



THE LAW AND FGM

MALTA

DECEMBER 2021

National Legal Framework

Overview of National Legal Framework in Malta

National legislation:

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

Introduction

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

FGM Prevalence

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

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

National Legal Framework

Specific Provision

FGM is criminalised in Malta under a specific provision on FGM in general criminal law, inserted in 2014 and amended in 2018.

Article 251E(1) of the Criminal Code of the Republic of Malta (1854, amended 2021) (the *Criminal Code*) criminalises any person who, for non-medical reasons, performs an operation or any type of intervention to a woman's genitalia, causing damage or inflicting permanent changes to it.

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

Article 251E(3) prescribes that consent does not justify exemption from a penalty.

Definition of FGM

Article 251E(5) of the Criminal Code defines 'FGM' as an operation or intervention to a woman's genitalia including excision, infibulation or mutilation of the genitalia. It therefore broadly conforms to the definition of FGM provided by the World Health Organization (the *WHO*).

The term 'excision' includes Types I and II FGM as prescribed by the WHO.

The term 'infibulation' includes Type III FGM.

The term 'mutilation of the genitalia' includes all four types of FGM.

The Criminal Code does not, therefore, omit any forms of FGM described by the WHO.⁵

Women and Girls of All Ages

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

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

Procuring, Aiding and Abetting

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

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

Allowing the Use of Premises

Allowing the use of premises for the purpose of FGM has most likely been criminalised in Malta. Under **Article 251E(6) of the Criminal Code**, all persons involved in the crime are subject to criminal liability. Allowing the use of premises for the practice of FGM could fall under the definition of 'aiding and abetting' that is criminalised under **Article 251E(6)**.

Providing or Possessing Tools

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

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

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

Possessing (specific) tools for FGM is not criminalised in Malta as an attempted offence. **Article 41** prescribes that any person who manifests an intent to commit a crime by overt acts that are then followed by the commencement of the commission of the crime is subject to lower penalties than established for the perpetrator, in case the crime was not completed because of an accidental cause, independent of the

will of the perpetrator (**Article 41(1)(a)**), or because of the voluntary withdrawal of the perpetrator (**Article 41(1)(b)**). Simply possessing (specific) tools does not fall under the definition of ‘manifesting an intention to commit a crime by overt acts’ and is, therefore, not punishable by law.

Failure to Report FGM

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

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

Medicalised FGM

Medicalised FGM is criminalised in Malta under a general provision (**Article 251E(1) in the Criminal Code**), which includes medical exemptions to the prohibition of FGM. Surgeries that could be qualified as FGM, but are medically necessary qualify as medical exemptions and are therefore not criminalised under **Article 251E(1)**.

Extraterritoriality

The **Criminal Code** extends extraterritorial application of Maltese criminal law to the commission of FGM abroad, regardless of double criminality. **Article 5(1)(d)** prescribes that any person who is a citizen or a permanent resident in Malta and has committed one of the offences described in **Articles 251E, 42(c) and 43 of the Criminal Code** may be prosecuted and tried in Malta, even if the offence (which includes FGM) was committed abroad (**Article 5(1)(g)**).

Penalties

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

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

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

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

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

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

Protection

Protecting Uncut Girls and Women

Section 3(2)(2) of the Child Protection Procedures for Schools Act provides that the staff of educational institutions have an obligation to report instances, even without full proof, where it is suspected that a minor is at risk of physical abuse, including physical injury or failure to provide adequate care of a minor to ensure his or her safety.

Article 18(1)(b) of the same act prescribes that a minor may be put under supervision for a period of time and under the conditions deemed appropriate, together with the allocation of parental responsibility, for the best interests of the child. **Article 19(1)** prescribes that a minor may be immediately removed from the home where an immediate risk of severe harm is present.

Implementation of The Law

Court Cases

There are no Maltese court cases in relation to FGM known to 28 Too Many.

Conclusions and Recommendations

Conclusions

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

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

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

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

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

Recommendations

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

Appendix I: International and Regional Treaties

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

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

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

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

Appendix II: National Laws

Criminal Code

Art. 5

(1) Bla ħsara għal kull dispożizzjoni speċjali oħra ta' dan il-Kodiċi jew ta' kull liġi oħra li tagħti ġurisdizzjoni lill-qrati f'Malta biex jiġġudikaw reati, l-azzjoni kriminali tista' titmexxa f'Malta, skont il-liġijiet tagħha –

- (a) kontra kull min jagħmel reat f'Malta, jew fuq il-baħar f'kull lok sa fejn tasal il-ġurisdizzjoni territorjali ta' Malta;
- (b) kontra kull min jagħmel reat fuq il-baħar 'il barra minn dawk il-limiti abbord ta' xi bastiment jew biċċa oħra tal-baħar li tagħmel ma' Malta;
- (ċ) kontra kull min jagħmel reat abbord ta' xi inġenji talajru fil-waqt li jkunu fl-ispazju tal-arja ta' Malta jew abbord ta' xi inġenji tal-ajru li jagħmlu ma' Malta ikunu fejn ikunu.

Għall-finijiet ta' dan il-paragrafu l-frazi "spazju tal-arja" tfisser l-ispazju tal-arja fuq l-art u tal-ibħra territorjali ta' Malta;

- (d) bla ħsara tal-paragrafi ta' qabel ta' dan is-subartikolu, kontra kull ċittadin ta' Malta jew resident permanenti f'Malta, li f'xi post jew abbord ta' xi bastiment jew biċċa oħra tal-baħar jew fuq xi inġenji tal-ajru jkunu fejn ikunu, isir ħati tar-reati msemmija fl-artikolu 54A jew ta' reat kontra s-sigurtà tal-Gvern jew tar-reati msemmija fl-artikoli 133, 139A, jew tar-reati msemmija fl-artikoli 188B, 188Ċ, 188D, jew tar-reati msemmija fl-artikoli 311 sa 318 u fl-artikolu 320 meta dawn isiru jew jiġu diretti kontra jew fuq xi faċilità tal-Istat jew tal-gvern, faċilità infrastrutturali, post pubbliku jew aċċessibbli għall-pubbliku jew sistema ta' trasport pubbliku, jew ta' falsifikazzjoni ta' xi obbligazzjonijiet tal-Gvern imsemmija fl-artikolu 166 jew ta' xi wieħed mid-dokumenti msemmija fl-artikolu 167, jew tar-reat imsemmi fl-artikolu 196, jew ta' xi reat ieħor kontra l-persuna ta' ċittadin ta' Malta jew ta' xi resident permanenti f'Malta.

Għall-finijiet ta' dan il-paragrafu:

"resident permanenti" tfisser persuna li jkun ingħatalha permess ta' residenza skont id-dispożizzjonijiet tal-artikolu 7 tal-Att dwar l-Immigrazzjoni;

"reat kontra l-persuna" tinkludi r-reati msemmija fl-artikoli 86 sa 90 u fl-artikoli 198 sa 205;

l-espressjonijiet "faċilità tal-Istat jew tal-Gvern", "faċilità infrastrutturali", u "sistema ta' trasport pubbliku" għandhom l-istess tifsira li ngħatat lilhom rispettivament fl-artikolu 314A(4);

- (e) kontra kull min fiż-żmien li jkun f'Malta:
 - (i) ikun sar ħati ta' reat imsemmi fl-artikolu 87(2) jew fl-artikoli 198, 199, 211, 214 sa 218, 220, 249 sa 251, 311, 312, 314A, 314B, 314ĊA, 316 jew 317 meta dan isir jew jiġi dirett fuq jew kontra l-persuna ta' persuna protetta jew bi preġudizzju jew feriment ta' dik il-persuna jew li x'aktarx jipperikola jew jikkaġuna ħsara gravi lill-proprjetà, lill-ħajja jew lis-saħħa ta' dik il-persuna, jew li jkollu x'jaqsam ma' xi attakk fuq lok relevanti jew fuq xi vettura li soltu tintuża minn persuna protetta jew meta persuna protetta tkun qiegħda f'dak il-lok jew dik il-vettura; jew
 - (ii) ikun għamel xi għemil li kieku dan ikun sar f'Malta kien jikkostitwixxi reat u dak l-għemil kien jinvolvi l-użu ta' bomba, bomba splussiva li tintafa' bl-idejn, missila, arma tan-nar awtomatika, ittra bomba jew pakkett bomba li jipperikola lill-persuni; jew
 - (iii) ikun ikkommetta xi reat taħt l-artikoli 188B sa 188D,minkejja li r-reati msemmija f'dan il-paragrafu jkunu saru barra minn Malta:

Iżda għall-għanijiet tas-sub-paragrafu (i) ta' dan il-paragrafu ma jkollu ebda importanza jekk min jikkommetti r-reat kienx jaf jew le li l-persuna kienet persuna protetta;

(f) kontra kull min:

(i) jagħmel xi reat f'xi lok jew bini barra minn Malta li jkun igawdi l-immunità diplomatika minhabba l-fatt illi jkun qed iservi bħala ambaxxata, residenza jew skop ieħor simili in konnessjoni mas-servizz diplomatiku ta' Malta; jew

(ii) jagħmel reat f'xi post barra minn Malta meta dik il-persuna tkun tgawdi mill-immunità diplomatika minhabba dak is-servizz;

(g) kontra kull min fiż-żmien li jkun f'Malta, isir awtur jew kompliċi f'xi wieħed mid-delitti msemmija fl-artikolu 87(2), jew fl-artikoli 139A, 198, 199, 211, 214 sa 218, 220, 249 sa 251, 298, jew fl-artikoli 311 sa 318 jew fl-artikolu 320 meta dawn isiru fiċ-ċirkostanzi msemmija fil-paragrafu (d) jew (e) ta' dan is-subartikolu, jew f'delitt li jsir b'xi għemil kif imsemmi fil-paragrafu (e)(ii) ta' dan is-subartikolu, jew jassoċja ruħu ma' xi persuna jew persuni bil-għan li jagħmel xi wieħed mill-istess delitti, ngħad li d-delitti jkunu saru barra minn Malta;

(h) kontra kull min ma tinhareg ebda awtorità għal procedimenti dwaru, jew ma ssir ebda ordni għar-ritorn tiegħu, wara talba li ssir minn xi pajjiż għall-estradizzjoni tiegħu minn Malta, mill-Ministru responsabbli għall-ġustizzja minhabba f'li jkun ċittadin ta' Malta jew li r-reat li dwaru kien mitlub ir-ritorn tiegħu jkun suġġett għall-piena kapitali fil-pajjiż li jkun għamel it-talba, ukoll jekk ma jkun hemm ebda dispożizzjoni skont il-liġijiet ta' Malta hlief din id-dispożizzjoni li bis-saħħa tagħha tkun tista' tinbeda l-azzjoni kriminali kontra dik il-persuna;

(i) kontra kull min jagħmel reat li, b'dispożizzjoni espressa tal-liġi, jkun jikkostitwixxi reat ukoll meta jsir barra minn Malta.

Iżda l-azzjoni kriminali ma tistax titmexxa kontra l-President ta' Malta, dwar dak li jagħmel fil-qadi tal-funzjonijiet tal-kariga tiegħu.

(2) Għall-finijiet tas-subartikolu (1)(b) u (c), bastiment jew biċċa oħra tal-baħar jew inġenji tal-ajru jitqiesu li jagħmlu ma' Malta jekk ikunu reġistrati f'Malta jew, jekk ma jkunu reġistrati mkien, jekk ikunu proprjetà għal kollox ta' persuni li huma abitwalment residenti f'Malta jew ta' korpi ġuridiċi mwaqqfa taħt u skont il-liġijiet ta' Malta u għandhom hemm il-post ewlieni tan-negozju tagħhom.

(3) Għall-għanijiet tas-subartikolu (1)(e):

"persuna protetta" tfisser, dwar reat allegat, persuna minn dawn li ġejjin:

(a) persuna li fil-waqt tar-reat allegat tkun Kap ta' Stat, membru ta' korp li jwettaq il-funzjonijiet ta' Kap ta' Stat skont il-kostituzzjoni ta' dak l-Istat, Kap ta' Gvern jew Ministru għall-Affarijiet Barranin u li tkun barra mit-territorju tal-Istat fejn ikollha dik il-kariga;

(b) persuna li fil-waqt tar-reat allegat tkun rappreżentant jew uffiċjal ta' xi Stat jew uffiċjal jew agent ta' xi organizzazzjoni internazzjonali ta' xorta inter-governamentali, ikollha jedd skont id-dritt internazzjonali għal protezzjoni speċjali minn kull attakk fuq il-persuna, il-libertà jew id-dinjità tagħha u li ma tkunx tinkwadra fil-paragrafu ta' qabel;

(c) persuna li fil-waqt tar-reat allegat tkun membru tal-familja ta' persuna oħra msemmija f'xi wieħed mill-paragrafi ta' qabel u –

(i) jekk il-persuna l-oħra hija msemmija fil-paragrafu (a) hawn aktar qabel, tkun qegħda takkumpanjaha,

(ii) jekk il-persuna l-oħra hija msemmija fil-paragrafu (b) hawn aktar qabel, tkun membru tal-familja tagħha;

"lok relevanti" tfisser lok li fih tkun tabita jew toqgħod fih persuna protetta jew li persuna protetta tkun qegħda tuża bil-għan li twettaq il-funzjonijiet tagħha bħala tali persuna; u

"vettura" tinkludi kull mezz ta' ġarr;

u jekk tqum il-kwistjoni matul xi proċedimenti jekk persuna tkunx jew kinitx persuna protetta, ċertifikat mahruġ mill-Ministru responsabbli għall-affarijiet barranin jew taħt l-awtorità tiegħu u li jkun jiddikjara xi fatt li jkun u li jkollu x'jaqşam mal-kwistjoni, għandu jitqies bħala prova konkluziva ta' dak il-fatt.

Art. 31

- (1) It-tluġħ jew l-inżul minn grad ta' piena għal grad ieħor, isir kif sejjer jingħad hawnhekk:
- (a) bla ħsara ta' xi dispożizzjoni speċjali li hemm f'dan il-Kodiċi, mill-piena ta' priġunerija għall-għomor l-inżul isir skont l-iskala tal-pieni ta' priġunerija kif speċifikat fil-paragrafu (b);
 - (b) bla ħsara ta' xi dispożizzjoni speċjali li hemm f'dan il-Kodiċi, l-iskala tal-pieni ta' priġunerija hi din li ġejja:
 - (i) minn għaxar snin sa erbghin sena;
 - (ii) minn tmien snin sa tletin sena,
 - (iii) minn seba' snin sa għoxrin sena,
 - (iv) minn sitt snin sa tnax-il sena,
 - (v) minn ħames snin sa disa' snin,
 - (vi) minn erba' snin sa sitt snin,
 - (vii) minn tliet snin sa ħames snin,
 - (viii) minn sentejn sa erba' snin,
 - (ix) minn tmintax-il xahar sa tliet snin,
 - (x) minn tlettax-il xahar sa sentejn,
 - (xi) minn disa' xhur sa tmintax-il xahar,
 - (xii) minn seba' xhur sa sena,
 - (xiii) minn ħames xhur sa disa' xhur,
 - (xiv) minn xaħrejn sa sitt xhur,
 - (xv) minn xahar sa tliet xhur;
 - (c) l-inżul mill-ħmistax-il grad isir għall-priġunerija għal żmien ta' mhux aktar minn għoxrin ġurnata, jew għad-detenzjoni jew għall-ammenda;
 - (d) fit-tluġħ minn grad għal ieħor, isir bil-maqlub, billi jinbeda mill-ħmistax-il grad;
 - (e) meta l-liġi ma tgħidx espressament xort'oħra, it-tluġħ mill-ewwel grad isir billi tizdied mal-piena ta' priġunerija, l-piena tar-rekluzjoni għal mhux aktar minn tnax-il perijodu, jew billi jizdiedu pieni oħra stabbiliti fir-regolamenti tal-ħabs;
 - (f) it-tluġħ mill-piena tal-multa jsir għall-priġunerija għal żmien mhux iżjed minn tliet xhur, u l-inżul isir għall-pieni stabbiliti għall-kontravvenzjonijiet;
 - (g) it-tluġħ mill-pieni stabbiliti għall-kontravvenzjonijiet isir għall-piena tal-multa jew ta' priġunerija għalżmien ta' mhux iżjed minn tliet xhur.
- (2) Il-liġi li b'mod ġenerali tistabbilixxi l-inżul minn piena għal oħra, ma titqiesx li tinkludi kazijiet ta' kontravvenzjonijiet jew ta' delitti li jaqgħu taħt il-pieni tal-kontravvenzjonijiet.

Art. 41

- (1) Kull min bil-ħsieb li jagħmel delitt juri dan il-ħsieb b'atti esterni u jagħti bidu għall-esekuzzjoni tad-delitt, jeħel, meta jinsab ħati, barra minn meta l-liġi tgħid espressament xort'oħra, -

- (a) jekk id-delitt ma jkunx għe esegwit minħabba xi haġa aċċidentali u indipendenti mill-volontà tal-ħati, il-piena stabbilita għad-delitt ikkunsmat imnaqqsa grad jew żewġ gradi;
 - (b) jekk id-delitt ma jkunx għe esegwit minħabba li l-ħati jkun waqaf minn rajh milli jikkonsma d-delitt, il-piena għall-atti li jkun laħaq għamel, jekk dawk l-atti jkunu jikkostitwixxu delitt skont il-liġi.
- (2) It-tentattiv ta' kontravvenzjoni ma jaqa' taħt ebda piena, ħlief fil-każijiet imsemmijin espressament mil-liġi

Art. 42

Persuna titqies kompliċi f'delitt jekk hija –

- (a) tkun tat ordni lil ħaddieħor biex jagħmel id-delitt; jew
- (b) tkun għiegħlet li d-delitt isir b'mezz ta' rigali, wegħdiet, theddid, manigġi, jew egħmil qarrieqi, inkella b'abbuż ta' awtorità jew setgħa, inkella li tkun tat istruzzjonijiet biex isir id-delitt; jew
- (c) tkun tat armi, għodod jew mezzi oħra li jkunu ġew użati fl-egħmil tad-delitt, meta kienet taf li kellhom hekk jiġu użati; jew
- (d) għad li ma tkunx waħda mill-persuni msemmija fil-paragrafi (a), (b) u (c), b'xi mod li jkun, xjentement, tkun għenet jew assistiet lill-awtur jew lill-awturi tad-delitt fl-atti li bihom id-delitt ikun għe ippreparat jew ikkunsmat; jew
- (e) tkun xewxet lil ħaddieħor inkella saħħet il-volontà tiegħu sabiex jagħmel id-delitt, jew wegħdet li wara l-fatt tassistih, tieqaf miegħu jew tikkompensah.

Art. 43

Barra minn meta l-liġi tgħid xort'oħra, il-kompliċi f'delitt jeħel il-piena stabbilita għall-awtur.

Art. 251E

- (1) Kull min, għal raġunijiet li ma jkunux mediċi, jagħmel operazzjoni jew iwettaq xi intervent fuq l-organi ġenitali ta' mara, liema operazzjoni jew intervent jikkawżaw ħsara fuq l-organi ġenitali jew iġibu fuq dawk l-organi tibdil permanenti, ikun ħati ta' mutilazzjoni furzata tal-organi ġenitali ta' mara u jeħel il-piena tal-prigunerija għal żmien ta' minn ħames snin sa għaxar snin.
 - (2) (a) Kull min jinsab ħati ta' mutilazzjoni tal-organi ġenitali ta' mara li biha tiġri l-mewt minħabba biss fin-natura jew fil-konsegwenzi naturali tal-offiża, u mhux għal xi kawża aċċidentali li tinqala' wara, jeħel –
 - (i) il-piena ta' prigunerija minn sitt snin sa għoxrin sena, jekk il-mewt tiġri fi żmien erbgħin ġurnata li jibdedw iġġhoddu mill-aħħar nofs il-lejl ta' qabel id-delitt;
 - (ii) il-piena ta' prigunerija minn sitt snin sa tnax-il sena, jekk il-mewt tiġri wara l-erbgħin ġurnata hawn fuq imsemmija, imma qabel sena li tibda tgħodd bħal ma jingħad hawn fuq.
 - (b) Jekk il-mewt tiġri minħabba f'xi kawża aċċidentali li tinqala' wara u mhux biss minħabba fin-natura jew fil-konsegwenzi naturali tal-operazzjoni jew intervent, l-akkużat, meta jinsab ħati, jeħel il-piena ta' prigunerija għal żmien minn sitt snin sa tnax-il sena.
- (3) Il-kunsens tal-persuna li fuqha jsiru l-operazzjoni jew l-intervent ma jiġġustifikax l-eżenzjoni mill-piena.
- (4) Kull min xjentement jonqos milli jipprova jevita, permezz ta' lment formali jew b'xi mod ieħor, mutilazzjoni tal-organi ġenitali ta' mara, jeħel multa ta' mhux inqas minn elf euro (€1,000) u mhux iżjed minn ħamest elef euro (€5,000) jew prigunerija għal żmien ta' minn sitt xhur sa sentejn jew għal multa u prigunerija flimkien: l-żda d-dmir li jiġi evitat att bħal dan għandu jgħodd minkejja kull dmir ta' kunfidenzjalità.
- (5) Għall-finijiet ta' dan l-artikolu, il-kliem "operazzjoni" u "intervent" għandhom jinkludu l-qtugħ, infibulazzjoni jew mutilazzjoni tal-organi ġenitali.
- (6) Kull min jgħin, iħajjar, jagħti parir, iħabrek, jew jisforza mara sabiex taqta', tinfibula jew b'xi mod ieħor timmutila l-organi ġenitali tagħha kollha jew xi parti minnha, ikun ħati ta' reat u jeħel, meta jinsab ħati, il-piena stabbilita taħt dan l-artikolu.

Art. 251H

Il-piena għad-delitti msemmijin fl-artikoli 251 sa 251G, it-tnejn inklużi, għandhom jiżdiedu bi grad jew żewġ gradi f'kull wieħed mill-każijiet li ġejjin:

- (a) id-delitt twettaq kontra il-konjuġi jew is-sieħba preżenti jew ta' qabel, minn membru tal-familja, persuna li tgħix mal-vittma jew persuna li tkun abbużat mill-awtorità tagħha:
Iżda f'dan il-paragrafu "konjuġi" tinkludi persuna li ż-żwieġ tagħha mal-akkużat ġie xolt jew ġie dikjarat null;
- (b) id-delitt, jew id-delitti relatati, twettaq jew twettqu ripetutament;
- (ċ) id-delitt twettaq fuq persuna vulnerabbli skont it-tifsira tal-artikolu 208AĊ(2);
- (d) id-delitt twettaq fuq jew fil-preżenza ta' minuri;
- (e) id-delitt twettaq minn żewġ persuni jew aktar li aġixxew flimkien;
- (f) twettqet vjolenza qabel jew waqt it-twettiq tad-delitt;
- (g) id-delitt twettaq bl-użu jew it-theddid tal-użu ta' arma;
- (h) id-delitt ikkawża offiża gravi fizika jew psikoloġika fuq il-vittma;
- (i) l-akkużat kien qabel instab ħati ta' delitti ta' naturasimili.

Act No. XXIII of 2019 (Child Protection Act)

Art. 3

- (1) Għandu jkun hemm Direttur li jkollu responsabbiltà li jiproteġi tfal f'riskju.
- (2) Għandu jkun hemm ukoll uffiċjali oħra tad-Direttur li jeżerċitaw u jesegwixxu dawk is-setgħat, funzjonijiet u dmirijiet kollha delegati jew mogħtija lilhom mid-Direttur.
- (3) Fl-eżerċizzju u fl-esekuzzjoni tas-setgħat, funzjonijiet u dmirijiet kollha delegati jew mogħtija lilhom kif intqal qabel, l-uffiċjali tad-Direttur għandhom, sakemm ma jkunx jidher li l-intenzjoni hija kuntrarja, ikollhom l-istess dmirijiet u jgawdu l-istess ħarsien u privileġġi li l-liġi timponi jew tagħti lid-Direttur.
- (4) Il-kariga tad-Direttur tkun enti morali b'personalità ġuridika distinta u tkun tista' tagħmel kuntratti, timpjega persunal, takkwista, iżzomm u tiddisponi minn kull proprjetà jew drittijiet għall-finijiet tal-funzjonijiet tagħha, tħarrek u tiġi mħarrka, u tagħmel dawk il-ħwejjeġ kollha u dawk it-transazzjonijiet kollha li huma incidentali jew li jwasslu għall-qadi tal-funzjonijiet tagħha skont dan l-Att.

Art. 9

- (1) Kull persuna li għandha raġuni taħseb li minuri qiegħed isofri, jew qiegħed f'periklu li jsufri, ħsara sinifikanti, tista' tirrapporta dawk iċ-ċirkostanzi li minħabba fihom tqis li għandha dik ir-raġuni lid-Direttur (Protezzjoni Minuri) jew lill-Pulizija Eżekuttiva:

Iżda kull rapport magħmul lill-Pulizija Eżekuttiva għandu jiġi mgħoddi lid-Direttur (Protezzjoni Minuri) bla dewmien.

- (2) Bla ħsara għal kull dispożizzjoni oħra ta' xi liġi u għall-obbligi professjonali tiegħu li jibqgħu sħaħ minkejja dan l-artikolu, kull professjonist li matul ix-xogħol tiegħu jkollu għarfien ta' att li jikkostitwixxi reat kriminali li jikkaġuna ħsara sinifikanti hekk kif imfissra fis-subartikolu (4) fuq minuri għandu jirrapporta minnufih lid-Direttur (Protezzjoni Minuri) jew lill-Pulizija Eżekuttiva u, mingħajr preġudizzju għas-subartikolu (4), ebda rappurtaġġ b'hal dak meta magħmul in bona fide ma jista' jikkostitwixxi reat jew jagħti lok għal xi azzjoni taht kull liġi li tkun:

Iżda meta rapport isir lil entità jew istituzzjoni, minbarra d-Direttur (Protezzjoni Minuri) jew il-Pulizija Eżekuttiva, dik l-entità jew istituzzjoni għandha tirreġistra bil-miktub ir-rapport u għandha, mingħajr dewmien, u f'kull każ mhux aktar tard minn erbgħa u għoxrin siegħa minn meta jkun riċevut ir-rapport, tirreferi r-rapport lid-Direttur (Protezzjoni Minuri) jew lill-Pulizija Eżekuttiva.

- (3) Kull professjonist li jonqos milli jagħmel rapport imsemmi fissubartikolu (2) ikun ħati ta' reat u jeħel meta jinstab ħati l-piena ta' prigunerija għal żmien ta' mhux anqas minn tliet xhur u mhux aktar minn disa' xhur, jew multa ta' mhux iżjed minn ħamest elef euro (€5,000), jew dik il-multa u prigunerija flimkien.
- (4) Għall-finijiet ta' dan l-artikolu u ta' dispożizzjonijiet oħra ta' dan l-Att, "ħsara sinifikanti" tinkludi abbuż, negliġenza, fastidju, trattament ħażin, sfruttament, abbandun, espożizzjoni, u t-traffikar ta' xi persuni kif imsemmi fis-Sub-titolu VIII Bis tat-Titolu VIII tat-Taqsima II tal-Ewwel Ktieb tal-Kodiċi Kriminali.
- (5) Ir-rapporti kollha magħmula skont dan l-artikolu, magħmula lil min magħmula, għandhom jitqiesu daqslikieku protetti bis-segretezza professjonali, sakemm mhumiex hekk protetti skont xi liġi, u minkejja kull dispożizzjoni oħra ta' xi liġi ma jistgħux jiġu magħmula aċċessibbli għall-pubbliku kemm sħaħ u kemm parzjalment.

Art. 18

- (1) Fil-każijiet fejn id-Direttur jaġixxi sabiex tkun magħmula ordni għall-protezzjoni ta' tifel, il-Qorti tal-Maġistrati tista' tagħmel waħda jew iżjed mill-ordnijiet li ġejjin:

- (a) ordni ta' ħarsien li tipprovdi għat-tqegħid tat-tifel, li jkun fil-bżonn ta' ħarsien u protezzjoni, f'xi forma oħra ta' ħarsien u, meta jkun meqjus xieraq li hemm bżonn, għall-għoti ta' responsabbiltajiet ta' ġenitur lill-Bord tar-Revizjoni, lill-kustodju, lill-carer alternattiv jew lil persuna jew persuni oħra li l-qorti jkun jidhrilha xieraq;

- (b) ordni ta' superviżjoni li tqiegħed lit-tifel taħt is-superviżjoni tal-Aġenzija msemmija għal żmien speċifikat fl-ordni u taħt dawk il-kundizzjonijiet li l-qorti jidhrilha xieraq li timponi, inkluż l-allokkazzjoni tar-responsabbiltà tal-ġenitur jew xi aspetti tagħha lil dik il-persuna jew persuni li l-qorti tħoss li huwa xieraq;
 - (c) ordni ta' trattament li tordna lill-ġenituri tat-tifel jircievu kura għall-abbuż minn sustanzi, jew trattament għal vjolenza domestika, jew kura psikjatrika jew psikoloġika;
 - (d) ordni ta' tneħħija li tneħħi lill-awtur tal-ħsara sinifikanti lit-tifel mil-lok fejn ikun joqgħod dak it-tifel u biex jipprovdri protezzjoni lit-tifel, u dan mingħajr preġudizzju għad-dispożizzjonijiet tal-Kodiċi Kriminali u tal-Kodiċi Ċivili.
- (2) Mingħajr preġudizzju għal xi kwistjoni rilevanti oħra li l-qorti tista' tqis għall-finijiet li jiġi stabbilit liema ordni għandha tagħmel, il-Qorti tal-Maġistrati għandha tqis:
- (a) il-fehmiet tat-tifel, meta jitqies li għandu fehim biżżejje;
 - (b) il-fehmiet tal-ġenituri;
 - (c) il-fehmiet tal-kustodju, fejn applikabbli;
 - (d) il-kapaċità tal-ġenituri li jħarsu l-benesseri u l-iżvilupp armonjuż tat-tifel;
 - (e) in-natura u l-kwalità tar-rabta bejn it-tifel u l-familja tiegħu;
 - (f) il-grad ta' ħsara li giet imġarrba jew li tista' tiġi mġarrba mit-tifel;
 - (g) it-tul ta' żmien li l-familja tat-tifel tkun damet tircievi servizzi ta' appoġġ u trattament;
 - (h) il-grad ta' vulnerabbiltà tat-tifel;
 - (i) l-isfond kulturali, lingwistiku u reliġjuż tat-tifel; u
 - (j) ir-relazzjonijiet tat-tifel ma' ħutu.
- (3) Għall-finijiet tas-subartikolu (1)(a), il-Qorti tal-Maġistrati għandha tqis:
- (a) jekk hemmx nuqqasijiet fil-kura ta' kuljum tat-tifel jew nuqqasijiet f'dak li hu kuntatt personali u sigurtà li t-tifel jinħtieġ fl-età u l-iżvilupp tiegħu;
 - (b) jekk it-tifel li jkun marid, diżabbli jew fi bżonn ta' għajjnuna speċjali, hux qiegħed jingħata t-trattament u l-kura speċjalizzata li jinħtieġ;
 - (c) jekk it-tifel huwiex f'riskju ta' abbandun; u
 - (d) jekk, b'mod ġenerali, it-tifel huwiex f'riskju li jsofri ħsara sinifikanti.
- (4) Fil-każijiet fejn isir provvediment għall-għoti ta' xi responsabbiltajiet ta' ġenitur lil xi persuna minbarra l-ġenituri tat-tifel, il-Qorti tal-Maġistrati għandha tagħti preferenza lill-familja tat-tifel, sakemm dan ma jkunx bid-dieher kontra l-aħjar interessi tat-tifel.
- (5) Fil-każijiet kollha fejn issir talba għal ordni taħt dan l-artikolu, il-Qorti tal-Maġistrati għandha taħtar Avukat tat-Tfal sabiex jirrapprezenta l-interessi tat-tifel.
- (6) Hlief għal raġunijiet speċjali u straordinarji, f'xi proċeduri għal ordni taħt is-subartikolu (1), il-Qorti tal-Maġistrati għandha tisma' l-provi kollha mogħtija mit-tifel f'seduta waħda:
- Iżda l-Qorti tal-Maġistrati tista', meta tqis li jkun xieraq li hekk tagħmel, taħtar espert jew esperti tat-tfal sabiex jisimgħu dawn il-provi.

Art. 19

- (1) Fil-każijiet li fihom id-Direttur (Protezzjoni Minuri) jaġixxi sabiex tkun magħmula ordni għall-protezzjoni ta' minuri, il-Qorti tista' tagħmel waħda jew iżjed mill-ordnijiet li ġejjin:
- (a) ordni ta' ħarsien li permezz tagħha tafda l-kura u kustodja tal-minuri lil dik il-persuna jew entità li taħdem fil-qasam soċjali li l-Qorti jidhrilha xierqa;

- (b) ordni ta' superviżjoni li tqiegħed lill-minuri taħt issuperviżjoni tal-entità indikata mid-Direttur (Protezzjoni Minuri) għal żmien speċifikat fl-ordni u taħt dawk il-kundizzjonijiet li l-Qorti jidhrilha xieraq li timponi, inkluż l-allokazzjoni tarresponsabbiltà tal-ġenitur jew xi aspetti tagħha lil dik il-persuna jew persuni kif il-Qorti tħoss li huwa xieraq;
 - (c) ordni ta' trattament li tordna lill-ġenituri tal-minuri jirċievu kura għall-abbuż minn sustanzi, jew trattament għal vjolenza domestika, jew kura psikjatrika jew psikoloġika jew kwalunkwe trattament, kura jew għajjnuna li l-Qorti, wara li tisma' l-esperti fil-qasam, jidhrilha xieraq li timponi;
 - (d) ordni ta' tneħħija li permezz tagħha tordna liżgumbrament tal-awtur tal-ħsara sinifikanti lill-minuri mil-lok fejn ikun joqgħod dak il-minuri, liema ordni ta' tneħħija jista' wkoll jipprovdi għall-protezzjoni tal-minuri, u dan mingħajr preġudizzju għad-dispożizzjonijiet ta' kull liġi oħra.
- (2) Qabel ma tgħaddi għad-deċiżjoni tagħha l-Qorti għandha tikkunsidra, sakemm ikun possibbli:
- (a) il-fehmiet tal-minuri, meta jitqies li għandu fehim biżżejjed;
 - (b) il-fehmiet tal-ġenituri;
 - (c) il-fehmiet tat-tutor u, jew kuratur;
 - (d) il-kapaċità tal-ġenituri li jħarsu l-benesseri u l-iżvilupp armonjuż tal-minuri;
 - (e) in-natura u l-kwalità tar-rabta bejn il-minuri u l-familja tiegħu;
 - (f) il-ħsara li ġiet imġarrba, li qiegħed iġarrab jew li tista' tiġi mġarrba mill-minuri;
 - (g) it-tul ta' żmien li l-familja tal-minuri tkun damet tirċievi servizzi ta' appoġġ u trattament;
 - (h) il-grad ta' vulnerabbiltà tal-minuri;
 - (i) l-isfond kulturali, lingwistiku u reliġjuż tal-minuri; u
 - (j) ir-relazzjonijiet tal-minuri ma' ħutu.
- (3) Għall-għanijiet tas-subartikolu (1)(a), il-Qorti għandha tqis:
- (a) jekk hemmx nuqqasijiet fil-kura ta' kuljum tal-minuri jew nuqqasijiet f'dak li hu kuntatt personali u sigurtà li l-minuri jinħtieġ fl-età u l-iżvilupp tiegħu;
 - (b) jekk il-minuri li jkun marid, diżabbli jew fi bżonn ta' għajjnuna speċjali, hux qiegħed jingħata t-trattament u l-kura speċjalizzata li jinħtieġ;
 - (c) jekk il-minuri huwiex f'riskju ta' abbandun; u
 - (d) jekk, b'mod ġenerali, il-minuri huwiex f'riskju li jsofri ħsara sinifikanti.
- (4) Fil-każijiet fejn isir provvediment għall-għoti ta' xi responsabbiltajiet ta' ġenitur lil xi persuna minbarra l-ġenituri tal-minuri, il-Qorti għandha tagħti preferenza lill-familja tal-minuri, sakemm il-Qorti ma tkunx tal-fehma li huwa raġonevolment ċar li dan ikun kontra lajjar interessi tal-minuri.

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 Olesia Bilkei (undated) *Portrait of a beautiful African-American woman in a trendy red dress posing on the street . . .* 123RF ID 164174296.

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

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

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

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

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