prohibition overrides any constitutional protection that is given to religious, ethnic or cultural groups.

Further, consent (or the belief that consent has been given) does not provide a defence, given (i) the degree of physical and psychological harm FGM can cause, and (ii) the risk that a consent defence might be abused to avoid liability under Article 2, including through societal pressure or coercion. In many cases, the victims of FGM would be too young to provide consent. A parent, Guardian or person with Parental or Familial Responsibility is unable to provide consent for FGM on behalf of a Female.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Benin (Civil Law)**

#### **Law No. 2003-03 on the Suppression of Female Genital Mutilation in the Republic of Benin**

##### *Chapter 1 – General Dispositions*

Article 2 – All forms of female genital mutilation practices by any person, whatever its quality, are prohibited.

[Translated from original]

### **Kenya (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2011**

##### *Part IV – OFFENCES*

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

(1) A person, including a person undergoing a course of training while under supervision by a medical practitioner or midwife with a view to becoming a medical practitioner or midwife, who performs female genital mutilation on another person commits an offence.

(2) If in the process of committing an offence under subsection (1) a person causes the death of another, that person shall, on conviction, be liable to . . . .

[. . .]

(6) It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.

## ***Uganda (Common Law)***

### **The Prohibition of Female Genital Mutilation Act, 2010**

#### *Part II – The Offence of Female Genital Mutilation*

2. Offence of female genital mutilation.

A person who carries out female genital mutilation commits an offence and is liable on conviction to . . . .

3. Aggravated female genital mutilation.

(1) A person commits the offence of aggravated female genital mutilation where—

- (a) death occurs as a result of female genital mutilation;
- (b) the offender is a parent, guardian or person having authority or control over the victim;
- (c) the victim suffers disability;
- (d) the victim is infected with HIV as a result of the act of female genital mutilation; or
- (e) female genital mutilation is done by a health worker.

(2) A person who commits the offence of aggravated female genital mutilation is liable on conviction to . . . .

[ . . . ]

5. Attempt to carry out female genital mutilation.

A person who attempts to carry out female genital mutilation commits an offence and is liable on conviction to . . . .

[ . . . ]

9. Consent of the victim to female genital mutilation.

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

10. Culture and religion not a defence to female genital mutilation.

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

## ***East African Community***

### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

#### *Part II – Female Genital Mutilation and Related Offences*

4. (1) A person who performs any operation or procedure that involves partial or total removal of the external female genitalia, or other injury to the female organ for non-medical reasons on another person commits an offence known as female genital mutilation and is liable on conviction to . . . .
- (2) A person commits the offence of aggravated female genital mutilation where –
  - (a) death occurs as a result of female genital mutilation;
  - (b) the offender is a parent, guardian or person having authority or control over the victim;
  - (c) the victim suffers disability as a result of the mutilation;
  - (d) the victim is infected with HIV as a result of the act of female genital mutilation;
  - (e) the female genital mutilation is done by a health worker
- (3) A person who commits the offence of aggravated female genital mutilation is liable on conviction to . . . .

## Chapter III: Aiding, Abetting, Counselling, Procuring and Encouraging FGM

### Article 3 – Aiding, Abetting, Counselling, Procuring and Encouraging Female Genital Mutilation

- (1) A person commits an offence if that person aids, abets, counsels or procures
  - (a) another person to commit any of the offences described in Article 2; or
  - (b) a Female to perform Female Genital Mutilation upon herselfand is aware, suspects or has reason to suspect that these acts will occur.
- (2) A person who does not commit an offence under Article 3(1) nevertheless commits an offence if that person encourages
  - (a) another person to commit any of the offences described in Article 2; or
  - (b) a Female to perform Female Genital Mutilation upon herselfin the performance of a Restricted Occupation.
- (3) A person who does not commit an offence under Article 3(1) nevertheless commits an offence if that person encourages
  - (a) another person to commit any of the offences described in Article 2; or
  - (b) a Female to perform Female Genital Mutilation upon herselfand holds Parental or Familial Responsibility for the Female.
- (4) A person in the performance of a Restricted Occupation who commits an offence under Article 3(1) or (2) will be subject to the maximum penalty under Article 11.
- (5) For the purposes of determining whether an offence has been committed under Article 3(1), (2) or (3), a person's culture, religion or other custom, tradition or practice shall be no defence.
- (6) It is no defence under Article 3(1), (2) or (3) that a Female on whom Female Genital Mutilation was performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that the person aiding, abetting, counselling, procuring or encouraging Female Genital Mutilation believed such consent had been given.

## Explanatory Note

Research has shown that a practitioner who performs FGM is often accompanied by one or more assistants who may be family members or members of the local community. It is therefore important to have provisions that address other perpetrators of FGM, other than actual practitioners of FGM. This will include those responsible for assisting, aiding and abetting the practice as well as those who request and arrange (procure) the act of FGM.

Article 3 does not make it an offence for a Female to carry out FGM on herself, given the risk of (i) criminalising the victim, and (ii) deterring the victim from reporting FGM in case she is accused of performing FGM on herself. However, Article 3 creates offences of helping or encouraging the performance of FGM (including helping or encouraging a victim to perform FGM on herself).

Aiding, abetting, counselling or procuring can include requesting that a person perform FGM on someone else, giving a person instructions in the performance of FGM, or supplying them with the premises or necessary tools to perform FGM. Aiding, abetting, counselling or procuring can occur by any means, including online.

The mental-state conditions of awareness, suspicion or reason to suspect the performance of FGM set important limits to the offence. For example, these conditions of the person's mental state ensure that a person would not commit an offence under Article 3(1) if they provided transport for a family with no reason to believe this would lead to FGM.

Article 3(2) and (3) are intended to make it an offence for a person in a position of significant influence or Parental/Familial authority to encourage FGM. This offence does not intend to limit freedom of speech or freedom of expression in general. It is intended to restrict people with leadership and parental responsibilities from using their positions to promote FGM. It includes religious leaders, community leaders, police officers and medical professionals (among others).

Consent (or belief that consent has been given) does not provide a defence to the offences set out in this Article.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Ethiopia (Common Law)**

#### **Proclamation No. 414/2004 – The Criminal Code of the Federal Democratic Republic of Ethiopia**

*Article 570 – Incitement Against the Enforcement of Provisions Prohibiting Harmful Traditional Practices*

Any person who publicly or otherwise incites or provokes another to disregard the provisions of this Code prohibiting harmful traditional practices, or organizes a movement to promote such end, or takes part in such a movement, or subscribes to its schemes, is punishable with . . . .

### **Kenya (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2011**

*Part IV – OFFENCES*

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

A person who aids, abets, counsels or procures—

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

### **Nigeria (Common Law)**

#### **Violence Against Persons Prohibition Act 2015**

*Section 6 – Prohibition of female circumcision or genital mutilation*

- (4) A person who incites, aids, abets, or counsels another person to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to . . . .

## ***Uganda (Common Law)***

### **The Prohibition of Female Genital Mutilation Act, 2010**

#### *Part II – The Offence of Female Genital Mutilation*

6. Procuring, aiding, abetting, etc. female genital mutilation

A person who procures, counsels, aids, abets, induces, coerces, threatens or under false pretence carries out female genital mutilation commits an offence and is liable on conviction to . . . .

7. Participation in events leading to female genital mutilation

A person who participates in any event leading to female genital mutilation commits an offence and is liable on conviction to . . . .

[In addition, Section 8 includes a longer sentence if the offender in sections 6 and 7 is a parent, guardian, husband or a person having authority or control over the victim. Section 10 clarifies that culture and religion are not a defence to female genital mutilation.]

## ***East African Community***

### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

#### *Part II – Female Genital Mutilation and Related Offences*

5. A person who aids, abets, counsels or procures –

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

## Chapter IV: Performing or Procuring FGM in Another Country/Jurisdiction

### Article 4 – Performing or Procuring Female Genital Mutilation in Another Country/Jurisdiction

- (1) Articles 2 and 3 extend to any act done outside [legislating country] by a [legislating country] national or resident.
- (2) A person commits an offence if that person
  - (a) takes a Female from [legislating country] to another country;
  - (b) takes a Female from another country to [legislating country];
  - (c) arranges for a Female to be taken from [legislating country] to another country; or
  - (d) arranges for a Female to be taken from another country to [legislating country]with the intention of subjecting that Female to, or having that Female subjected to, any of the offences described in Article 2.
- (3) A person – whether they are a national or resident of [legislating country] or not – commits an offence if they arrange for another individual to be transported from another country to [legislating country] in order for that individual to commit any of the offences described in Article 2.
- (4) A person – whether they are a national or resident of [legislating country] or not – commits an offence if they arrange for another individual in [legislating country] to be transported to another country in order for that individual to commit any of the offences described in Article 2.
- (5) A person commits an offence if they attempt to perform any of the actions described in Article 4(2), (3) or (4).
- (6) For the purpose of determining whether an offence has been committed under Article 4(2), (3), (4) or (5), a person’s culture, religion or other custom, tradition or practice shall be no defence.
- (7) It is no defence under Article 4(2), (3), (4) or (5) that a Female on whom the Female Genital Mutilation was performed or planned to be performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that a person who took the Female (or individual referenced under Article 4(3) or (4)) or arranged for the Female (or individual referenced under Article 4(3) or (4)) to be taken or transported under Article 4(2), (3) or (4) believed such consent had been given.

## Explanatory Note

Article 4 aims to deal with the situation where a person tries to avoid criminal penalties under the law by taking a Female outside of the legislating country to a jurisdiction where FGM can be performed legally or where sanctions are not as readily enforced. It does this in two ways.

Firstly, Article 4(1) extends the provisions of Articles 2 and 3 to acts done outside of the legislating country by a national of the legislating country, which creates a criminal offence where a person performs FGM despite having left the legislating country.

Secondly, Article 4(2) creates criminal offences of taking a Female or arranging for a Female to be taken outside of the legislating country, as well as bringing a Female or arranging for a Female to be brought into the legislating country, in order for FGM to be performed on her. This aims to target those who facilitate the practice of FGM by moving victims across national borders. For example, if a girl's parent or Guardian took her from the legislating country to a jurisdiction where FGM is legal and the girl underwent FGM in that jurisdiction, the parent or Guardian would have violated Article 4(2). In this scenario, the parent or Guardian would still be liable under Article 4(5) should the FGM or transportation fail to take place as planned.

Article 4 also creates an offence of facilitating the movement of a person (at subsection (3)) from one country to the legislating country or (at subsection (4)) from the legislating country to another country for that person to perform FGM. This aims to address scenarios where a practitioner of FGM is sent from or brought into the legislating country to perform FGM. This provision may be particularly important if the parent or Guardian of a Female has moved from a country where FGM is prevalent to a country where it is less common (hence they may have to arrange for a practitioner of FGM to travel into their new country of residence).

Consent (or belief that consent has been given) and religious or cultural beliefs do not provide defences to the offence set out in this Article.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Guinea-Bissau (Civil Law)**

#### **Law 14/2011, Federal Law to Prevent, Fight and Suppress Female Genital Mutilation**

##### *Chapter II – Crimes and Penalties*

Article 9 (Fraud to the law): The provisions of Articles 4 to 8 of this law are applicable in cases where the national or foreign national living in Guinea-Bissau is displaced and removed in a foreign country.

[Translated from original]

[Articles 4–8 outlaw the performance of FGM generally, including criminalising those who assist and those who become aware of the performance of FGM but fail to report it.]

### **Kenya (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2011**

##### *Part IV – OFFENCES*

##### 21. Procuring a person to perform female genital mutilation in another country

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

##### 28. Extra-territorial jurisdiction

- (1) A person who, while being a citizen of, or permanently residing in, Kenya, commits an act outside Kenya which act would constitute an offence under section 19 [Offence of female genital mutilation] had it been committed in Kenya, is guilty of such an offence under this Act.
- (2) A person may not be convicted of an offence contemplated in subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.

## ***Uganda (Common Law)***

### **The Prohibition of Female Genital Mutilation Act, 2010**

#### *Part III – Court Orders and Jurisdiction*

15. Extra-territorial jurisdiction

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

## ***East African Community***

### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

#### *Part II – Female Genital Mutilation and Related Offences*

6. A person commits an offence if the person takes another person from a Partner State to another Partner State or another country, or arranges for another person to be brought into a Partner State from another country with the intention of having that other person subjected to female genital mutilation.

## Chapter V: Performing, Aiding and Abetting Medicalised FGM

### Article 5 – Performing, Aiding and Abetting Medicalised Female Genital Mutilation

- (1) Any person who
- (a) performs Medicalised Female Genital Mutilation on a Female;
  - (b) attempts to perform Medicalised Female Genital Mutilation on a Female; or
  - (c) aids, abets, counsels or procures another person to commit either of the offences in subsection (a) or subsection (b) of this Article and is aware, suspects or has reason to suspect that these offences will occur
- commits an offence, unless that person is a Healthcare Professional and reasonably believes that the procedure performed on the Female is medically necessary for her physical or mental health, including, but not limited to (i) enabling a Female to give birth, (ii) mitigating or reversing as far as possible the effects of Female Genital Mutilation, or (iii) performing gender reassignment surgery.
- (2) It is no defence under Article 5(1) that a Female on whom Medicalised Female Genital Mutilation was performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that the person performing Medicalised Female Genital Mutilation believed such consent had been given.
- (3) A person who commits an offence under Article 5(1) and causes the death of the Female will be subject to the maximum penalty under Article 11.
- (4) For the purposes of determining whether an offence has been committed under Article 5(1), a person's culture, religion or other custom, tradition or practice shall be no defence.

## Explanatory Note

Article 5 is intended to make it an offence for a doctor, nurse, midwife or other medical professional (or any person undergoing training to become a doctor, nurse, midwife or other medical professional) to perform FGM on a Female. It is not intended to criminalise legitimate surgical procedures that are required for the mental or physical health of a Female, in particular surgeries intended to mitigate or reverse the effects of FGM, facilitate giving birth or perform gender reassignment surgery.

Article 5(1) creates a rebuttable presumption that a person has committed an offence if the procedure performed on a Female satisfies any of subsections (a) through (c). The defence of medical necessity is available only to Healthcare Professionals and requires them to show that they reasonably believed that the procedure was necessary for the physical or mental health of a Female. Evidence could include, for example, confirmation from a second medical professional or a medical body that the procedure was medically necessary. The arrangement of subsection (1) in this way seeks to avoid medical exemptions being used as a pretext for carrying out FGM.

Article 5(2) makes it clear that the ‘defence’ of medical necessity is not available merely on the basis that the Female consented to the procedure or that she might, absent the procedure, be disparaged or otherwise ostracised. In other words, a medical professional could not argue, as a defence, that the Female would suffer mental harm from being ostracised if the procedure did not take place. Consent (or belief that consent has been given) and religious or cultural beliefs do not provide defences to the offence of Medicalised FGM. Otherwise, a society’s expectation that a woman undergo FGM could provide a persistent basis for Medicalised FGM to occur.

## Examples from African Legislation

**Note:** *Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Kenya (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2011**

##### *Part IV – OFFENCES*

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

- (1) A person, including a person undergoing a course of training while under supervision by a medical practitioner or midwife with a view to becoming a medical practitioner or midwife, who performs female genital mutilation on another person commits an offence.

- (2) If in the process of committing an offence under subsection (1) a person causes the death of another, that person shall, on conviction, be liable to . . . .
- (3) No offence under subsection (1) is committed by an approved person who performs—
  - (a) a surgical operation on another person which is necessary for that other person’s physical or mental health; or
  - (b) a surgical operation on another person who is in any stage of labour or has just given birth, for purposes connected with the labour or birth.
- (4) The following are, for the purposes of this Act, approved persons—
  - (a) in relation to an operation falling within paragraph (a) of subsection (3), a medical practitioner;
  - (b) in relation to an operation falling within paragraph (b) of subsection (3), a medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming a medical practitioner or midwife.
- (5) In determining, for purposes of subsection (3)(a), whether or not any surgical procedure is performed on any person for the benefit of that person’s physical or mental health, a person’s culture, religion or other custom or practice shall be of no effect.
- (6) It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.

### ***Niger (Common Law)***

#### **The Penal Code, Law No. 2003-025 [amending Law No. 61-27 (1961)]**

##### *Section III bis. – Female Genital Mutilation*

Article 232.3: The penalties under the previous article are increased to the maximum when the offender belongs to the medical or paramedic profession; a ban on practising one’s profession may be imposed for a period of . . . .

[Translated from original]

## ***Uganda (Common Law)***

### **The Prohibition of Female Genital Mutilation Act, 2010**

#### *Part II – The Offence of Female Genital Mutilation*

3. Aggravated female genital mutilation.
  - (1) A person commits the offence of aggravated female genital mutilation where—
    - [. . .]
    - (e) female genital mutilation is done by a health worker.
  - (2) A person who commits the offence of aggravated female genital mutilation is liable on conviction to . . . .

[. . .]
9. Consent of the victim to female genital mutilation.
 

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

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

## ***East African Community***

### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

#### *Part II – Female Genital Mutilation and Related Offences*

4. (2) A person commits the offence of aggravated female genital mutilation where –
  - [. . .]
  - (e) the female genital mutilation is done by a health worker.
- (3) A person who commits the offence of aggravated female genital mutilation is liable on conviction to . . . .

## Chapter VI: Use of Premises to Perform FGM

### Article 6 – Use of Premises to Perform Female Genital Mutilation

- (1) A person commits an offence if they use (or allow the use of) any Premises over which they have control or responsibility for the performance of Female Genital Mutilation and they are aware, suspect or have reason to suspect that the Premises will be used for the performance of Female Genital Mutilation.
- (2) For the purpose of determining whether an offence has been committed under Article 6(1), a person’s culture, religion or other custom, tradition or practice shall be no defence.
- (3) It is no defence under Article 6(1) that a Female on whom the Female Genital Mutilation was performed or planned to be performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that a person who provided any Premises for the performance of Female Genital Mutilation under Article 6(1) believed such consent had been given.

### Explanatory Note

Article 6 creates a criminal offence of providing a premises for FGM to be carried out.

A person does not need to intend or know that FGM will be performed; it is enough to suspect or have reason to suspect that the premises will be used for the purposes of performing FGM. It is irrelevant whether or not FGM is ultimately performed.

Under this provision, the person does not need to own the premises. It is enough that they have control or responsibility over it.

Furthermore, consent (or belief that consent has been given) and religious or cultural beliefs do not provide defences to the offence set out in this Article.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Kenya (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2011**

##### *Part IV – OFFENCES*

22. Use of premises to perform female genital mutilation

A person who knowingly allows any premises, for which that person is in control of, or responsible for, to be used for purposes of performing female genital mutilation commits an offence.

### **East African Community**

#### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

##### *Part II – Female Genital Mutilation and Related Offences*

7. A person who knowingly allows any premises, for which that person is in control of, or responsible for, to be used for purposes of performing female genital mutilation commits an offence.

## Chapter VII: Possession and Provision of Tools for Use in FGM

### Article 7 – Possession and Provision of Tools for use in Female Genital Mutilation

- (1) A person who possesses Tools for a purpose connected with performing Female Genital Mutilation and is aware, suspects or has reason to suspect that Female Genital Mutilation will be performed using those Tools commits an offence.
- (2) A person who provides or sells Tools to other persons for a purpose connected with performing Female Genital Mutilation and is aware, suspects or has reason to suspect that Female Genital Mutilation will be performed using those Tools commits an offence.
- (3) For the purpose of determining whether an offence has been committed under Article 7(1) or (2), a person’s culture, religion or other custom, tradition or practice shall be no defence.
- (4) It is no defence under Article 7(1) or (2) that a Female on whom the Female Genital Mutilation was performed or planned to be performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that a person who possessed, sold, or provided the Tools for the purposes of Female Genital Mutilation under Article 7(1) or (2) believed such consent had been given.

### Explanatory Note

Article 7 creates an offence of possessing, providing and selling tools or cutting equipment for purposes connected to FGM.

Intention or knowledge that FGM will be performed is not necessary. It is enough that a person suspects or has reason to suspect that the tools or equipment will be used for FGM. It is irrelevant whether or not FGM is ultimately performed.

Consent (or belief that consent has been given) and religious or cultural beliefs do not provide defences to the offence set out in this Article.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Kenya (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2011**

##### *Part IV – OFFENCES*

##### 23. Possession of tools or equipment

A person who is found in possession of a tool or equipment for a purpose connected with the performance of female genital mutilation, commits an offence.

### **The Gambia**

#### **Women’s (Amendment) Act (2015)**

##### *Section 32B – Accomplices to female circumcision*

- (1) A person who requests, incites or promotes female circumcision by providing tools or by any other means commits an offence and is liable on conviction to . . . .

### **East African Community**

#### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

##### Part II – Female Genital Mutilation and Related Offences

8. A person who is found in possession of a tool or equipment for a purpose connected with the performance of female genital mutilation commits an offence.

## Chapter VIII: Failure to Report FGM

### Article 8 – Failure to Report Female Genital Mutilation

- (1)** Any person commits an offence if that person

  - (a)** is aware, suspects or has reason to suspect that a particular act of Female Genital Mutilation is taking place or is planned to take place and

    - (i)** fails to take reasonable steps to prevent the Female Genital Mutilation taking place; or
    - (ii)** fails to report such fact to the police or other relevant authorities without delay in all such cases (whether that person has taken reasonable steps to prevent the Female Genital Mutilation taking place or not) and in particular with a view to preventing the act; or
  - (b)** is aware, suspects or has reason to suspect that a particular act of Female Genital Mutilation has taken place and fails to report such fact to the police or other relevant authorities without delay; or
  - (c)** is aware, suspects or has reason to suspect that a particular act of Female Genital Mutilation has taken place, is taking place or is planned to take place and threatens, harms or in any way attempts to prevent a person from reporting or attempting to report a Female Genital Mutilation offence.
- (2)** For the purpose of determining whether an offence has been committed under Article 8(1), a person’s culture, religion or other custom, tradition or practice shall be no defence.
- (3)** It is no defence under Article 8(1) that a Female on whom the Female Genital Mutilation was performed, is being performed or is planned to be performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that a person who failed to report the Female Genital Mutilation under Article 8(1) believed such consent had been given.

## Explanatory Note

Article 8 obliges a person who is aware, suspects or has reason to suspect that FGM will take place in the future, is taking place or has taken place to take reasonable steps to intervene and to report the matter to the police or relevant authorities without delay. This Article creates a criminal offence for failing to report FGM to the police or relevant authorities (whether before or after the offence takes place).

Although this Article applies to any person, more stringent penalties ought to apply to persons in a Restricted Occupation or with Parental or Familial Responsibility who might therefore be considered as having a duty or care towards the victim/potential victim.

Consent (or belief that consent has been given) does not provide a defence, given (i) the degree of physical and psychological harm FGM can cause and (ii) the risk that a consent defence might be abused to avoid liability under Article 8, including through societal pressure or coercion. In many cases, the victims of FGM would be too young to provide consent. A parent, Guardian or other person with Parental or Familial Responsibility is unable to provide consent for FGM on behalf of a Female.

Furthermore, religious or cultural beliefs do not provide defences to the offence set out in this Article.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Benin (Civil Law)**

#### **Law No. 2003-03 on the Suppression of Female Genital Mutilation in the Republic of Benin**

##### *Chapter 2 – Penalties*

Article 9 - Any person who, having been informed that a female genital mutilation was planned, did nothing to prevent the act, shall be prosecuted for failure to provide assistance to the person in danger and will be sentenced in accordance with the relevant provisions of the criminal code.

Any person who is aware of an act of female genital mutilation is required to report the fact immediately to the nearest State prosecutor or police criminal investigation department for legal purposes.

[Translated from original]

## **Eritrea**

### **Proclamation 158/2007: A Proclamation to Abolish Female Circumcision**

#### *Article 4 (Punishment)*

[ . . . ]

- (4) Whosoever, knowing that female circumcision is to take place or has taken place, fails, without good cause, to warn or inform, as the case may be, the proper authorities promptly about it, shall be punishable with . . . .

## **The Gambia**

### **Women's (Amendment) Act (2015)**

#### *Section 32B – Accomplices to female circumcision*

- (2) A person who knows that female circumcision is about to take place or has taken place, and fails, without good cause, to warn or inform, as the case may be, the proper authorities promptly, commits an offence and is liable on conviction to . . . .

## **Guinea-Bissau (Civil Law)**

### **Law 14/2011, Federal Law to Prevent, Fight and Suppress Female Genital Mutilation**

#### *Chapter II – Crimes and Penalties*

#### Article 8 (failure to help or report)

1. Any person who, through any means, becomes aware of the preparation leading to the practice of excision and does not take measures to prevent it, and may do so without risks to his or her physical integrity, shall be charged with the failure to help provided for in article 144 of the Code Criminal.
2. Any person who, by the nature of their duties, is aware of the practice of excision has a duty to report it to the judiciary, the public ministry or the police.

[Translated from original]

**Kenya (Common Law)****The Prohibition of Female Genital Mutilation Act, 2011***Part IV – OFFENCES*

## 24. Failure to report commission of offence

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

**Uganda (Common Law)****The Prohibition of Female Genital Mutilation Act, 2010***Part IV – Duty to Report*

## 16. Duty to report female genital mutilation.

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

**East African Community****East African Community Prohibition of Female Genital Mutilation Bill, 2016***Part II – Female Genital Mutilation and Related Offences*

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

## Chapter IX: Use of Derogatory or Abusive Language

### Article 9 – Use of Derogatory or Abusive Language

- (1) A person commits an offence if that person
  - (a) uses derogatory or abusive language; and
  - (b) intends, is aware or has reason to be aware that this language will ridicule, embarrass or otherwise harm
    - (i) a Female; or
    - (ii) another person with Familial or Parental Responsibility over a Female on the basis of the Female having undergone or not undergone Female Genital Mutilation.
- (2) For the purpose of determining whether an offence has been committed under Article 9(1), a person's culture, religion or other custom, tradition or practice shall be no defence.
- (3) It is no defence under Article 9(1) that a Female on whom the Female Genital Mutilation was performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that a person committing an offence under Article 9(1) believed such consent had been given.

### Explanatory Note

It is common in FGM-practising communities for women and girls who do not undergo FGM and their families to face abusive and derogatory language or behaviours that exclude them from everyday activities and communal events. It is also possible that, in other circumstances, women and girls who have undergone FGM and their families might face abusive and derogatory language or behaviours.

Article 9 creates a criminal offence for using derogatory or abusive language towards a Female, or persons who exercise Parental or Familial Responsibility over a Female, on the basis of whether a Female has or has not undergone FGM. This offence does not intend to limit freedom of speech or freedom of expression in general.

Consent (or belief that consent has been given) and religious or cultural beliefs do not provide defences to the offence set out in this Article.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Kenya (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2011**

##### *Part IV – OFFENCES*

25. Use of derogatory or abusive language

Any person who uses derogatory or abusive language that is intended to ridicule, embarrass or otherwise harm a woman for having not undergone female genital mutilation, or a man for marrying or otherwise supporting a woman who has not undergone female genital mutilation, commits an offence and shall be liable, upon conviction, to . . . .

### **East African Community**

#### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

##### *Part II – Female Genital Mutilation and Related Offences*

10. Any person who uses derogatory or abusive language that is intended to ridicule, embarrass or otherwise harm a woman for having undergone female genital mutilation, or a man for marrying or otherwise supporting a woman who has not undergone female genital mutilation, commits an offence and shall be liable upon conviction, to . . . .

# Chapter X: Discrimination or Alienation of Women and their Families in Relation to FGM

## Article 10 – Discrimination or Alienation of Women and their Families in Relation to Female Genital Mutilation

- (1) A person commits an offence if, on the basis of a Female having undergone or not undergone Female Genital Mutilation, that person knowingly discriminates against, alienates, stigmatises or excludes from participation in economic, social or political activities

  - (a) that Female; or
  - (b) another person with Familial or Parental Responsibility over that Female.
- (2) A person commits an offence if, on the basis of a Female pursuing legal redress in respect of having undergone Female Genital Mutilation, that person knowingly discriminates against, alienates, stigmatises or excludes from participation in economic, social or political activities

  - (a) that Female;
  - (b) another person with Familial or Parental Responsibility over that Female;
  - (c) legal representatives or members of the judiciary involved in the legal redress proceedings; or
  - (d) witnesses involved in the legal redress proceedings.
- (3) For the purpose of determining whether an offence has been committed under Article 10(1) or (2), a person's culture, religion or other custom, tradition or practice shall be no defence.
- (4) It is no defence under this Article that a Female on whom the Female Genital Mutilation was performed or planned to be performed consented to the act, that a person with Parental or Familial Responsibility consented on behalf of a Female, or that a person committing an offence under Article 10(1) or (2) believed such consent had been given.

## Explanatory Note

It is common in FGM-practising communities for Females who do not undergo FGM to face discrimination. They, along with their families, are often excluded from everyday activities and communal events. Similarly, Females who have undergone FGM can be subjected to discrimination. Article 10 creates a criminal offence for discriminating against or alienating persons on the basis of whether a Female has or has not undergone FGM. It should be noted that there are no current examples of laws in Africa that prevent discrimination against Females who have undergone FGM. The example below only covers Females who have not undergone FGM.

It is also common in FGM-practising communities for Females who, having undergone FGM, pursue legal remedies, and for individuals who act as witnesses in FGM cases, to face discrimination and alienation. They, along with their families, their legal representatives, members of the judiciary and/or witnesses, are often subjected to abusive and derogatory language. Article 10 creates a criminal offence for discriminating against such persons. There are no anti-FGM laws in Africa that currently address this specific issue.

Consent (or belief that consent has been given) and religious or cultural beliefs do not provide a defence to the offence set out in this Article.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Uganda (Common Law)**

#### **The Prohibition of Female Genital Mutilation Act, 2010**

##### *Part IV – Duty to Report*

11. Protection of females who have not undergone female genital mutilation.

A person who discriminates against or stigmatizes a female who has not undergone female genital mutilation from engaging or participating in any economic, social, political or other activities in the community commits an offence and is liable on conviction to . . . .

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

A person who discriminates against or stigmatizes another person whose wife, daughter or relative has not undergone female genital mutilation from engaging or participating in any economic, political, social or other activities in the community commits an offence and is liable on conviction to . . . .

## Chapter XI: Penalties

### Article 11 – Penalties

- (1) A person guilty of an offence under Articles 2, 3, 4, 5, 6, 7, 8, 9, 10 or 13 is liable on conviction to [imprisonment, a fine or both].
- (2) A person guilty of an offence under Article 2(4), Article 3(4) or Article 5(3) is liable on conviction to [maximum penalty within the penalty range for these offences].
- (3) A person guilty of the offence of Aggravated Female Genital Mutilation is liable on conviction to [maximum penalty within the penalty range for this offence].
- (4) A person who commits an offence under Articles 2, 3, 4 or 5 on more than one occasion is liable on conviction to [maximum penalty within the penalty range for these offences].
- (5) Subject to Article 11(2), a person guilty of an offence under Articles 2, 3, 4 or 5 who performs a Restricted Occupation is liable on conviction to [imprisonment, a fine or both]. A person in a Restricted Occupation may be subject to suspension from practice, disbarment or have their professional qualifications rescinded if they commit any of the offences listed in this subsection (5).

## Explanatory Note

Penalty categories listed here are merely for guidance. Each country should be free to create its own penalties based on best practice recommendations and in line with penalties imposed for similar serious offences such as grievous bodily harm.

When determining appropriate penalties, consideration should be given to:

- the nature and seriousness of the offence, including the potential or actual harm caused (including, for example, whether a Female who has undergone FGM has died, contracted HIV or incurred a disability);
- whether the person guilty of an offence:
  - (a) is a repeat offender;
  - (b) performs a Restricted Occupation;
  - (c) is a Healthcare Professional; or
  - (d) has Parental Responsibility or Familial Responsibility for a Female who has undergone FGM.

Where an act of FGM involves these persons, legislators should consider imposing longer sentences and/or larger fines.

The extent of the punishment should be proportionate to the seriousness of the crime. Article 11 has therefore been structured to emphasise where a maximum penalty should be considered.

This Article does not advocate the use of capital punishment as a penalty for any of the offences set out in this Model Law where this penalty constitutes the 'maximum penalty' in a particular jurisdiction. A more appropriate 'maximum penalty' could be considered 'life imprisonment', which is currently used in several anti-FGM laws throughout the region.

Appropriate penalties may include fines, prison sentences (with or without the possibility of parole), professional sanctions (such as probation, disbarment, rescinding professional qualifications or registrations, or suspension from practice) and/or compensation orders (having regard to the injuries suffered and expenses incurred by the victim, including medical expenses). Penalties may also be a combination of the above.

# Chapter XII: Protection Orders

## Article 12 – Protection Orders

- (1) A judicial authority may, if satisfied that a Female is likely to undergo Female Genital Mutilation under Articles 2, 4 or 5, issue a Protection Order upon application by any person.

### Explanatory Note

Article 12 provides the right for a judicial authority to issue Protection Orders to prevent the performance of FGM under Articles 2, 4 and 5 of this Model Law if there is sufficient infrastructure to administer, issue and support such an order.

### Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

#### *Uganda (Common Law)*

##### **The Prohibition of Female Genital Mutilation Act, 2010**

###### *Part III – Court Orders and Jurisdiction*

###### 14. Special powers of court

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

#### *East African Community*

##### **East African Community Prohibition of Female Genital Mutilation Bill, 2016**

###### *Part II – Female Genital Mutilation and Related Offences*

13. A court in a Partner State may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order.

# Chapter XIII: Anonymity of Victims

## Article 13 – Anonymity of Victims

- (1) A person commits an offence if they include information likely to lead members of the public to identify a Female as the victim of Female Genital Mutilation, whether actual or alleged, in any Publication during the Female's lifetime, unless the Female is an adult and has given her express consent.
- (2) In any criminal proceedings before a court, a person does not commit an offence under Article 13(1) if the court determines that
  - (a) Article 13(1) would substantially disadvantage a person's defence at a trial of a Female Genital Mutilation offence; or
  - (b) Article 13(1) would impose a substantial and unreasonable restriction on the reporting of a trial where it is in the public interest to remove or relax the restriction.
- (3) The persons responsible for a Publication are
  - (a) the proprietor, editor or publisher of a newspaper or periodical;
  - (b) the corporate body that provides the programme service in which a television or radio programme is broadcast;
  - (c) the producer or editor of a television or radio programme; or
  - (d) any person who publishes any other kind of Publication.

## Explanatory Note

At present, there are no examples of anonymity orders in anti-FGM legislation throughout the region. Article 13, however, sets out the best practice position and can be used where the legislating country has adequate resources to implement such orders. Reluctance to be identified as a victim of FGM is believed to contribute to the low reporting rate of this offence. The aim in providing for the anonymity of victims of alleged FGM offences is to support more women and girls to come forward.

Article 13 provides for the anonymity of victims of FGM offences from the point at which the offence is alleged. It sets out the circumstances in which publication of information that could reveal the identity of a victim are prohibited. It then states that publication of the identity of a victim is an offence, it clarifies the persons responsible for such an offence and gives the associated penalties.



# PART II

## STATE OBLIGATIONS

## Overview

There are a number of international and regional treaties that have relevance to FGM. States that have signed up to these treaties are obliged to put in place legislation and implementation measures to assist in the eradication of FGM.

### *International Level*

Concern about FGM at the international level dates from 1990, when the **UN Convention on the Elimination of Discrimination Against Women** ('CEDAW') adopted **General Recommendation No. 14** calling on states 'to take appropriate and effective measures with a view to eradicating the practice of female circumcision.'

Subsequent recommendations and statements have been issued by CEDAW and the **Office of the UN High Commissioner for Human Rights**, reminding member governments of their obligations to eliminate FGM and other harmful practices. In 2014 signatory states to CEDAW and the **Convention on the Rights of the Child** passed a **Joint General Recommendation on Harmful Practices** confirming their obligations 'to ensure full compliance...to eliminate harmful practices.' In 2016 the **UN Human Rights Council** adopted a resolution recognising FGM as an act of violence against women and girls. It urged countries to put in place national legislation prohibiting FGM and to develop strategies for its enforcement.

### *Regional Level*

On a regional level, the **African Union** (the 'AU') has been calling on member states to eliminate FGM since 1990, when it adopted the **African Charter on the Rights and Welfare of the Child**. In 2003 the AU adopted the **African Charter on Human and Peoples' Rights on the Rights of Women in Africa** (also known as the 'Maputo Protocol'), in which Article 5 specifically requires members to prohibit 'by legislative measures backed by sanctions all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.'

Some countries with FGM-practising communities, such as Somalia and Sudan, have not signed CEDAW or other treaties that include references to the elimination of FGM. Others, such as Egypt, have signed them but given reservations, some of which effectively exempt these states from complying with a legislative framework criminalising FGM. One of the main reasons given for making these reservations has been that some provisions of CEDAW and the Maputo Protocol are not regarded as being in line with Sharia law. Most of these countries, however, are members of the **Organisation of Islamic Co-operation** and thus, in 2003, following the **Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation** held in Cairo, adopted the **Cairo Declaration on the Elimination of FGM** (the 'CDEFGM').

The CDEFGM comprises 17 recommendations for governments to follow with the aim of preventing and prohibiting FGM. Importantly, these include the enactment of specific legislation addressing FGM and working with NGOs to develop strategies to change social perceptions of the practice. The CDEFGM was adopted by the following countries: Benin, Burkina Faso,

Cameroon, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, The Gambia, Ghana, Guinea, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Sudan, Tanzania, Togo and Uganda.

### ***Purpose of Part II of the Model Law***

Part II sets out best practice policies and procedures that states can implement if there are sufficient resources in place. The examples below are aspirational and ambitious, and states may therefore wish to use the policies included in this part as a guide rather than a set of definitive obligations.

This part gives states the opportunity to provide for the creation of anti-FGM boards, as seen in Kenya. Part II also contains provisions to assist states in implementing national plans in relation to FGM and providing support to victims of FGM through healthcare, including physical, physiological and psychological support.

States can implement the sections below, where resources and infrastructure allow, and can adapt the provisions as necessary. Where a state has limited resources available, legislators should prioritise the implementation of Part I of this Model Law to ensure that the fundamental criminal legal framework is in place.

## Chapter XIV: National Plan and Strategy

### Article 14 – National Plan and Strategy

- (1) The Government shall formulate and implement a comprehensive and time-bound national action plan and strategy, backed by adequate national resources, to:

  - (a) protect Females from Female Genital Mutilation;
  - (b) provide Support Services to victims of Female Genital Mutilation;
  - (c) prosecute perpetrators of Female Genital Mutilation; and
  - (d) undertake public education of the people of [legislating country] on the dangers and adverse effects of Female Genital Mutilation.
- (2) The national action plan and strategy shall be for a strategic plan period of five years. On expiry of this five-year period, a new national action plan and strategy shall be implemented.
- (3) The national action plan and strategy shall detail the funding commitments and budget lines to support the work aimed at eradicating Female Genital Mutilation.
- (4) The national action plan and strategy shall include (but not be limited to) plans of action for

  - (a) establishing an [anti-Female Genital Mutilation Board/national steering committee] to coordinate the objectives set out at Article 14(1);
  - (b) effectively implementing and enforcing the law that criminalises Female Genital Mutilation;
  - (c) effectively monitoring and reporting all cases of Female Genital Mutilation;
  - (d) designing, supervising and coordinating public-awareness programmes against the practice of Female Genital Mutilation;
  - (e) publicising through civil society and the media the law that criminalises Female Genital Mutilation and any cases where any person is taken to court for alleged breach of such law;
  - (f) providing technical and other support and training to institutions, agencies and other bodies engaged in the programmes aimed at the eradication of Female Genital Mutilation;
  - (g) providing training regarding Female Genital Mutilation and anti-Female Genital Mutilation laws for all members of the police and judiciary and all those in positions of authority, including those in Restricted Occupations and Healthcare Professionals;

- (h) designing programmes aimed at eradicating Female Genital Mutilation;
  - (i) providing telephone helplines for reporting cases of Female Genital Mutilation and providing safe spaces for Females where a need is identified;
  - (j) facilitating resource mobilisation for the programmes and activities aimed at eradicating Female Genital Mutilation; and
  - (k) tracking and assessing the implementation of the policies and programmes aimed at eradicating Female Genital Mutilation.
- (5) The Government shall review, monitor and evaluate the planned outputs of its national action plan and strategy on a regular basis. A monitoring-and-evaluation system shall be put in place to ensure that the strategic objectives are realised within the stipulated planning period.
- (6) Quarterly reports on progress against the identified strategic objectives, strategic activities, expected outcomes and targets of the national action plan and strategy shall be prepared by the [anti-Female Genital Mutilation board/national steering committee].
- (7) The Government shall collaborate with civil society, including but not limited to international and national NGOs, in conducting research, sharing information and coordinating public-awareness programmes in the community against the practice of Female Genital Mutilation.
- (8) The Government shall provide technical and financial assistance for institutions, agencies and other bodies (including NGOs) engaged in programmes aimed at the eradication of Female Genital Mutilation in [legislating country].

## Explanatory Note

International and regional treaties require all states to develop and implement national strategies to achieve implementation and enforcement of legislation. Governments need to show commitment to new and/or amended anti-FGM laws by supporting their introduction with adequately funded and resourced strategies to ensure communities understand why FGM is harmful, why the practice is being criminalised and that ending FGM is in the best interests of all members of society. Governments must therefore take the lead and be proactive in relation to anti-FGM laws, working closely with the police and judiciary, civil society and the media to make progress.

Article 14 sets out best practice principles that should be used when developing a national strategy.

National strategies should include:

- funding commitments and budget lines to support the work to end FGM, including dissemination of the law through civil society and the media;
- training around FGM and anti-FGM laws for all members of the police and judiciary (from local police officers through to high court judges and border control) and all those in positions of authority, including medical professionals, social workers, teachers and faith and community leaders;
- effective monitoring of FGM cases, including the creation of a national dataset, where a country is able to administer, issue and support such a system, to monitor the levels of FGM during the lifespan of the strategy; and
- collaboration with NGOs and other institutions, including the provision of government funding to such organisations to support research projects and educational and public-awareness programmes.

Where they are currently unavailable and a need is identified, appropriate protection measures (such as emergency telephone hotlines or safe spaces) should be put in place for women and girls at risk of FGM.

28 Too Many's research to date has identified that most of the 28 countries in Africa with FGM-practising communities appear to have some form of national strategy or national action plan in place. However, some appear to have passed the time period for which they were originally drawn up, and it is unclear whether they have been updated and extended or renewed. It is therefore important that provisions are implemented to ensure that, where such strategies are put in place, they are publicly available and are reviewed and updated on a periodic basis to assess their impact and develop new methods and programmes for the eradication of FGM.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### Kenya (Common Law)

#### The Prohibition of Female Genital Mutilation Act, 2011

##### *Part V – MISCELLANEOUS*

##### 27. Measures by Government

The Government shall take necessary steps within its available resources to –

- (a) protect women and girls from female genital mutilation;
- (b) provide support services to victims of female genital mutilation; and
- (c) undertake public education and sensitise the people of Kenya on the dangers and adverse effects of female genital mutilation.

### East African Community

#### East African Community Prohibition of Female Genital Mutilation Bill, 2016

##### *Part I – PRELIMINARY PROVISIONS*

- 3. The objective of this Act is to . . . (d) develop and harmonize policies, laws, strategies and programmes to prevent female genital mutilation; prosecute perpetrators of female genital mutilation and provide services to victims and girls at risk of female genital mutilation.

##### *Part IV – MISCELLANEOUS PROVISIONS*

- 15. (1) The Partner States shall adopt comprehensive laws that prohibit female genital mutilation, facilitate the prosecution of perpetrators, protect victims and girls and women at risk.
- (2) The Partner States shall within their national budgets avail resources to –
  - (a) protect women and girls from female genital mutilation;
  - (b) provide Support Services to victims of female genital mutilation; and
  - (c) undertake public education and sensitize the people of the Community on the dangers and adverse effects of female genital mutilation.
- (3) The Partner States shall develop appropriate mechanisms, policies, measures and strategies and programmes to combat female genital mutilation including the –
  - (a) establishment of regional data bases on cross border female genital mutilation . . . .

## Chapter XV: Anti-FGM Boards and Committees

### Article 15 – Anti-Female Genital Mutilation Boards/Committees

- (1) The Government shall establish an anti-Female Genital Mutilation board (the ‘Board’), which shall be a body corporate.
- (2) The Board shall, in its corporate name, be capable of
  - (a) suing and being sued;
  - (b) borrowing money or making investments;
  - (c) entering into contracts; and
  - (d) doing or performing all other acts or things for the proper performance of its functions that may lawfully be done or performed by a body corporate.
- (3) The Board shall consist of
  - (a) a chairperson appointed by the [relevant government official/minister];
  - (b) the [relevant government official/minister] responsible for matters relating to gender;
  - (c) the [relevant government official/minister] responsible for matters relating to finance;
  - (d) the [relevant government official/minister] responsible for matters relating to health;
  - (e) the [relevant government official/minister] responsible for matters relating to education;
  - (f) the [relevant government official/minister] responsible for matters relating to youth affairs;
  - (g) three other members appointed by [relevant official]; and
  - (h) the chief executive officer.

Any of the government officials listed above may be substituted by a representative duly appointed in writing by [relevant government official].
- (4) A person appointed as a member of the Board under this Article, other than an ex officio member, shall serve for a single term of six years and shall not be eligible for re-appointment.
- (5) The chief executive officer shall hold office for a period of not more than five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment.

- (6) The chief executive officer shall be an ex officio member of the Board but shall have no right to vote at any meeting of the Board.
- (7) The chief executive officer shall—
- (a) subject to the direction of the Board, be responsible for the day-to-day management of the Board;
  - (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board; the exercise, discharge and performance of its objectives, functions and duties; and the general administration of the Board; and
  - (c) be the secretary of the Board.
- (8) The functions of the Board shall be to
- (a) design, supervise and coordinate public-awareness programmes against the practice of Female Genital Mutilation;
  - (b) generally advise the Government on matters relating to Female Genital Mutilation and the implementation of this law;
  - (c) design and formulate a policy on the planning, financing and coordinating of all activities relating to Female Genital Mutilation;
  - (d) provide technical and other support to institutions, agencies and other bodies engaged in the programmes aimed at the eradication of Female Genital Mutilation;
  - (e) design programmes aimed at the eradication of Female Genital Mutilation;
  - (f) facilitate resource mobilisation for the programmes and activities aimed at eradicating Female Genital Mutilation; and
  - (g) perform such other functions as may be assigned by any written law.

## Explanatory Note

In several countries, national steering committees are in place to coordinate the work to end FGM. In Kenya, the national Prohibition of Female Genital Mutilation Act of 2011 (the ‘FGM Act 2011’) went further in specifically requiring the establishment of an anti-FGM board and set out the functions and responsibilities of the Government of Kenya as a whole to end the practice.

The content of Article 15 is therefore predominately based upon the Kenyan FGM Act 2011. It sets out the main provisions of the FGM Act 2011, and, for states wishing to include further provisions, such as wording covering the Board’s powers and liabilities, it is recommended that the full FGM Act 2011 is referred to, which may be accessed here: [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProhibitionofFemaleGenitalMutilationAct\\_No32of2011.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProhibitionofFemaleGenitalMutilationAct_No32of2011.pdf).

## Chapter XVI: Healthcare and Support for Victims of FGM

### Article 16 – Healthcare and Support for Victims of Female Genital Mutilation

- (1) The Government shall take necessary steps to
  - (a) develop and improve services for access to physical, physiological and psychological healthcare for Females who have suffered from Female Genital Mutilation; and
  - (b) develop and improve services for rehabilitation and integration for Females who have suffered from Female Genital Mutilation, including shelter, safe spaces and psychosocial support.
- (2) The Government shall develop appropriate mechanisms, policies, measures, strategies and programmes to
  - (a) educate Healthcare Professionals in medical centres on the dangers and adverse impacts of Female Genital Mutilation;
  - (b) provide standards for training Healthcare Professionals in medical centres (either public or private) for them to be able to deal with Female Genital Mutilation cases and give adequate support to Female Genital Mutilation victims;
  - (c) make it mandatory for Healthcare Professionals in medical centres (either public or private) to report incidents of Female Genital Mutilation to the police; and
  - (d) set up a free and anonymous hotline, available 24 hours a day, offering help and advice to victims of Female Genital Mutilation, individuals suspecting Female Genital Mutilation and Healthcare Professionals dealing with Female Genital Mutilation cases.

## Explanatory Note

In order to provide assistance to women and girls who are victims of FGM, governments shall take necessary steps and implement appropriate strategies from a healthcare perspective. Article 16 sets out the obligations of the state to put in place those key services and training elements to fully support women and girls who have had or are at risk of having FGM.

FGM is a complex form of abuse requiring adequate intervention from medical professionals, including doctors, nurses and midwives. It is essential, therefore, that FGM victims receive appropriate healthcare from medical professionals who have a clear understanding and knowledge of the practice.

Governments shall develop strategies and policies to enhance healthcare training for medical professionals and establish appropriate infrastructure dedicated to FGM victims (including shelter and medical/psychiatric facilities and services). Where systems are in place to ensure the confidentiality and protection of FGM victims, services such as mandatory reporting by healthcare professionals and confidential telephone or messaging advice and reporting services (available 24 hours a day) should also be considered.

Such initiatives will require the state's commitment to adequate funding for both their implementation and ongoing maintenance.

## Examples from African Legislation

*Note: Specific monetary fines and/or terms of imprisonment within the examples below have been removed for the purposes of this Model Law. For further details, refer to the original legislation of the given country.*

### **Benin (Civil Law)**

#### **Law No. 2003-03 on the Suppression of Female Genital Mutilation in the Republic of Benin**

##### *Chapter 3 – Final Provisions*

Article 10 – Those responsible for health facilities, both public and private, are obliged to welcome victims of female genital mutilation and to provide them with the most appropriate care. They must inform the public prosecutor or the nearest judicial police officer for legal purposes.

[Translated from original]

## **Guinea (Civil Law)**

### **Children’s Code 2008**

#### *Section VII: Violence Against Children*

Article 410: Those responsible for health facilities, both public and private, are required to provide support and welcome victims of female genital mutilation into their centres or establishments with the most appropriate care.

Relevant public authorities should be informed without delay in order to allow them to follow the development of the victim’s condition and to diligently follow the prosecutions provided for in the previous provisions.

[Translated from original]

## **Guinea-Bissau (Civil Law)**

### **Law 14/2011, Federal Law to Prevent, Fight and Suppress Female Genital Mutilation**

#### *Chapter II – Crimes and Penalties*

Article 12 (special duty of assistance)

1. Those responsible for health facilities have a duty to provide physical and psychological assistance to the victims of excision and to provide them with the most appropriate treatment, in accordance with this law.

[Translated from original]

# Sources

*Please note that legislation cited in this report may have been amended since publication of this Model Law.*

## International Treaties and Conventions

United Nations Convention on the Elimination of All forms of Discrimination Against Women (1979)

Convention on the Rights of the Child (1989)

African Charter on the Rights and Welfare of the Child (1990)

African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (Maputo Protocol)

Cairo Declaration on the Elimination of FGM (2003)

## National and Regional Laws

Benin	Law No. 2003-03 on the Suppression of Female Genital Mutilation in the Republic of Benin
East African Community	East African Community Prohibition of Female Genital Mutilation Act 2016
Ethiopia	Proclamation No. 414/2004 – The Criminal Code of the Federal Democratic Republic of Ethiopia
Eritrea	Proclamation 158/2007: A Proclamation to Abolish Female Circumcision
Guinea	Children's Code 2008
Guinea Bissau	Law 14/2011, Federal Law to Prevent, Fight and Suppress Female Genital Mutilation
Kenya	Prohibition of Female Genital Mutilation Act No. 32 of 2011, Revised Edition 2012
Niger	The Penal Code, Law No. 2003-025 [amending Law No. 61-27 (1961)]
Nigeria	Violence Against Persons Prohibition Act 2015
The Gambia	Women's (Amendment) Act (2015)
Uganda	Prohibition of Female Genital Mutilation Act 2010



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Registered Charity No. 1150379  
Limited Company No. 08122211  
Email: [info@28toomany.org](mailto:info@28toomany.org)