

THE LAW AND FGM

EUROPE

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Methodology & Disclaimer

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

Acknowledgements:

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References to each national law referred to or quoted from in this report can be found in the individual country reports at:

<https://www.28toomany.org/Law>

When referencing this report, please use:

28 Too Many (2021) *The Law and FGM in Europe* (December 2021).

Available at: <https://www.28toomany.org/Law>



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 in which 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 Ashurst LLP for their pro bono legal support, which has enabled this research to take place, and to the many teams of international lawyers and local counsel in the study countries, who supported us with their insights into the laws related to FGM in their respective jurisdictions.

All reports and resources published by 28 Too Many are available to download for free at www.28toomany.org

Female Genital Mutilation (FGM)

Female genital mutilation (FGM), sometimes called female genital cutting (FGC), female genital mutilation/cutting (FGM/C) or female circumcision, 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.' [1]

FGM is a form of gender-based violence (GBV) and has been recognised by various international organisations, including the United Nations (UN), as a harmful practice and a violation of the human rights of girls and women. At least 200 million girls and women alive today have had FGM in the 28 African countries where FGM is practised as well as in parts of Asia. [2]

History of FGM

FGM has been practised for over 2,000 years. [3] Although some communities practising FGM believe it is a religious requirement, research shows that FGM pre-dates Islam and Christianity. Some anthropologists trace the practice to 5th century BC Egypt, where infibulation was referred to as 'Pharaonic circumcision'. Today, FGM continues to be practised across a wide range of cultures and religions. [4]

Global Prevalence and Practices

FGM has been reported in over 90 countries around the world. In Africa it occurs mainly in countries along a belt stretching from Senegal in West Africa, to Egypt in North Africa, to Somalia in East Africa, and parts of central Africa. It also occurs in some countries in Asia and the Middle East and among 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 why it is practised.



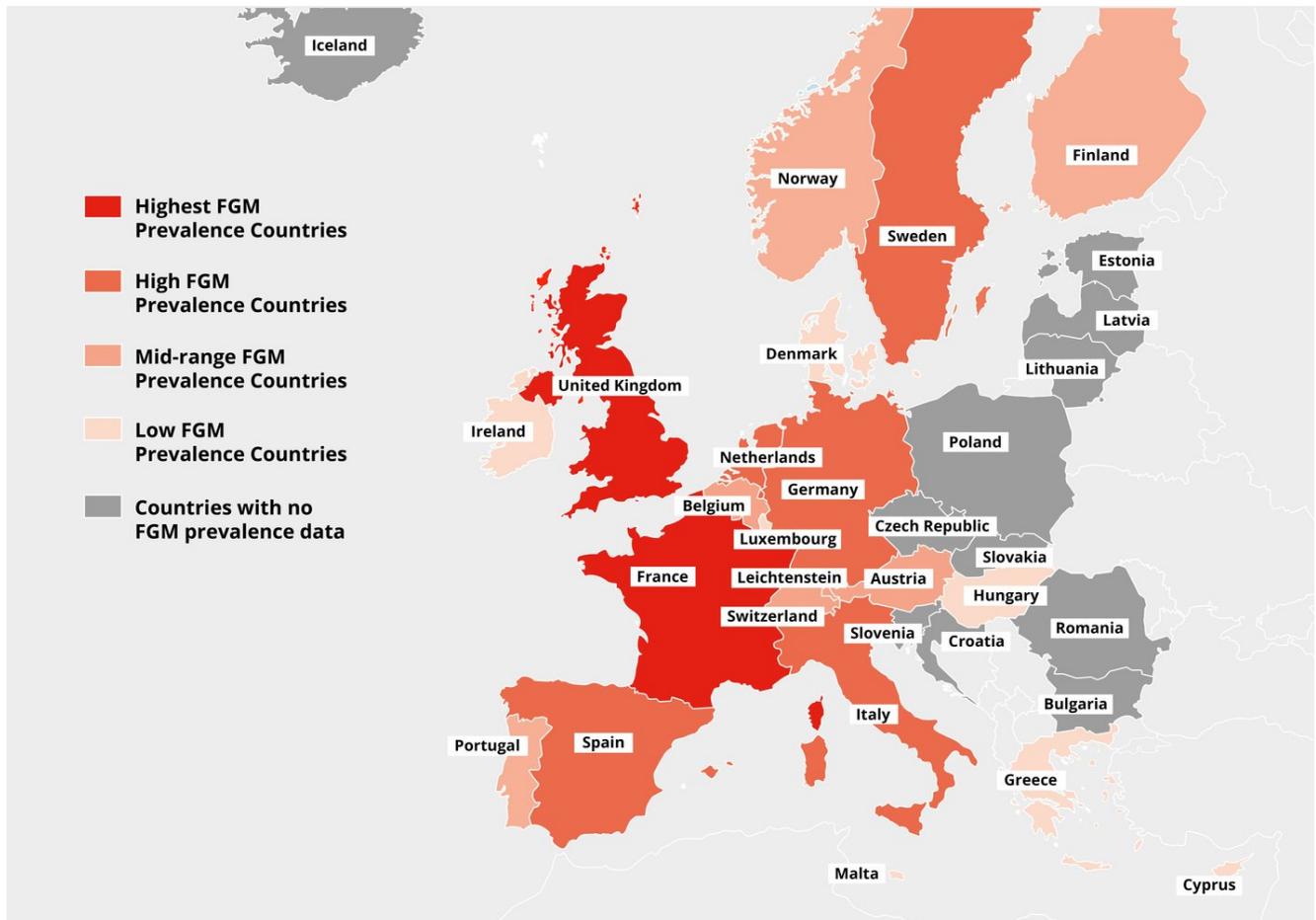
The Prevalence of FGM in Europe

Based on the available data, it is estimated that between 608,591 and 628,771 girls and women residing in the 32 European countries studied for this project have experienced FGM. The majority of these women and girls reside in the United Kingdom, France, Italy, Spain, Germany, the Netherlands and Sweden, as shown in Figure 1.

Additionally, it is estimated that between 133,924 and 189,438 girls and women (the majority of whom are under the age of 18) are at risk of FGM. The majority of those at risk reside in the United Kingdom, France, Italy, Norway, Sweden, Spain **[5]** and Belgium.

Figure 1:

Number of girls/women in 32 European countries who have undergone/are at risk of FGM



Twelve out of the 32 European countries [6] included in this study, which are mostly located in Eastern Europe, do not present any relevant data regarding the number of girls and women who have undergone FGM or are at risk of it. This lack of data is generally due to a low influx of migrants from FGM-practising countries to those 12 countries. Malta, Luxembourg and Denmark only present data for the number of girls up to the age of 18 who could be at risk of FGM.

The majority of girls and women who have undergone FGM or are at risk of it originate from **FGM-practising countries in Africa:** Egypt, Eritrea, Ethiopia, Nigeria, Somalia and Sudan.

Smaller groups originate from Burkina Faso, Côte d'Ivoire, Djibouti, The Gambia, Ghana, Guinea, Indonesia, Iraq, Kenya, Mali, Mauritania, Senegal and Sierra Leone.

International & Regional Treaties

This research has identified important international and regional treaties that are relevant to preventing and combatting FGM. The following four **international treaties** condemn FGM and support the adoption of national legislation prohibiting it:

- 1 International Covenant on Civil and Political Rights** (the *ICCPR*) (adopted 1966, entered into force 1976);
- 2 International Covenant on Economic, Social and Cultural Rights** (the *ICESCR*) (adopted 1966, entered into force 1976);
- 3 Convention on the Elimination of All Forms of Discrimination Against Women** (*CEDAW*) (adopted 1979, entered into force 1981); and
- 4 Convention on the Rights of the Child** (the *CRC*) (adopted 1989, entered into force 1990).

All 32 study countries have ratified all four of these treaties without any reservations to the provisions relevant to combating FGM.

On a **regional** level, the following two treaties condemn FGM and support the adoption of national legislation prohibiting it:

- 1** **Convention for the Protection of Human Rights and Fundamental Freedoms** (the *ECHR*) (adopted 1950, entered into force 1953); and
- 2** **Council of Europe Convention on preventing and combating violence against women and domestic violence** (the *Istanbul Convention*) (adopted 2011, entered into force 2014).

All 32 countries have signed and ratified the ECHR without any reservations to the provisions relevant to combating FGM.

Unfortunately, this is not the case for the Istanbul Convention: only 25 of the 32 countries have ratified the Istanbul Convention, but no country has made a reservation to Article 38, which criminalises FGM within the territorial jurisdiction of a country.

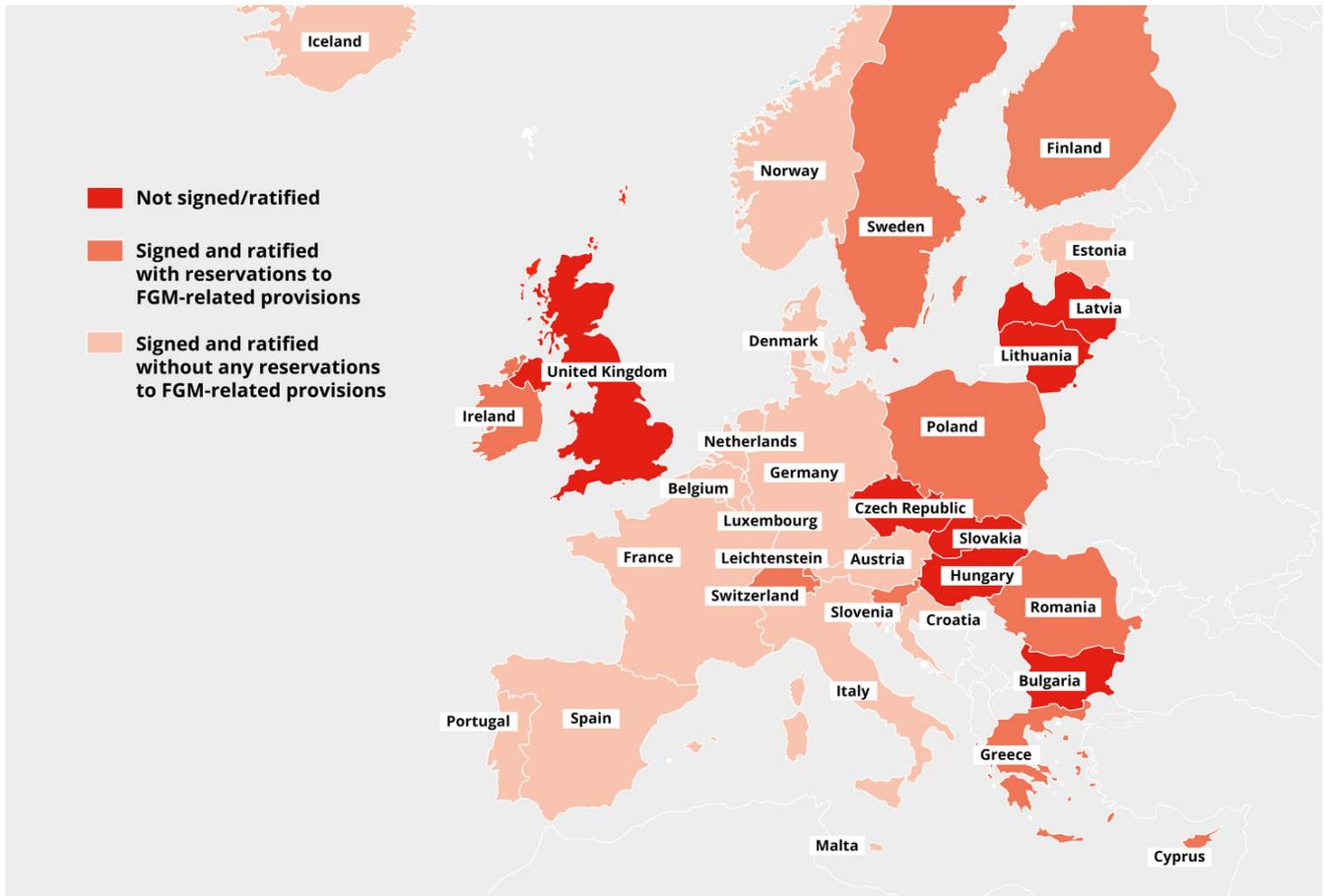
In total, 15 of those 25 countries, as shown in pale orange on Figure 2, have signed and ratified the Istanbul Convention without any reservations to the provisions of the Convention that are relevant to combatting FGM.

Ten of those 25 countries, as shown in orange on Figure 2, have signed and ratified the Istanbul Convention, but have reserved the right not to apply certain provisions, in accordance with Article 78, paragraph 2 of the Convention, which is relevant to combatting FGM. All ten countries have reserved the right not to apply one or more of the provisions of the Convention laid down in:

- Article 30, paragraph 2 regarding State compensation;
- Article 44, paragraphs 1.e, 3 and 4 regarding jurisdiction;
- Article 55, paragraph 1 regarding *ex parte* and *ex officio* proceedings;
- Article 58 regarding the statute of limitation; and
- Article 59 regarding residence status.

Figure 2:

Countries that have signed and ratified the Istanbul Convention



One of the most essential provisions of the Istanbul Convention for combatting FGM is Article 44 regarding extraterritoriality. Article 44 prescribes an obligation for countries to take necessary measures to establish jurisdiction over any offence, including FGM, when it is committed by one of its nationals (Article 44 (1)(d)), by a person who has habitual residence in its territory (Article 44 (1)(e)), or against a national or a person with habitual residence in that country (Article 44 (2)).

Only 7 of the 32 countries have signed but not ratified the Istanbul Convention: Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Slovakia and the United Kingdom. Bulgaria is also not likely to ratify the Convention in the near future, since it has deemed it unconstitutional. The Czech Republic has reserved the right, in accordance with Article 78, paragraph 2 of the Convention, not to apply the provisions laid down in Article 30, paragraph 2 regarding State compensation, Article 44, paragraphs 1.e, 3 and 4 regarding jurisdiction, and Article 59 regarding residence status.

National Legal Frameworks

Laws and Provisions Criminalising FGM

All 32 European countries included in this study have criminalised FGM either explicitly or implicitly through different types of legal instruments.

9.4%

Three countries (9.4% of the 32 countries) have adopted separate laws that explicitly and specifically criminalise FGM: Ireland, Sweden and the United Kingdom.

40.6%

Thirteen countries (40.6%) have adopted specific provisions in their national criminal codes explicitly criminalising FGM: Belgium, Croatia, Cyprus, Denmark, Germany, Iceland, Italy, Luxembourg, Malta, Norway, Portugal, Spain and Switzerland.

21.9%

Seven countries (21.9%) have a general assault provision either with a governmental declaration confirming the application of that provision to FGM, with another provision concerning FGM, or with both.

- Finland and Romania only have governmental declarations confirming the application of general assault provisions to FGM.
- France and the Netherlands have both governmental declarations and provisions concerning FGM. France has a provision specifically criminalising inciting another person to perform FGM on a minor or inciting a minor to undergo FGM, while the Netherlands has a provision specifically concerning a prescriptive period for FGM and extraterritoriality.
- Greece and Liechtenstein have only added provisions concerning FGM. Greece has a provision that criminalises convincing a woman to undergo FGM, and Liechtenstein has a provision that stipulates that consent cannot be given to any mutilation of the genitals.
- Austria has included genital mutilation in general in its genital assault provision, as a sub-paragraph, and also has a provision specifying that consent cannot be given to genital mutilation.

28.1%

Nine countries (28.1%) have general assault provisions that could apply to FGM; however, this is not confirmed by any governmental declaration or other provisions in their laws: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

Nonetheless, all of these countries have ratified four UN conventions [7] and the European Convention on Human Rights (the *ECHR*), which condemn FGM and support criminalisation. Estonia, Slovenia and Poland have also ratified the Istanbul Convention. Since criminalisation can be a deterrent, it is important that anti-FGM laws exist in countries where FGM is an issue. In the European context, FGM is an issue among diaspora and immigrants who originate from FGM-practising countries such as Somalia. These nine countries that have no law, provision or governmental declaration confirming the criminality of FGM have low influxes of migrants from FGM-practising countries, which may explain the legislative inaction from their governments.

Legislative Framework

Highest FGM-Prevalence Countries

FRANCE	General assault provision with a declaration confirming its application to FGM
UNITED KINGDOM	Separate law explicitly and specifically criminalising FGM

High FGM-Prevalence Countries

GERMANY	Specific provision in the criminal code explicitly criminalising FGM
ITALY	Specific provision in the criminal code explicitly criminalising FGM
NETHERLANDS	General assault provision with a declaration confirming its application to FGM
SPAIN	Specific provision in the criminal code explicitly criminalising FGM
SWEDEN	Separate law explicitly and specifically criminalising FGM

Mid-Range FGM-Prevalence Countries

AUSTRIA	General assault provision with another type of provision concerning FGM
BELGIUM	Specific provision in the criminal code explicitly criminalising FGM
FINLAND	General assault provision with a declaration confirming its application to FGM
NORWAY	Specific provision in the criminal code explicitly criminalising FGM
PORTUGAL	Specific provision in the criminal code explicitly criminalising FGM
SWITZERLAND	Specific provision in the criminal code explicitly criminalising FGM

Low FGM-Prevalence Countries

CYPRUS	Specific provision in the criminal code explicitly criminalising FGM
DENMARK	Specific provision in the criminal code explicitly criminalising FGM
GREECE	General assault provision with another type of provision concerning FGM
HUNGARY	General assault provision that may apply to FGM (thus far unconfirmed)
IRELAND	Separate law explicitly and specifically criminalising FGM
LUXEMBOURG	Specific provision in the criminal code explicitly criminalising FGM
MALTA	Specific provision in the criminal code explicitly criminalising FGM

Countries With No FGM-Prevalence Data

BULGARIA	General assault provision that may apply to FGM (thus far unconfirmed)
CROATIA	Specific provision in the criminal code explicitly criminalising FGM
CZECH REPUBLIC	General assault provision that may apply to FGM (thus far unconfirmed)
ESTONIA	General assault provision that may apply to FGM (thus far unconfirmed)
ICELAND	Specific provision in the criminal code explicitly criminalising FGM
LATVIA	General assault provision that may apply to FGM (thus far unconfirmed)
LIECHTENSTEIN	General assault provision with another type of provision concerning FGM
LITHUANIA	General assault provision that may apply to FGM (thus far unconfirmed)
POLAND	General assault provision that may apply to FGM (thus far unconfirmed)
ROMANIA	General assault provision with a declaration confirming its application to FGM
SLOVAKIA	General assault provision that may apply to FGM (thus far unconfirmed)
SLOVENIA	General assault provision that may apply to FGM (thus far unconfirmed)

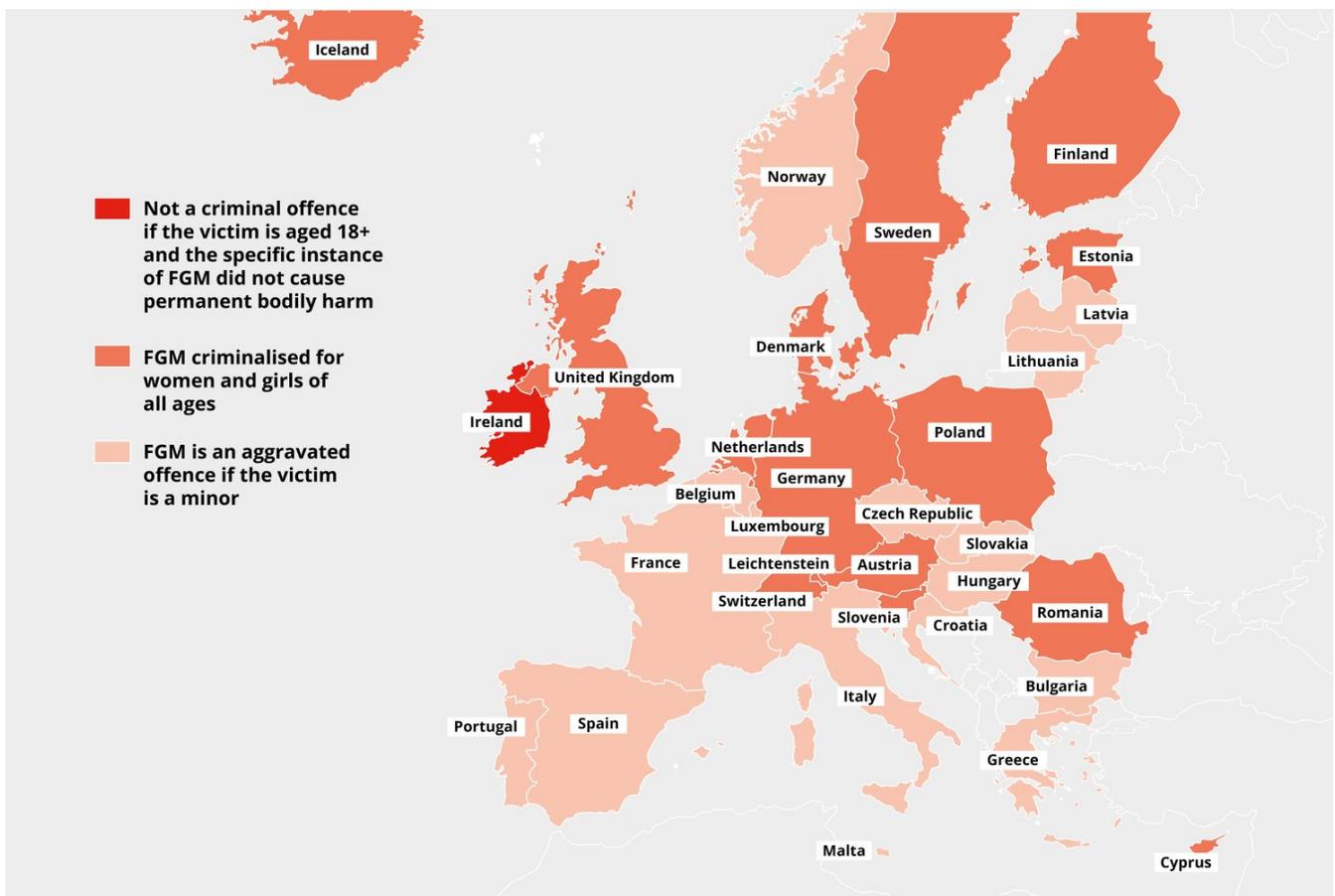
Women and Girls of All Ages

All 32 study countries, in principle, have criminalised FGM for women and girls of all ages.

There are no age restrictions given in any of the legal provisions either explicitly or implicitly criminalising the practice, except in Ireland, where FGM is not a criminal offence if the victim is aged 18 or older and the specific instance of FGM *did not* cause permanent bodily harm (a highly unlikely scenario).

In 16 countries, the age of the victim (that is, if the victim is a minor) may constitute an aggravating circumstance or qualify FGM/assault as a separate aggravated offence: *Belgium, Bulgaria, Croatia, the Czech Republic, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Portugal, Slovakia and Spain.*

Figure 3:
The impact of age on the criminality of FGM



Consent

The laws of 12 of the study countries and three constituent countries of the United Kingdom explicitly confirm that FGM is a criminal offence regardless of the consent of the victim.

Those 12 countries are: *Austria, Belgium, Cyprus, Denmark, Iceland, Ireland, Liechtenstein, Luxembourg, Malta, Norway, Portugal, Sweden and England, Northern Ireland and Wales.*

While the issue of consent is not mentioned in the criminal codes of Romania and the Netherlands, governmental orders in these two countries confirm that FGM has been criminalised regardless of the consent of the victim.



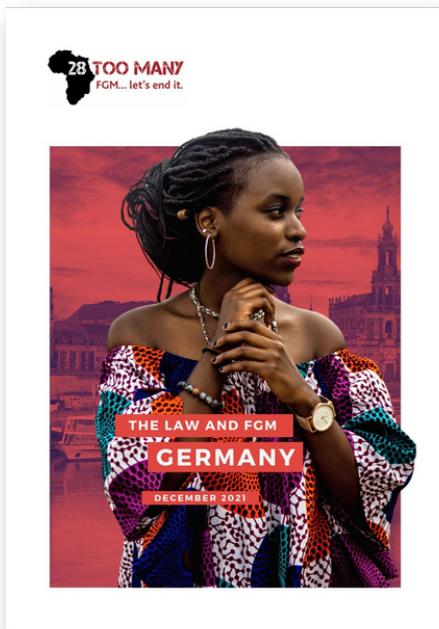
Consent is not mentioned in the laws of 14 countries and one constituent country of the United Kingdom.

Those 14 countries are: *Bulgaria, Croatia, the Czech Republic, Estonia, Finland, France, Greece, Hungary, Poland, Italy, Lithuania, Latvia, Slovakia and Switzerland, and Scotland.*



The Swiss Government has elaborated that this was a purposeful decision, since other alterations to the genitalia, such as piercings or labiaplasty, could fall within the definition of FGM in Swiss law, and legally valid consent for those can be given. It was concluded that the question of consent would thus be left to case law.

In Spain consent that is given in a valid, free and unforced manner by the person who undergoes FGM can mitigate the sentence for it, but cannot justify it. Consent given by a minor or incapacitated person is never considered to be valid.



Finally, in two countries, Germany and Slovenia, the law prescribes that consent can be a justification for assault if it does not breach a general principle of morality.

German law prescribes that a person who inflicts bodily harm *with the victim's consent* is only deemed to act unlawfully if, despite that consent, the act offends 'common decency'.

A 'state of affairs' (*sachstand*) adopted by the federal parliament specifies that consent given by a minor to FGM would in any case be unlawful because she does not have the capacity to understand what she is 'consenting' to. Her parents also cannot consent to FGM on her behalf.

In the case of adult women, who in principle do have the capacity to understand what they are consenting to, consent may still be deemed to offend common decency, based on the 'morality' of consent. The 'morality' of consent is said to be dependent on the risk of damage to life or health and the reasons for the consent. In the case of FGM, the risk to life or health is usually high; however, the 'state of affairs' does state that there are scenarios imaginable wherein a woman's consent to a light form of FGM may be deemed valid.

Slovenian law states that assault is not a criminal offence if consent is given, unless 'a common legal value is endangered'. The law does not define what those 'common legal values' may be, nor has 28 Too Many been able to find any government or legal source that confirms or rejects whether FGM endangers such a 'common legal value'.

Consent Framework

Highest FGM-Prevalence Countries

FRANCE	Consent is not referred to in country's law
UNITED KINGDOM	FGM has been criminalised, regardless of victim consent

High FGM-Prevalence Countries

GERMANY	Consent may legally justify assault, under certain conditions
ITALY	Consent is not referred to in country's law
NETHERLANDS	Government order confirms FGM has been criminalised, regardless of consent
SPAIN	Valid consent given mitigates sentence
SWEDEN	FGM has been criminalised, regardless of victim consent

Mid-Range FGM-Prevalence Countries

AUSTRIA	FGM has been criminalised, regardless of victim consent
BELGIUM	FGM has been criminalised, regardless of victim consent
FINLAND	Consent is not referred to in country's law
NORWAY	FGM has been criminalised, regardless of victim consent
PORTUGAL	FGM has been criminalised, regardless of victim consent
SWITZERLAND	Consent is not referred to in country's law

Low FGM-Prevalence Countries

CYPRUS	FGM has been criminalised, regardless of victim consent
DENMARK	FGM has been criminalised, regardless of victim consent
GREECE	Consent is not referred to in country's law
HUNGARY	Consent is not referred to in country's law
IRELAND	FGM has been criminalised, regardless of victim consent
LUXEMBOURG	FGM has been criminalised, regardless of victim consent
MALTA	FGM has been criminalised, regardless of victim consent

Countries With No FGM-Prevalence Data

BULGARIA	Consent is not referred to in country's law
CROATIA	Consent is not referred to in country's law
CZECH REPUBLIC	Consent is not referred to in country's law
ESTONIA	Consent is not referred to in country's law
ICELAND	FGM has been criminalised, regardless of victim consent
LATVIA	Consent is not referred to in country's law
LIECHTENSTEIN	FGM has been criminalised, regardless of victim consent
LITHUANIA	Consent is not referred to in country's law
POLAND	Consent is not referred to in country's law
ROMANIA	Government order confirms FGM has been criminalised, regardless of consent
SLOVAKIA	Consent is not referred to in country's law
SLOVENIA	Consent may legally justify assault, under certain conditions



Definition of FGM in Legislation

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of the 32 study countries maintain some form of definition of FGM (see Figure 4).

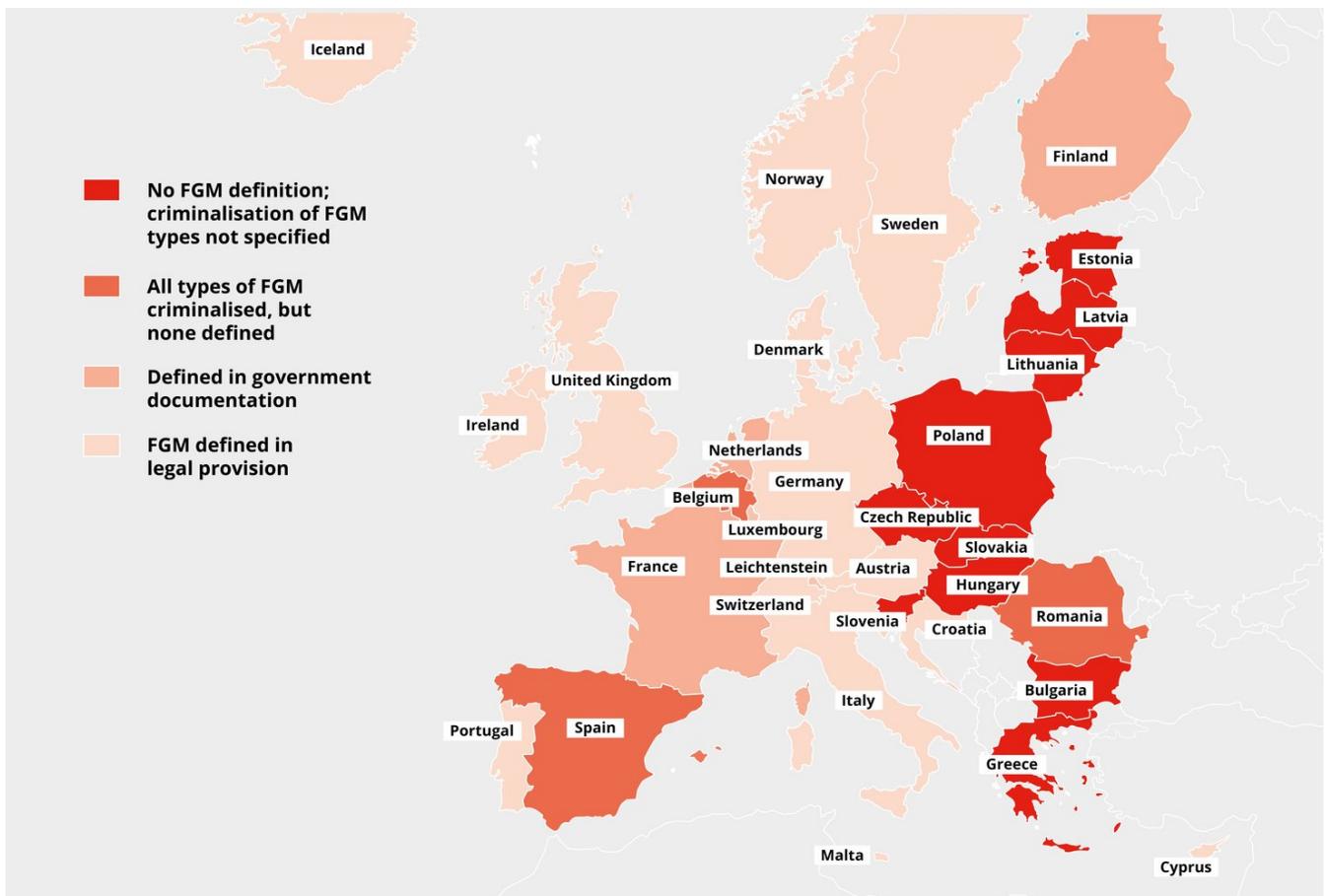
In 16 of these, some form of a definition of FGM is maintained in a legal provision.

A further three countries have defined FGM in relevant government documentation: Finland, France and the Netherlands.

Belgium, Romania and Spain specify that all forms of FGM have been criminalised, but do not further define 'FGM'. Greece simply mentions 'genital mutilation' without providing a definition of the term.

Nine of the 32 countries studied do not maintain definitions of FGM, nor do they specify that all types of FGM have been criminalised.

Figure 4:
Definitions of FGM in legislation



WHO-Aligned Definitions

The definitions of FGM contained in the laws of only six countries fully correspond to the WHO's definition in that they mention the types of injuries that can be caused by all types of FGM and specify that those injuries will have been inflicted for non-medical reasons. [8]

Those countries are: *Cyprus, Ireland, Italy, Malta, Portugal and the United Kingdom*. Furthermore, *Finland and France* adopted the WHO's definition in relevant government documentation related to FGM.

The definitions of FGM in the laws of six countries deviate slightly from the WHO's definition: Croatia, Denmark, Iceland, Luxembourg, Sweden and Switzerland.

All of these countries omit the criterium of the lack of medical necessity for FGM. This may be because the legislator wanted to exclude other non-medical alterations to the genitalia, such as piercings or labiaplasty, from criminalisation. The laws of Denmark and Iceland define FGM as only 'the partial or total removal of the female external genitalia'. This excludes Type IV FGM and may also exclude some forms of Type III FGM in which the labia majora are sutured without removing, either partially or totally, other parts of the genitalia.

The definition maintained in a government order in the Netherlands defines four types of FGM, which deviate from the four types distinguished by the WHO.

The Dutch definitions are:

- **infibulation** – 'the partial or total removal of the clitoris and the labia minora, upon which the labia majora are sutured to each other';
- **excision** – 'the removal of the clitoris and the partial or total removal of the labia minora';
- **circumcision** – 'the removal of the clitoral hood';
- **incision** – 'puncturing or cutting the clitoral hood with the goal of extracting several drops of blood'.

The Dutch governmental order specifies that the type 'incision' does not always amount to assault. This definition excludes forms of Type IV FGM and omits the criterium of the lack of medical necessity.

The definitions of FGM maintained in the laws of four countries deviate significantly from the WHO's definition: Austria, Germany, Liechtenstein and Norway.

For example, the *German law* defines FGM as 'mutilating the external genitalia of a female person', and the *Norwegian law* defines FGM as 'damaging a woman's genitalia or inflicting any permanent changes to it'. These definitions may be deemed too ambiguous.

The definitions maintained in *Austria and Liechtenstein* are similar, but add the criterium that the mutilation or injury must likely result in a permanent impairment of sexual sensation. This criterium may, again, have been added by the legislator to exclude other non-medical alterations to the genitalia, such as piercings or labiaplasty; however, not all forms of FGM are necessarily likely to permanently impair sexual sensations.

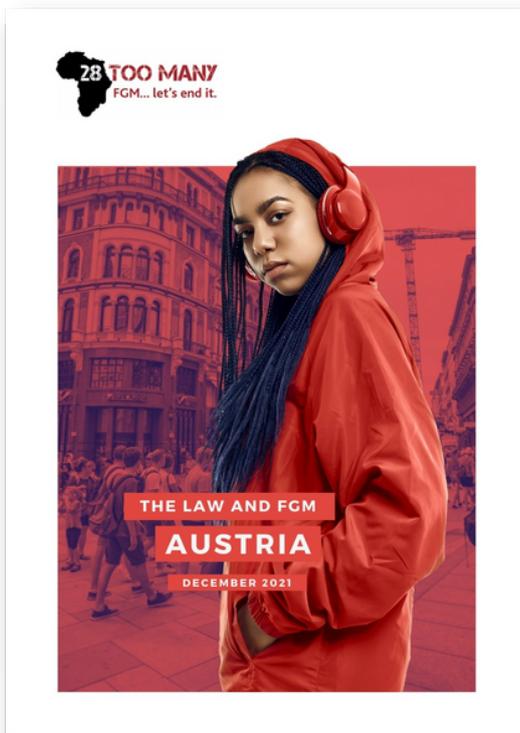
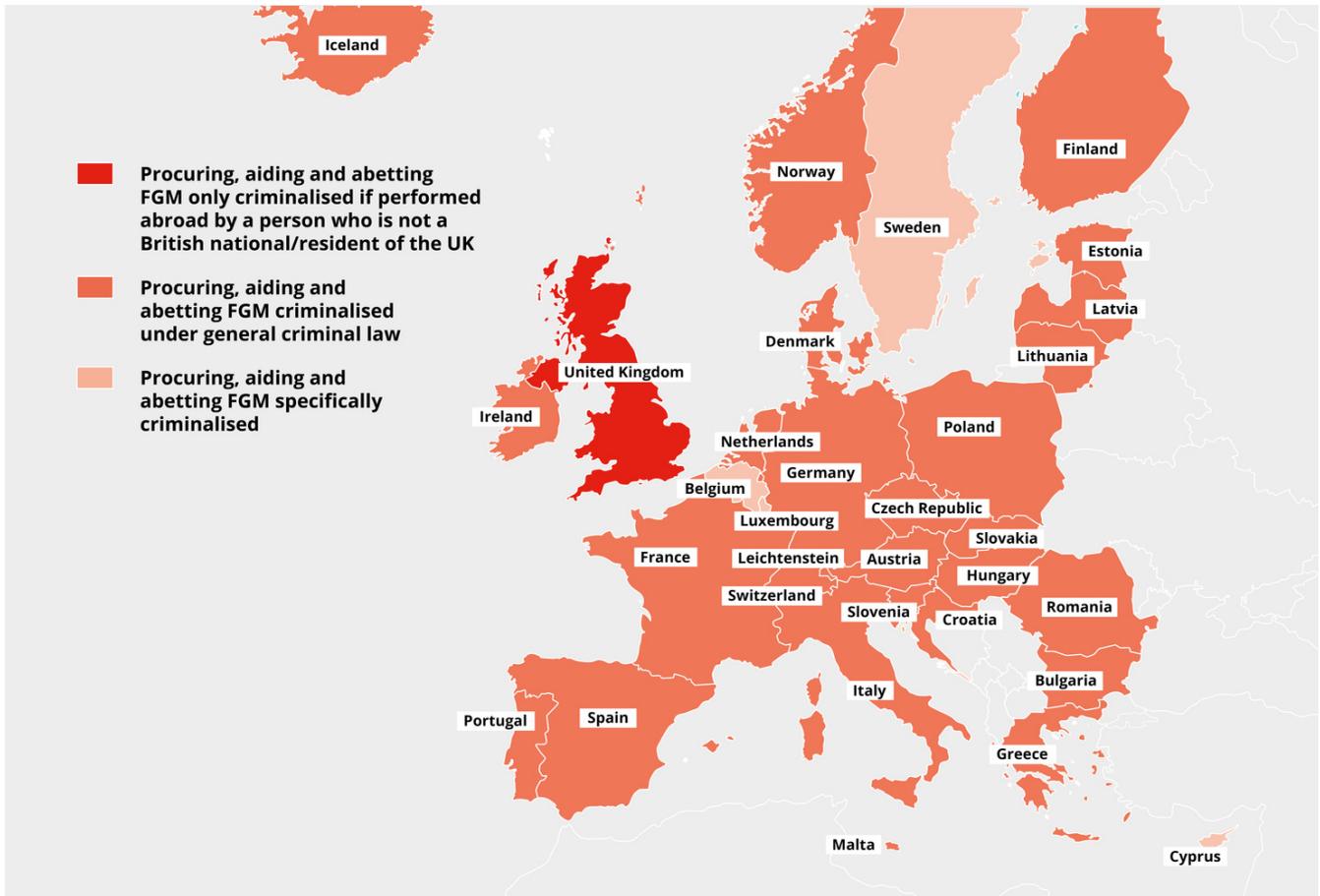


Figure 5:
Procuring, aiding and abetting FGM



Procuring, Aiding and Abetting

Procuring, aiding and abetting the performance of FGM in all circumstances have been criminalised in 31 of the countries included in this study, except for three constituent countries of the United Kingdom.

The laws of England, Northern Ireland and Wales only specifically criminalise procuring, aiding and abetting FGM if the FGM is performed overseas and the perpetrator does not have British nationality or is not a resident of the United Kingdom.

Procuring, aiding and abetting the performance of FGM have been specifically criminalised in four countries – *Belgium, Cyprus, Luxembourg and Sweden* – and one constituent country of the United Kingdom, *Scotland*.

Procuring, aiding and abetting FGM are criminalised under general criminal law in 27 countries (see Figure 5 above).

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countries, either through specific provisions on FGM or under general law, qualify all participants in the performance of FGM as ‘perpetrators’.

Any mitigation of the sentence prescribed by law for FGM or general assault are left up to the discretion of the court.

Those countries are Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, France, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Romania, Slovakia, Slovenia and Spain.

In seven countries, only those who procure FGM qualify as ‘(joint) perpetrators’, while those who aid and abet are liable, as ‘accomplices’, to mitigated sentences as prescribed by the law. These countries are Finland, Germany, Greece, the Netherlands, Portugal, Sweden and Switzerland.

Assisting or inciting a woman or girl to herself undergo FGM has been criminalised in five countries: Croatia, France, Greece, Malta and the United Kingdom. In France, this only applies to assisting or inciting a minor to undergo FGM.

Allowing the Use of Premises

Allowing the use of premises for the purpose of FGM has most likely been criminalised in all 32 countries, either under specific provisions on assisting FGM or general provisions on assisting an offence.

Providing and Possessing Tools



Providing (specific) tools for the purpose of FGM

has most likely been criminalised in all 32 countries through specific provisions on assisting FGM or general provisions on assisting an offence.

Possessing (specific) tools for the purpose of FGM

has most likely been criminalised in ten countries.

In three countries – *Portugal, Sweden and Switzerland* – possessing (specific) tools is most likely specifically classified as ‘preparing FGM’.

In seven countries – *Czech Republic, Finland, Hungary, the Netherlands, Latvia, Lithuania and Slovakia* – possessing (specific) tools is generally classified as ‘preparing an offence’. In these seven countries, the specific instance of FGM would have to qualify as ‘grievous bodily harm’, as defined under the laws of these countries.

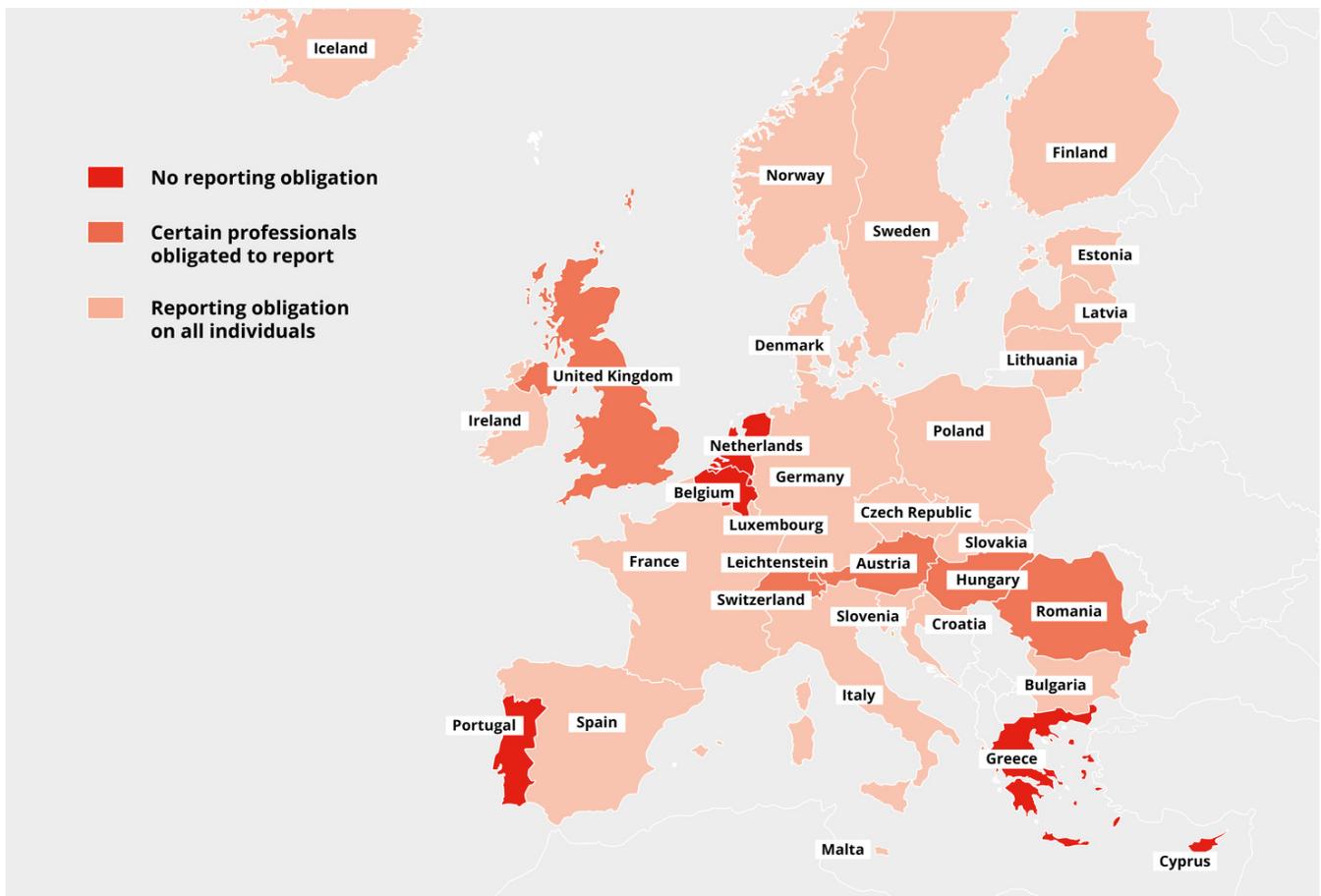
In *Denmark*, possessing (specific) tools for the purpose of FGM might qualify as ‘an attempt’. This is, however unclear.

Obligation to Report FGM

Although all 32 countries included in this study have criminalised FGM, not all of them require any person who is aware of the commission of FGM to report it to the competent authorities.

Cyprus, Portugal and the Netherlands do not set out any obligation to report when someone is aware of a risk or the commission of FGM. Portugal has particularly strict professional secrecy laws, which can only be waived without the patient's consent in the case of her death or a disease that must be reported. The Netherlands prescribes an obligation for organisations and self-employed professionals to maintain a reporting code for tracking cases of suspected violence or child abuse, but it is up to the professional's discretion to report them to the authorities.

Figure 6:
Obligation to report FGM



Seventeen countries obligate professionals and institutions providing care, education, or medical, social, or other services requiring regular contact with children and young persons to report instances where a child's well-being and development is suspected to be at risk, or her health and/or life is suspected to be endangered. Those countries are: *Austria, the Czech Republic, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Latvia, Lithuania, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom (England and Wales only)*. In addition to the above mentioned specialists, Finland prescribes an obligation for persons providing fire-and-rescue or religious services to notify municipal bodies of a minor whose development is endangered.

Twenty-two countries (see Figure 6) prescribe an obligation for anyone to report an instance in which they are aware of a child being in need of protection. Furthermore, Bulgaria, Estonia, Lithuania, Poland and Spain underline the immediate need to report FGM once the person becomes aware of a risk or the commission of FGM.

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countries have criminalised failing to report FGM:

Croatia, Czech Republic, Finland, France, Germany, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Slovakia, Slovenia and Sweden. Only five of these countries have criminalised any person who fails to report FGM: *Germany, Italy, Malta, Norway and Poland*.

Failing to report FGM is a criminal offence:

- in *Croatia* if the case of FGM is punishable with at least five years' imprisonment and if reporting would have prevented the crime;
- in *Liechtenstein* if the case of FGM is punishable with at least one year of imprisonment and if reporting could have prevented the crime;
- in *France and Luxembourg* if reporting the case would have prevented the crime;
- in the *Czech Republic, Finland, Lithuania, Poland and Slovakia* if the case of FGM is judged to have inflicted severe bodily harm;
- in *Ireland* if the victim is a minor; i.e. less than 18 years of age;
- in *Slovenia* if the FGM results in the death of a victim or if the preparations for FGM are punishable with at least three years' imprisonment (physicians are, however, exempt from punishment if they fail to report FGM); and
- in *Sweden*, depending on the role a person has in an offence – *inter alia*, if a person is an accomplice to an offence to a minor extent.

5

countries exempt persons who fail to report FGM from punishment if those persons are close to the perpetrator.

This includes spouses, registered or cohabiting partners, blood relatives in direct line, parents, siblings, adoptive parents/adoptive children or grandparents. Those countries are: *Croatia, France, Lithuania, Luxembourg and Slovenia.*

However, *Croatia* omits this exemption if the FGM is performed on a child and establishes criminal liability for anyone who fails to report a case of FGM.

In addition, accomplices to FGM or people bound by professional secrecy laws are exempted from punishment for failing to report FGM in *France*, and physicians are exempt in *Slovenia*.

Professional Secrecy Laws

In six countries, professionals are exempt from punishment for breaching professional secrecy laws only under specific circumstances or conditions:

- in *Belgium* if they are called upon as witnesses in court cases;
- in *Estonia and Slovenia* if failure to report would result in significant damage to the victim or other persons;
- in *Greece* if reporting a crime safeguards a justified essential interest;
- in *Liechtenstein* if the consequences of failing to report are graver than the consequences of breaching professional secrecy;
- in the *United Kingdom* if FGM was performed on a minor.

Medicalised FGM and the Law

18

out of the 32 study countries have no specific provisions in their codes on medicalised FGM, or on malpractice by a licensed medical professional or medical quackery.

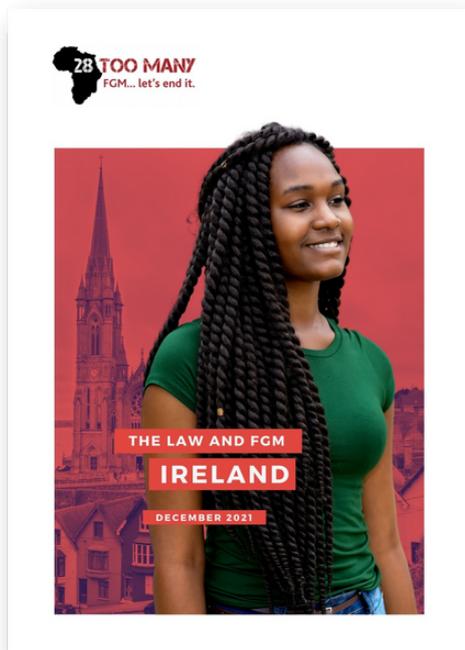
Nevertheless, medicalised FGM is still a criminal offence in these countries under general criminal law.

The laws of seven countries mention medicalised FGM or provide medical exemptions to anti-FGM laws: *Cyprus, Germany, Ireland, Italy, Malta, Portugal and the United Kingdom.*

It is important to note, however, that FGM does not fulfil the criteria necessary to bring it under the exemption of 'medical necessity' at any given point in time, even if it is conducted by a physician in a clinic; therefore, such exemptions from penalty do not apply to medicalised FGM.

- *Cyprus' and Malta's* laws prescribe medical exemptions to FGM, but only if there is a specific 'medical necessity' for such a procedure.
- *Italy's* Penal Code criminalises the performance of or assistance in medicalised FGM by practitioners of a health profession. It also prescribes an exemption from penalties if surgeries that could amount to FGM are performed for the therapeutic needs of a woman.
- In *Germany*, a 'state of affairs' prescribes that the removal or alteration of the external female genitalia is not a criminal offence if there is a medical necessity to do so, or if it is performed for the purposes of cosmetic surgery.
- The *Portuguese* Criminal Code contains a general provision on medical malpractice. It also contains a medical exemption to an offence concerning violation of physical integrity if the surgery is carried out by a physician or other legally authorised person with the intention of preventing, diagnosing, alleviating or mitigating illness, suffering, injury, bodily fatigue or mental disturbance.

The laws of Ireland and the United Kingdom contain similar medical exemptions to the prohibition of FGM.



Firstly, a surgical operation is not considered FGM if it is necessary for the protection of the physical or mental health of a girl or a woman and if it is performed by a registered medical practitioner. British legislation prescribes that the belief of a girl or a woman or of any other person that FGM is a customary or ritual (religious) requirement is irrelevant in determining whether the operation is necessary.

Secondly, a surgical operation is not considered FGM if it is performed by a registered medical practitioner, a midwife or a person undergoing training to be a practitioner on a girl or a woman in any stage of labour or just after giving birth, for purposes connected with the labour or birth.

The remaining seven countries criminalise medicalised FGM under general criminal law, but also provide certain specifics, as follows.

- *Bulgaria, Croatia, Finland, Iceland, Liechtenstein, and the Netherlands* have criminalised unlicensed medical practice and practices by licensed physicians that violate established procedures, which most likely covers FGM, as well as medical quackery.
- In addition, the Penal Code of the *Republic of Romania* prescribes a penalty for medical professionals for the infliction of bodily injury as a result of not complying with the legal provisions and measures for the proper exercise of a profession.

Extraterritoriality

All countries included in this research, except for Bulgaria, extend extraterritorial application of their criminal laws to the performance of FGM abroad in at least certain cases.



However, in the case of FGM, double criminality is a relevant factor. The requirement of double criminality prescribes that an act not only must constitute an offence in the country where it is tried, but also must constitute an offence in the country where it was committed. For FGM, this is not always so, since some of the significant diaspora populations in Europe originate from countries where FGM remains legal, including Somalia and Mali, and will take their girls there to be cut.

The laws of seven countries – *Belgium, Cyprus, Luxembourg, Portugal, Slovakia, Sweden and Switzerland* – extend extraterritorial application to the performance of FGM abroad, regardless of double criminality. Thus, the nationality and residence status of both the perpetrator and the victim are irrelevant if the perpetrator is apprehended on the territory of the prosecuting country (and cannot be extradited).

The laws of six countries – *Estonia, Greece, Ireland, Lithuania, Poland and Slovenia* – extend extraterritorial application of their criminal laws to the performance of FGM abroad under the requirement of double criminality. However, in Estonia, Greece, Poland and Slovenia, either the perpetrator or the victim must be a national of the prosecuting country for extraterritorial application. In Ireland and Lithuania, the perpetrator must be a national or citizen of the prosecuting country for extraterritorial application, and in Ireland the victim must be either a minor or have suffered permanent bodily harm.

The laws of six countries – *Austria, Croatia, Italy, Liechtenstein, Norway and Spain* – extend extraterritorial application of their criminal laws to the performance of FGM abroad, regardless of double criminality, as long as either the perpetrator or the victim is a national or resident of the prosecuting country. If neither the perpetrator nor the victim is a national or resident of the prosecuting country, extraterritorial application is not extended.

The laws of two countries – *France and Hungary* – extend extraterritorial application of their criminal laws to the performance of FGM abroad, regardless of double criminality, as long as either the perpetrator or the victim is a national of the prosecuting country.

The laws of eight countries – *the Czech Republic, Denmark, Finland, Iceland, Latvia, Malta, the Netherlands and the United Kingdom* – extend extraterritorial application of their criminal laws to the performance of FGM abroad, regardless of double criminality, as long as the perpetrator is a national or resident of the prosecuting country. The laws of *the Czech Republic, Denmark, Finland and the Netherlands* do also extend extraterritorial application if the victim is a national or resident of the prosecuting country, but always under the requirement of double criminality. The laws of *Iceland, Latvia, Malta and the United Kingdom* do not extend extraterritorial application if only the victim is a national or resident of the relevant country.

The law of Germany extends extraterritorial application of German criminal law to the performance of FGM abroad, regardless of double criminality, as long as the victim is either a German national or resident. If only the perpetrator is a German national or resident, extraterritorial application is also extended, but always under requirement of double criminality.

The law of Romania extends extraterritorial application of Romanian criminal law to the performance of FGM abroad, regardless of double criminality, as long as the victim is a Romanian national. If only the perpetrator is a Romanian national, extraterritorial application is also extended, but always under the requirement of double criminality. If neither are Romanian nationals, but only one or both residents of Romania, extraterritorial application is not extended.



Penalties

As established in previous sections, all 32 countries included in this study have criminalised FGM either explicitly or implicitly. However, countries prescribe different penalties for FGM and offences related to FGM, depending on the consequences of a specific instance of FGM (namely the form of bodily harm FGM is judged to have inflicted) and whether any aggravating circumstances apply.

Maximum Penalty

More than

10

years' maximum imprisonment for FGM and FGM-related offences are prescribed by the majority of the 32 study countries' laws.

However, four countries have shorter maximum penalties:

- *Cyprus* (maximum penalty of *five years*);
- *Hungary* (maximum penalty of *five years*);
- *Liechtenstein* (maximum penalty of *five years*); and
- *Croatia* (maximum penalty of *eight years*).

Luxembourg is the only country that prescribes a (possible) *life sentence* as a maximum penalty for FGM and FGM-related offences.

Half of the countries researched in this report have specific anti-FGM laws or specific provisions in general criminal law that prescribe penalties for FGM and FGM-related offences. The maximum penalty varies *between five- and fifteen-years' imprisonment*.

The rest of the countries do not directly mention FGM in their laws, but prescribe a penalty for the offence of (grievous/aggravated) assault, which includes FGM and FGM-related offences. The maximum penalty for these particular offences varies *between three- and fifteen-years' imprisonment*.

Aggravating Circumstances

In most FGM cases, aggravating circumstances likely apply, since FGM is often committed against minors or incapacitated persons; it may cause diseases, incapacity to work or health impairments; it can be excruciatingly painful; it may be performed with particular cruelty; or it may result in the death of the victim.

Twenty-three study countries highlight at least one of the abovementioned aggravating circumstances and would therefore impose higher penalties for FGM or FGM-related offences. The maximum penalty varies *between three- and twenty-years' imprisonment, except for in Luxembourg, where imprisonment for life may be prescribed.*

In Bulgaria, France, Greece, Iceland, Luxembourg, Malta, Norway, Slovakia, Slovenia and the Netherlands, the penalty prescribed for the performance of FGM where aggravating circumstances apply is *fifteen years' imprisonment or more.*

Accomplices

In total, 24 study countries state penalties for accomplices to FGM or FGM-related offences.

The definition of an accomplice generally involves procurers, aiders, abettors, assistants, inducers, advisors and any other persons who play a role in the performance or planning of FGM and FGM-related offences.

Most of these 24 countries prescribe *the same penalty for accomplices (also called 'joint perpetrators' or 'accessories to a crime') as for the perpetrators of FGM, except for a few instances, as follows.*

- The law in *the Netherlands* prescribes that accomplices may be sentenced to *two-thirds of the term of imprisonment that the perpetrator can be sentenced to* (in the case of FGM, this could amount to ten years and eight months), whereas co-perpetrators of FGM qualify as 'perpetrators' and receive *the penalty set for perpetrating the crime.*
- *Greece, Portugal, Sweden and Switzerland* offer a *reduced sentence for accomplices* compared to the penalty prescribed for the perpetrator.

Failure to Report FGM

Sixteen study countries criminalise failing to report an instance of FGM to the authorities: Croatia, Czech Republic, Finland, France, Germany, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Slovakia, Slovenia and Sweden.

However, only 12 of those countries specify penalties for the failure to report FGM. The maximum penalty for the failure to report FGM prescribed in these 12 countries varies *between a fine and up to three years' imprisonment.*

In Italy, failing to report FGM is not criminalised for average citizens, but is for public officials.

Medicalised FGM

Three study countries prescribe a prohibition of practising medicine or a disqualification from the medical profession for those medical professionals who perform FGM.

Greece prescribes a prohibition on practising medicine for *up to two years*.

Italy prescribes a disqualification from medical practice for *up to ten years*.

Switzerland prescribes a prohibition of practising medicine for *up to five years* for medical professionals who perform FGM, *up to ten years* if the FGM was performed on a minor, and *up to a lifetime* if it is suspected that the medical professional will engage in FGM after ten years from the moment he was found guilty of performing FGM.

Finally, *Hungary and Portugal* prescribe penalties of imprisonment for *one year or three years, respectively*, for a person who engages in preparations to inflict grievous bodily harm to a person, including FGM.



Protection for the Uncut

There are laws through which uncut girls may be protected in 31 out of the 32 countries included in this study.

Only in Portugal it is likely that uncut girls at risk of FGM are not protected by general child protection laws, because uncut girls do not seem to fall within the legal definition of 'a child in danger' maintained in the child protection laws. The Portuguese Child Protection Law provides an exhaustible list of scenarios in which a child is considered to be 'in danger', which neither explicitly nor implicitly includes uncut girls at risk of FGM. A child must have been physically abused to be considered in danger. It is not specified whether it includes a child at risk of being physically abused or at risk of becoming the victim of an offence.

In three constituent countries of the United Kingdom – England, Northern Ireland and Wales – both uncut girls and women may be protected through Female Genital Mutilation Protection Orders (FGMPOs).



Female Genital Mutilation Protection Orders are FGM-specific court orders that may contain, in principle, any type of measure a court sees fit to protect someone from being made to undergo FGM. FGMPOs can be addressed to anyone and may be made against any person who could be involved or become involved with making a woman or girl undergo FGM. However, these FGM-specific protection laws have not yet come into force in Scotland (one of the constituent countries of the United Kingdom).

In all of the other study countries, uncut girls can be protected through child protection laws in general civil codes. These general protections can be classified as:

- supervision and protective/supportive measures while the child remains at home in the care of their parents;
- out-of-home placement, where the child is taken into care by the relevant authorities.

Protective/supportive measures differ from country to country and may range from family therapy and parental education, to regular physical examinations to exclude FGM having been performed, to travel bans to prevent FGM being performed abroad.

In 27 of the countries, uncut girls and their families can be put under supervision and/or be protected through protective and supportive measures. The instatement of such supervision or measures can be decided upon by social services, if necessary without parental consent, in 15 countries: Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Norway, Romania, Spain, Sweden and Switzerland.

In the 12 other countries, such supervision and measures can be instated by court order, if necessary without parental consent: Austria, Belgium, Cyprus, France, Germany, Greece, Ireland, Liechtenstein, Malta, Netherlands, Poland and Slovenia.



In 29 study countries uncut girls can be taken into care and placed out of home if their safety cannot be guaranteed otherwise. In most countries this can only be done if protective measures and/or supervision are proven to have been fruitless or it is reasonably expected that such measures will prove to be fruitless. Uncut girls can be taken into care upon decision by relevant social services departments, if necessary without parental consent, in nine countries: *Croatia, Denmark, Finland, Hungary, Norway, Romania, Slovakia, Sweden and Switzerland.*

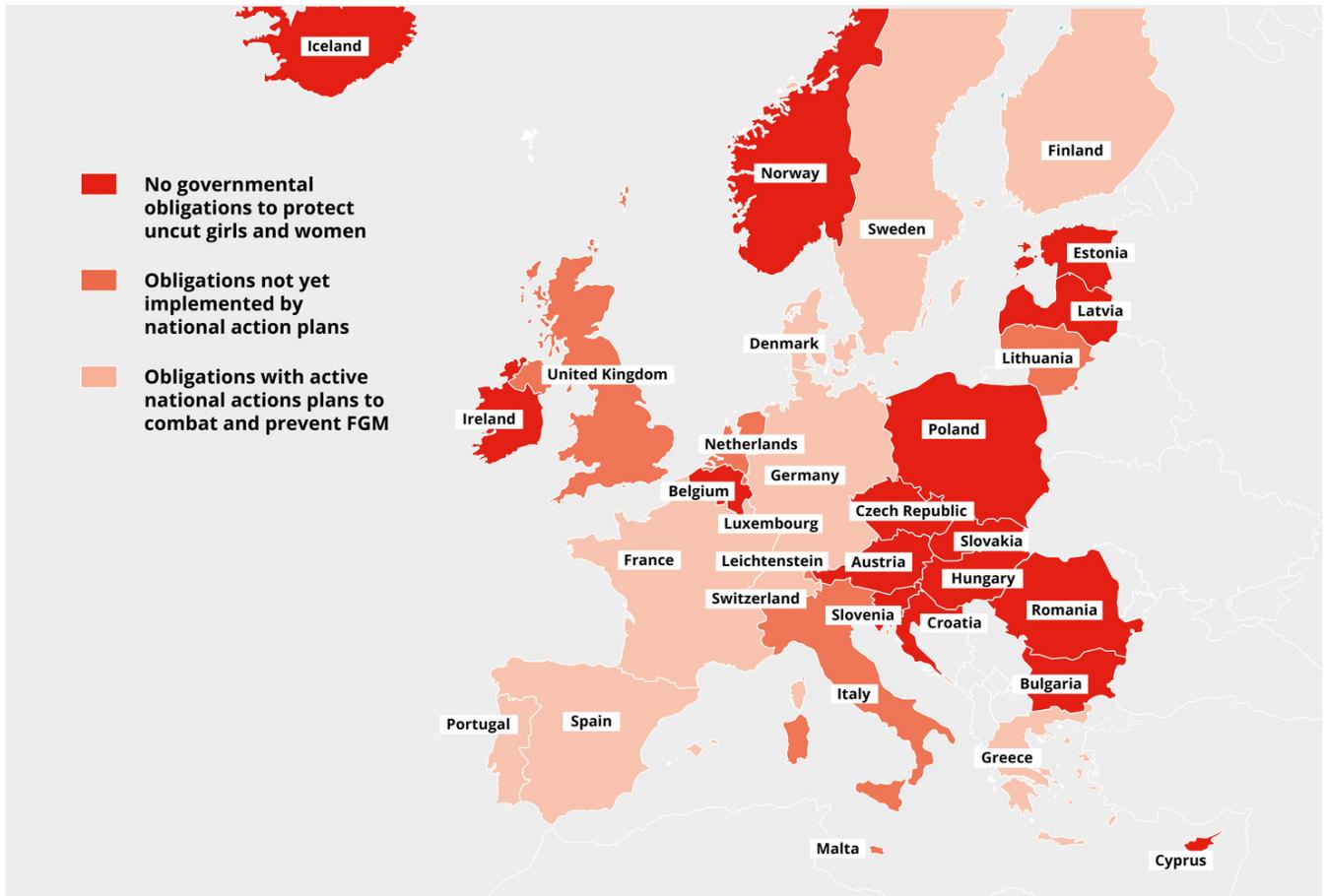
In 19 countries, uncut girls can only be taken into care upon court order, if necessary without parental consent: *Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovenia and Spain.*

In one country, *Iceland*, a girl can be taken into care upon the decision of social services for a duration of two months. For a longer period, a court order is needed.

Government Obligations

Only 13 of the 32 study countries accentuate governmental obligations to protect uncut girls and women. Those countries are: *Denmark, Finland, France, Germany, Greece, Italy, Lithuania, Portugal, Spain, Sweden, the Netherlands, and the United Kingdom.*

Figure 7:
Government obligation to protect the uncut



Nine of these countries – Denmark, Finland, France, Germany, Greece, Portugal, Spain, Sweden and Switzerland – have implemented national actions plans to combat and prevent FGM.

- Denmark has a fairly recent National Action Plan that covers combatting and preventing FGM; however, the local authority does not show promising levels of coordination and commitment to FGM-prevention, as most of the municipalities have failed to implement this action plan or failed to include FGM in more local actions plans.

- Greece has a few action plans that include FGM, including the National Action Plan for Public Health, which mentions the right to be protected from FGM, and the National Action Plan on Gender Equality for the period 2016–2020, which prescribes measures to combat violence against women.
- In addition to a national action plan, Switzerland has the Network against Female Genital Cutting Switzerland, a collaboration between NGOs backed by the Federal Government.
- Spain developed the Common Protocol for a Healthcare Response to FGM in 2015 as the first uniform action against FGM, and a plan for the period 2020–2022 for raising awareness of FGM. Twelve out of seventeen autonomous communities in Spain have their own protocols or guidance regarding combatting FGM.
- Even though Germany does not have any recent national action plans that mention FGM, the Federal Government did set up a Working Group to eliminate the practice. It is tasked with developing strategies to implement measures and collect reliable statistical data on FGM.
- Article 1 of the French Law for Real Equality between Men and Women prescribes that the national Government and local authorities have obligations to implement and fund policies aimed at combatting violence against women. Even though France does not have a specific law on FGM, there is a proposal pending, which includes monitoring instances of FGM.
- Italian and Lithuanian laws also contain obligations for local governments to (financially) promote and support activities that are directed towards the elimination of violence against children and women, including FGM.
- The United Kingdom established a National FGM Centre in 2015 to provide services for children and families affected by FGM, but there is currently no national coordinating committee on FGM in place.
- The Dutch Government is in a similar position to the United Kingdom, as it expressed an intention to establish a National Expertise Centre to encourage reporting instances of FGM, but no national coordinating committee on FGM is currently in place.

The other study countries – Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Luxembourg, Malta, Norway, Poland, Romania, Slovakia and Slovenia – do not specifically accentuate governmental obligations towards eliminating FGM, but this does not necessarily result in ignorance, since some of those countries have specific laws to tackle FGM and there may be no imminent need for additional governmental obligations to eliminate such practice.

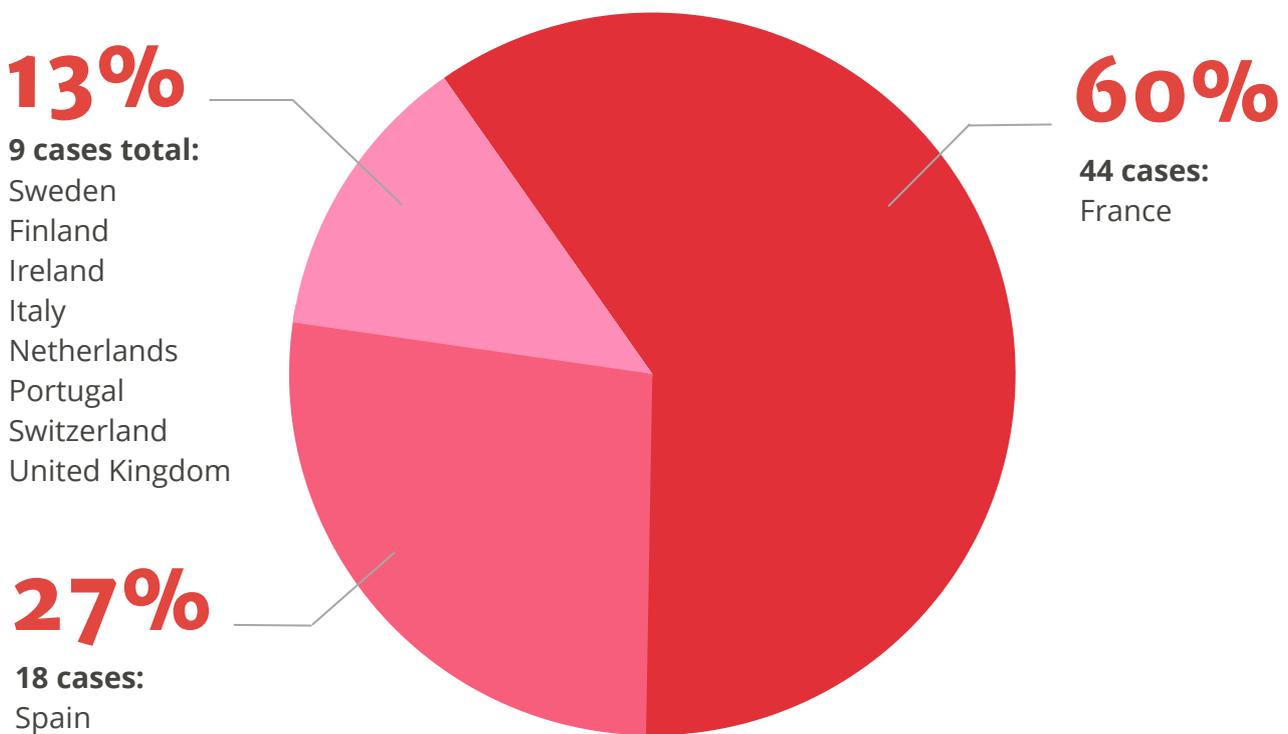


Implementation of the Law

There have been criminal court cases in relation to FGM in ten of the study countries: Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

Almost all of these cases have been prosecuted in two countries: in France (60% of cases), most ended in conviction, while in Spain (27% of cases), most led to acquittal.

Countries and number of cases



France

The first case in France was in 1983. It ended in the conviction of a mother for having her daughter undergo Type II FGM, which confirmed the criminalisation of FGM in France under ‘inflicting violence resulting in permanent mutilation or disability’.

Spain

In Spain there have been 18 cases, most of them in Catalonia. In 16 cases the parents were acquitted. The first conviction sentenced both the victim’s parents to six years’ imprisonment, and the second conviction sentenced the victim’s father to six years’ imprisonment and the victim’s mother to two years’ imprisonment. In both cases the girls had undergone FGM in Spain. The most important aspect of the Spanish cases is that, in one of the 18 cases, the Spanish Supreme Court confirmed the extraterritorial application of Spanish criminal law to FGM committed abroad, regardless of double criminality.

Sweden

In Sweden there have been two cases, both ending in conviction. In the first case, a girl’s father was convicted for having her undergo Type II FGM in Somalia, and, in the second case, a girl’s mother was sentenced to three years’ imprisonment for having her undergo Type I FGM in Somalia.

Finland & Netherlands

The two cases in Finland and the Netherlands did not amount to convictions due to a lack of evidence.

Switzerland

The first case in Switzerland was in 2018. A woman was convicted for having her two daughters undergo FGM in Somalia and Ethiopia. She was sentenced to eight months’ imprisonment on probation, due to mitigating factors: she was illiterate and under great social pressure to have her daughters undergo FGM, while not being in a socio-economic position to resist that pressure.

Italy

The first case in Italy was in 2006. A midwife was caught before she was able to carry out FGM; however, all defendants were acquitted on appeal because no intention to harm the sexual function of the girl was found. A second case, in 2018, led to a conviction.

United Kingdom

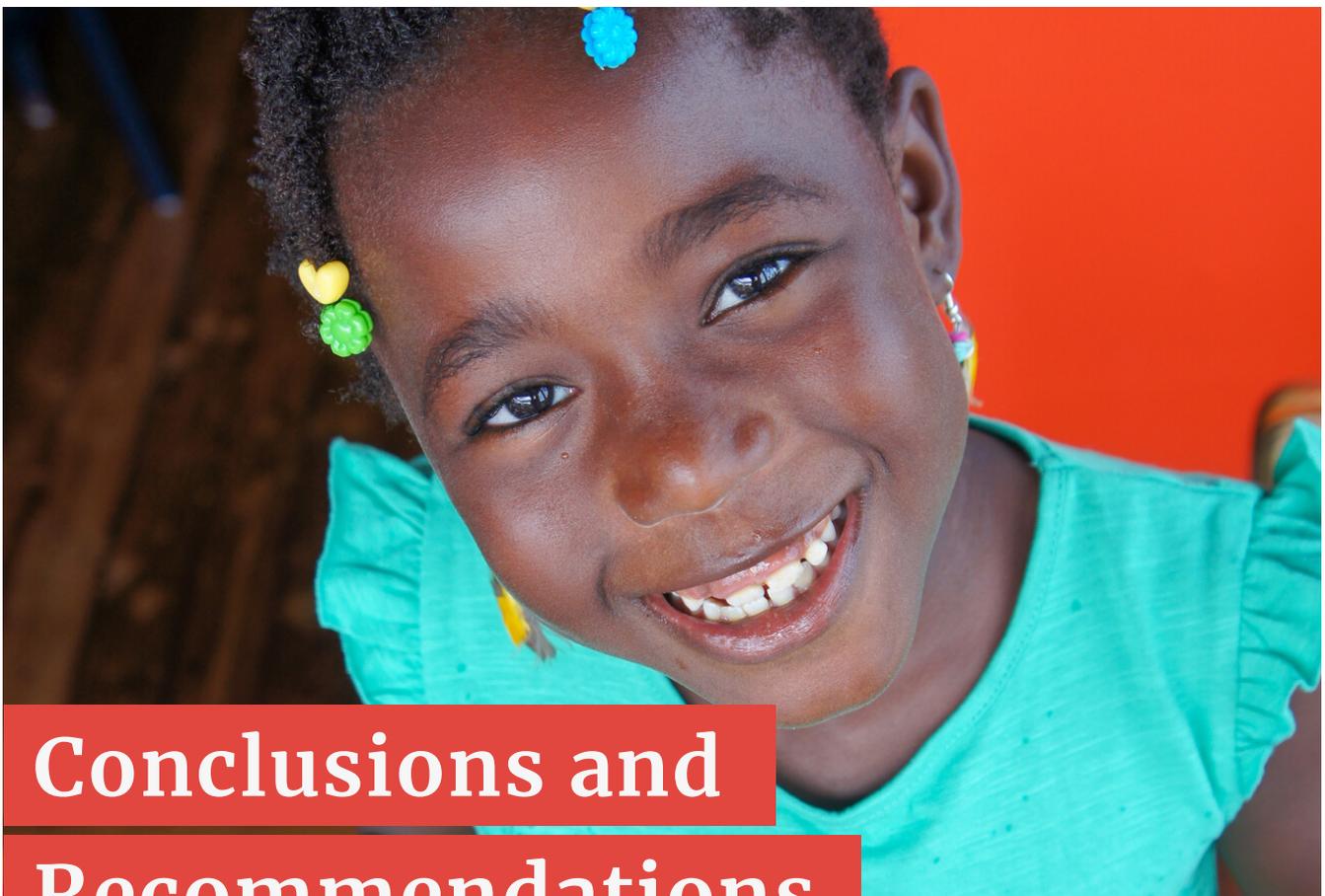
The first successful case in the United Kingdom was in 2019. A woman was sentenced to 11 years' imprisonment for having her daughter undergo Type II FGM.

Ireland

The first FGM case in Ireland was in 2020. It ended in the conviction of the parents of a girl, who was just under two at the time, for performing Type I FGM on her. The father and mother of the girl were sentenced to, respectively, five years and six months' imprisonment, and four years and nine months' imprisonment.

Portugal

The first case in Portugal was in 2021, as well. A mother was convicted for having her then-one-and-a-half-year-old daughter undergo FGM during a trip to Guinea Bissau. She was initially sentenced to three years' imprisonment; however, her sentence was suspended because it would be a 'new punishment' for the child, who was vulnerable and needed her mother. The court also took note of the circumstances of the case, particularly the situation of the defendant; that is, she was a very young mother (19 at the time) and a migrant living in Portugal, and as a young woman living with her family she had not been able to resist the pressures of her family and the imposed social norm of FGM.



Conclusions and Recommendations

Prevalence Data

Based on available data, this study found that, in total, approximately 618,681 girls and women have undergone FGM and approximately 161,681 girls and women (the majority of whom are girls up to the age of 18) are at risk of FGM across 32 European countries.

We recommend that Bulgaria, Croatia, the Czech Republic, Estonia, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia conduct research on the prevalence of FGM and the number of girls and women at risk of FGM.

We also recommend that Hungary and Ireland conduct research on the number of girls and women at risk of FGM.

International and Regional Treaties

All 32 countries included in this research have ratified four international treaties that condemn FGM and support the adoption of legislation criminalising it:

- 1** the **International Covenant on Civil and Political Rights;**
- 2** the **International Covenant on Economic, Social and Cultural Rights;**
- 3** the **Convention on the Elimination of All Forms of Discrimination Against Women; and**
- 4** the **Convention on the Rights of the Child.**

All 32 countries have also ratified one regional treaty that condemns FGM and supports the adoption of legislation criminalising it, the Convention for the Protection of Human Rights and Fundamental Freedoms.

Only 25 countries have ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), which is the only one of these treaties that explicitly obligates parties to criminalise FGM.

We urge Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Slovakia and the United Kingdom to ratify the Istanbul Convention.

Laws and Provisions Criminalising FGM

All 32 countries included in this study have criminalised FGM either explicitly or implicitly through different types of legal instruments.

Nine countries have only criminalised FGM implicitly through general assault laws. Greece and Liechtenstein only have a provision concerning genital mutilation in their general criminal laws.

We recommend that Bulgaria, the Czech Republic, Estonia, Greece, Hungary, Latvia, Liechtenstein, Lithuania, Poland, Slovakia and Slovenia issue governmental declarations that confirm the application of criminal law to FGM, include a definition of FGM (corresponding to the definition given by the WHO) and specify that FGM is a criminal offence for women and girls of all ages, regardless of perceived consent (specifically in the case of minors).

Definition of FGM

19 countries included in this study have specifically criminalised all forms of FGM, but have not further defined FGM or given some form of a definition either in laws or in relevant governmental sources.

Of those 19 countries, the definitions maintained by four countries deviate too significantly from the WHO definition.

Three countries specify that all forms of FGM have been criminalised, but do not further define FGM.

We recommend that Austria, Germany, Liechtenstein and Norway amend the current 'definition' of FGM maintained in their laws to align with the definition given by the WHO.

Procuring, aiding and abetting

Procuring, aiding and abetting the performance of FGM in all circumstances are criminalised in 31 countries and one constituent country of the United Kingdom, but not in three constituent countries of the United Kingdom – England, Northern Ireland and Wales.

The laws of those three countries only specifically criminalise procuring, aiding and abetting FGM if the FGM is performed overseas and the perpetrator does not have United Kingdom nationality or is not a resident of the United Kingdom.

We recommend that England, Northern Ireland and Wales also specifically criminalise procuring, aiding and abetting another person to perform FGM on someone in England, Wales or Northern Ireland.

Obligation to Report FGM or Risk of FGM to the Authorities

In 19 countries and three constituent countries of the United Kingdom, under either an FGM-specific provision or general law, there is some form of obligation to report FGM to the authorities. This appears as either an obligation to report or a criminalisation of failing to report.

In 15 countries, under either an FGM-specific provision or general law, there is some form of obligation to report to the authorities cases where there are reasonable grounds to believe that FGM may be committed (imminently). This appears as either as an obligation to report a criminalisation of failing to report.

In eight countries and one constituent country of the United Kingdom, there is no obligation to report FGM or the risk thereof to the authorities.

We recommend that the Czech Republic, Iceland, Italy, Latvia, Norway, Poland, Romania, Slovakia, England, Northern Ireland and Wales instate obligations for (at least) relevant professionals and institutions to report cases where there are reasonable grounds to believe that FGM may be committed imminently.

We recommend that Austria, Bulgaria, Liechtenstein and Luxembourg instate obligations for (at least) relevant professionals and institutions to report the performance of FGM.

We recommend that Belgium, Croatia, Cyprus, Greece, the Netherlands, Portugal, Slovenia, Switzerland and Scotland instate obligations for (at least) relevant professionals and institutions to report cases where FGM has been committed and cases where there are reasonable grounds to believe that FGM may be committed imminently.

Extraterritoriality

Except for Bulgaria, all countries extend extraterritorial application of national laws to the performance of FGM; however, not all make this extension regardless of double criminality, or in all cases.

FGM has not yet been criminalised in several countries in Africa – Somalia and Mali being the most relevant to the European context. From available data, it is clear that there are Somali diaspora in Austria, Belgium, Denmark, Germany, Luxembourg, Malta, Norway, the Netherlands, Sweden, Switzerland and Sweden, and Malian diaspora in Spain.

Belgium, Luxembourg, Sweden and Switzerland extend extraterritorial application of national laws to the performance of FGM in all cases, regardless of double criminality. Austria, Norway and Spain do so if either the victim or the perpetrator is a national or resident of the country.

However, Denmark, Germany, Malta, the Netherlands and the United Kingdom do not always extend extraterritorial application to the performance of FGM regardless of double criminality – or at all.

We recommend that Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Romania, Slovenia and the United Kingdom extend extraterritorial application of their national criminal laws to the performance of FGM, always regardless of double criminality.

Protection for the Uncut

30 countries included in this study offer some form of protection to uncut girls at risk of FGM through general child protection laws. Only in one country, Portugal, does it seem that there are no forms of protection for uncut girls at risk of FGM.

In three constituent countries of the United Kingdom, both uncut girls and uncut women at risk of FGM can be protected through FGM-specific protection laws called Female Genital Mutilation Protection Orders (*FGMPOs*). In one constituent country of the United Kingdom, Scotland, similar FGM-specific protection laws have been codified, but are not yet in force.

FGMPOs may contain, in principle, any type of measure a court sees fit to protect someone from being made to undergo FGM. FGMPOs may be addressed to anyone and may be applied to any relevant person who could be involved or could become involved with making a woman or girl undergo FGM.

FGMPOs have proven to be very effective at preventing FGM and are regularly applied for by potential victims, parents of potential victims who are against FGM, and authorities.

The available data indicates that, in 14 countries, 500 or more girls are at risk of FGM, the lowest number being in Greece (447 to 751) and the highest in France (24,681 to 43,193). Particularly when a country has a high prevalence of FGM and a high number of girls at risk (and also, potentially, women), a system similar to FGMPOs could be better suited to the prevention of FGM (and potentially other harmful traditional practices) than general child-protection laws.

We urgently recommend that Portugal instate a system similar to the British FGMPOs to guarantee effective protection of girls and women at risk of FGM and other harmful traditional practices, as it seems that general child-protection laws are not covering girls at risk of FGM.

We also recommend that France and Italy urgently guarantee efficient protection of girls and women at risk of FGM and other harmful traditional practices, considering the relatively high numbers of girls at risk in those countries.

We further recommend that Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Sweden and Switzerland instate systems similar to the British FGMPOs to guarantee effective protection of girls and women at risk of FGM and other harmful traditional practices.

Finally, we recommend that Scotland undertake the necessary measures to bring the FGM-specific protection laws that have already been codified into force.

End Notes

- [1] World Health Organization (2018) Female Genital Mutilation. Available at http://www.who.int/topics/female_genital_mutilation/en/.
- [2] UNICEF (2016) *Female Genital Mutilation/Cutting: A Global Concern*, p.2. Available at http://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf.
- [3] Alison T. Slack (1988) 'Female Circumcision: A Critical Approach', *Human Rights Quarterly*, 10(4), p.439. Available at https://www.jstor.org/stable/761916?seq=1#page_scan_tab_contents.
- [4] *Ibid.*, p.444.
- [5] **Spain** differentiates between high- and low-risk scenarios. It has been estimated that around 6,025 girls under the age of 18 residing in Spain are at high risk of undergoing FGM, while around 3,435 girls under the age of 18 residing in Spain are at low risk.
- [6] **Bulgaria, Croatia, Czech Republic, Estonia, Iceland, Latvia, Liechtenstein, Lithuania, Poland, Romania, Slovakia and Slovenia.**
- [7] The International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All forms of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1989).
- [8] It should be noted that, in the **United Kingdom**, according to prosecution guidelines, not all forms of Type IV FGM amount to mutilation in the sense of the laws of three constituent countries, **England, Northern Ireland and Wales.**

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