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FGM... let's end it.

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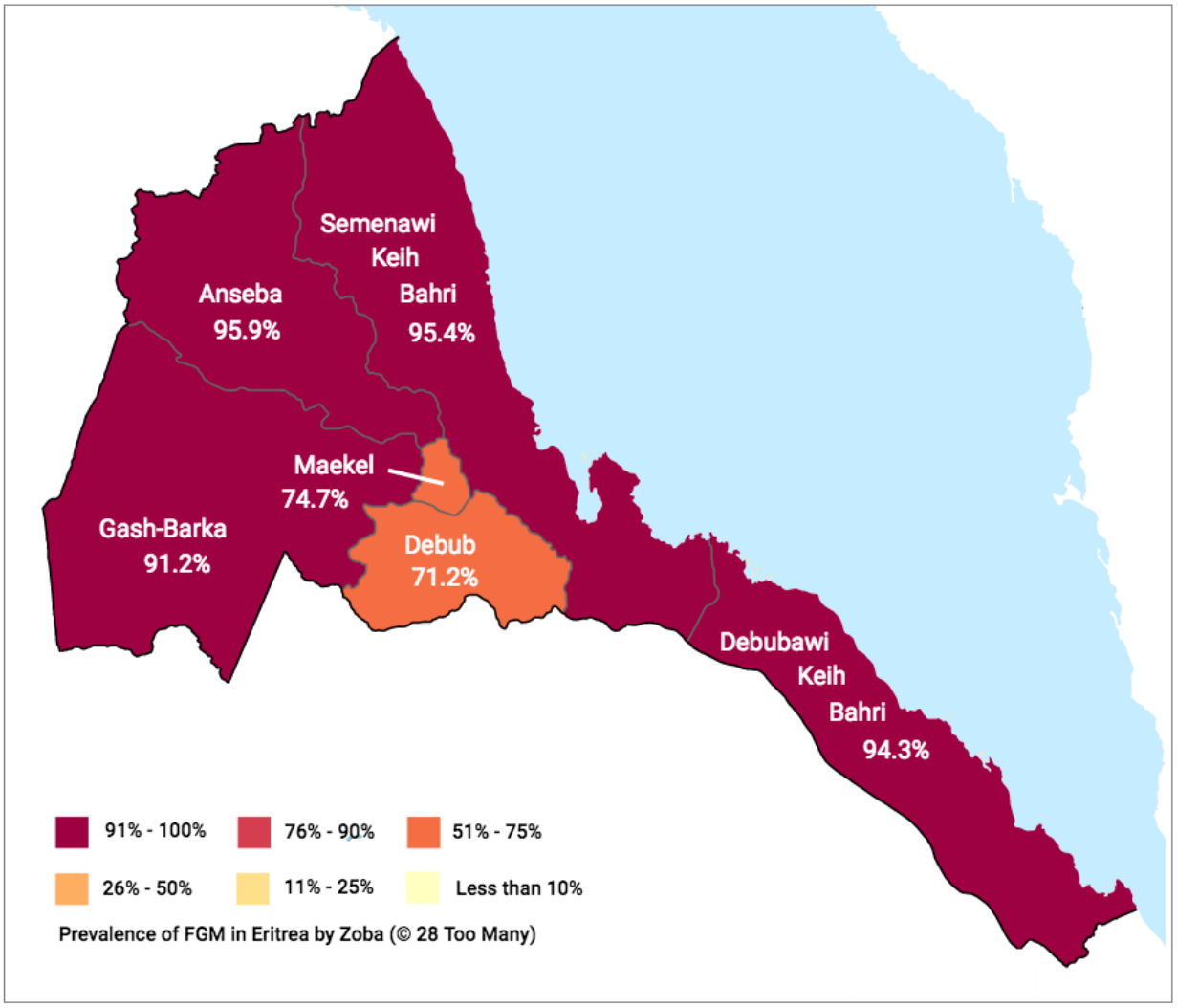


ERITREA:
THE LAW AND FGM/C

July 2018

In Eritrea, the prevalence of FGM/C in women aged 15–49 is 83%.

The regions with the highest prevalence are in the central north: Semenawi Keih Bahri and Anseba.



- 58.6% of women aged 15–49 who have undergone FGM/C were cut before the age of five.
- 'Nicked, no flesh removed' and 'sewn closed' are the most common types of FGM/C practised.
- 80.3% of FGM/C cases are carried out by a 'traditional circumciser'.
- 82.2% of women aged 15–49 and 83.5% of men aged 15–59 believe that FGM/C should be stopped.

Source of data: National Statistics Office (NSO) [Eritrea] and Fafo AIS (2013) *Eritrea Population and Health Survey 2010.* Asmara, Eritrea: National Statistics Office and Fafo Institute Applied International Studies. Available at **https://www.unicef.org/eritrea/resources_17043.html**.

*For further information on FGM/C in Eritrea see **https://www.fgmcri.org/country/eritrea/**.*

Domestic Legal Framework

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

**Specifically, it states violation of the 'human rights of women'.*

What is The Law Against FGM/C?

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

Eritrea's legal system comprises a mixture of civil, customary, and Islamic religious law.

The Eritrean Constitution (1997)[1] does not make explicit reference to harmful practices or FGM/C; however, **Article 7(2)** prohibits any act that violates the human rights of women, and **Article 14** guarantees equality under the law. **Article 16(1)** states that 'the dignity of all persons shall be inviolable' and **(2)** that 'no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

Proclamation No. 158/2007: A Proclamation to Abolish Female Circumcision (the *FGM/C Act*)[2]**, which came into effect on 20 March 2007, makes it a criminal offence to perform FGM/C on another person in Eritrea and sets out the associated penalties. This is the principal legislation governing FGM/C in Eritrea.**

What The Law Covers

The **FGM/C Act** gives a clear and comprehensive definition of 'female circumcision' in all its forms under **Article 2**:

(1) the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);

(2) the partial or total excision of the labia minora;

(3) the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;

(4) the stitching with thorns, straw, thread or by other means in order to connect the excision of the labia and the cutting of the vagina and the introduction of corrosive substances or herbs into the vagina for the purpose of narrowing it;

(5) symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or

(6) engaging in any other form of female genital mutilation and/or cutting.

Following this definition, **Article 3** states simply, 'Female circumcision is hereby abolished.'

Article 4 criminalises and sets out the associated punishments for the following:

(1) the performance of FGM/C;

(2) requesting, inciting or promoting FGM/C by providing tools or by any other means;

(3) the performance of FGM/C by a member of the medical profession; and

(4) the failure to report FGM/C, knowing that it will take place or has taken place, and the failure, without good cause, to promptly warn or inform, the proper authorities.

In addition to the FGM/C Act, **Article 327(a) of the new Penal Code of Eritrea (2015)**[3] (replacing the Transitional Penal Code of 1991), criminalises 'a person who exercises parental authority who for gain or in dereliction of duty grossly neglects the children under his charge and abandons them without due care and attention, or to moral or physical dangers.'

However, although the Minister of Justice announced that the new code was being put into effect immediately[4], other sources (such as the *Gazette of Eritrean Laws*, Vol. 23) state that they have not yet been enacted and the courts continue to use the **Transitional Penal Code of 1991**, under which **Article 548** punishes 'whosoever deliberately neglects, ill-treats, over-tasks or beats a child in such a way as to affect or endanger gravely the physical or mental development of a child'.

Medicalised FGM/C

Very few women or girls have been cut by a health professional in Eritrea. Most FGM/C continues to be performed by 'traditional circumcisers'.

The **FGM/C Act** states at **Article 4(3),** 'Where the person who performs female circumcision is a member of the medical profession, the penalty shall be aggravated and the court may suspend such an offender from practicing his/her profession for a maximum period of two years.'

Cross-Border FGM/C

In some countries where FGM/C has become illegal, the practice has been pushed underground and across borders to avoid prosecution. There is an absence of information on whether any Eritrean girls are taken across borders to be cut in other countries, or whether traditional circumcisers move between Eritrea and its neighbouring countries to perform FGM/C.

The **FGM/C Act** does not directly address incidences of cross-border FGM/C; more generally, Eritrean law prohibits cross-border crimes under **Article 44 of the new Penal Code 2015** by criminalising offences committed by Eritreans outside the country or where an extra-territorial crime is directed at a permanent resident of Eritrea.

Penalties

The penalties for violation of the law in Eritrea are set out in **Article 4 of the FGM/C Act** as follows:

(1) The performance of FGM/C – punishable with imprisonment for two to three years and a fine of 5,000–10,000 Nakfa (US$333–667[5]). If FGM/C results in death, imprisonment shall be for five to ten years.

(2) Requesting, inciting or promoting FGM/C by providing tools or by any other means – punishable with imprisonment for six months to one year and a fine of 3,000 Nakfa (US$200).

(3) Where performance of FGM/C is carried out by a member of the medical profession – the penalty shall be aggravated and the court may suspend such an offender from practising his/her profession for a maximum period of two years.

(4) Failure to report FGM/C – punishable with a fine of up to 1,000 Nakfa (US$67).

Under **Article 327 of the new Penal Code 2015**, which relates to neglecting a child and putting them in moral or physical danger, the offence is punishable with one to six months' imprisonment or a fine of 5,001–20,000 Nakfas (US$333–1,333).

Implementation of The Law

Cases

Eritrea reported in its fourth periodic report submitted to the Committee on the Rights of the Child (*CRC*) in March 2012 that, during the reporting period (2008–2010), about 54 cutters and parents of children who had undergone FGM/C were convicted and fined based on the relevant provisions of **Proclamation No. 158/2007**.[6]

Eritrea further reported in its national report submitted to the Human Rights Council in 2013 that, in the previous five years (2008–2013), 207,416 FGM/C-related disputes were brought to the courts and, overall, 155 cases were penalised across the country.[7]

In its fifth periodic report submitted to the Committee on the Elimination of Discrimination Against Women (*CEDAW*) in May 2014, the Eritrean Government reported that over 144 perpetrators of FGM/C had been taken to court by community-based enforcement committees.[8] It has not been possible, however, to ascertain how many of these resulted in prosecutions, convictions or punishments.

Details of specific FGM/C cases in Eritrea are difficult to obtain, and the abovementioned reports only refer to one specific case in the Southern Zone regional court involving a priest who opposed the law prohibiting FGM/C and was sued by the regional office of the National Union of Eritrean Women (*NUEW*). He was convicted and penalised.[9] A 2012 report prepared by the Eritrean Ministry of Health reported on the prosecution, conviction and imprisonment of FGM/C practitioner Zahra Ahmed in Anseba.[10]

The most recent report published by the UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (*UNJP*) listed 89 cases brought to court in Eritrea during 2016, but no convictions or sanctions were recorded.[11]

There is no publicly available information on whether any cases have been brought against health professionals performing FGM/C in recent years.

Relevant Government Authorities and Strategies

Since independence in 1993, Eritrea has undertaken a holistic approach to tackling FGM/C (known as ***Habarawi***, meaning 'collective') and developed policies, programmes and strategies that bring together all levels of society, from government departments, community and religious leaders, and health and education workers to families, individuals and practitioners in the community. Government authorities responsible for implementing this community programme (or ***Hamadea***) include the **Ministries of Health, Education, Justice and Information**. They partner with the **UNJP** to end FGM/C (Eritrea having joined in 2011).

Eritrea has a strict policy on non-governmental organisations (*NGOs*) working in the country, and the only two registered NGOs active in relation to eliminating FGM/C are the **National Union of Eritrean Women** (*NUEW*) and the **National Union of Eritrean Youth and Students** (*NUEYS*). Their strategies

include sensitisation campaigns, community abandonment programmes, multimedia education and awareness-raising activities.

For further information on responsibilities and strategies to end FGM/C in Eritrea see 28 Too Many's Country Profile: FGM in Eritrea at **https://www.fgmcri.org/country/eritrea/.**

Civil Society Observations

With the restrictive operating environment in Eritrea, there is limited information publicly available on any observations made by members of civil society or NGOs on the impact of the national legislation against FGM/C to date. Observations almost exclusively originate from government departments themselves, the NUEW and the NUEYS.

Following the criminalisation of FGM/C, the Government, through the NUEW, carried out a series of public meetings to raise awareness of the law and the effects of FGM/C and distribute copies of the FGM/C Act to 15,000 communities. According to the Eritrean Population and Health Survey 2010, 90.9% of women aged 15–49 say that they had heard of the law against FGM/C. The level of knowledge is greater in the capital, Asmara and in other urban areas than in rural areas. Two-thirds of mothers with at least one daughter who has not undergone FGM/C state that the reason for them remaining uncut is because FGM/C is against the law.[12]

The UNJP reports that the Anti-FGM Committees set up in local communities work efficiently and regularly report progress nationally. Influential leaders and policy makers have also publicly spoken on the law against FGM/C, and seven public-policy statements were made in 2016 to support the elimination of the practice.[13]

Conclusions and Suggestions for Improvement

Conclusions

- Current national legislation in Eritrea provides a clear definition of FGM/C and criminalises and punishes its performance and anyone requesting, inciting or promoting the practice under Proclamation No. 158/2007.
- Both the failure to report FGM/C to the relevant authorities and the performance of FGM/C by a member of the medical profession are criminalised and subject to punishment.
- The law does not directly criminalise and punish instances of cross-border FGM/C.
- Publicly available information on the enforcement of the law is limited. It appears that many cases may have reached court since the legislation was enacted, but the actual number of convictions is small.
- The operating environment for NGOs has become increasingly restricted and the work to end FGM/C is focused through government departments, the NUEW and NUEYS, in partnership with the UN Joint Programme.

Suggestions for Improvement

National Legislation

- The law should be strengthened to ensure any instances of cross-border FGM/C are criminalised and punished.
- Clear and accurate dissemination of the content of the law needs to continue, particularly in more remote rural areas.
- Laws must be made easy to understand in all local languages and available in alternative forms in areas of lower literacy.

Implementation of the Law

- Judges and local law enforcers need adequate support and training around the law and should be encouraged to fully apply the sentences provided for by the legislation.
- Adequate monitoring and reporting of FGM/C cases in Eritrea would improve efficiency and inform policy-makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- Increased involvement of local and religious leaders in education around the law, including their responsibilities and the importance of the law in protecting women and girls in their communities, would also be beneficial.
- Tribunals could be encouraged to make sure any prosecutions relating to FGM/C are clearly reported, including through local media such as community radio, and made available in local languages.

- Adequate support and protection for victims and witnesses in FGM/C cases is needed.
- All professions need continual training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM/C.
- Where these are currently unavailable and a need is identified, appropriate protection measures (for example, the provision of safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

ERITREA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 2002	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 2001	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)			✓ 1995	
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 2014	Article 20 and paragraph 1 of Article 30
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1993	✓ 1994		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)		✓ 1999		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)		✓ 1999		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2012			

'**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.

#NOFGM

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1 *Eritrea's Constitution of 1997* (1997) Available at https://www.constituteproject.org/constitution/Eritrea_1997.pdf?lang=en.
2 *Eritrea: Proclamation No. 158/2007 of 2007, the Female Circumcision Abolition Proclamation [Eritrea]* (2007) Available at http://www.refworld.org/docid/48578c812.html.
3 *Penal Code of the State of Eritrea* (2015) Available at http://www.refworld.org/pdfid/55a51ccc4.pdf.
4 Shabait (2015) 'Government of Eritrea Puts Into Effect New Civil and Penal Codes', *TesfaNew*s, 11 May. Available at https://www.tesfanews.net/government-of-eritrea-puts-into-effect-new-civil-and-penal-codes/.
5 *Nafka to USD conversion at 1 June 2018 (https://www.xe.com/currencyconverter/).*
6 United Nations Convention on the Rights of the Child (2014) *Committee on the Rights of the Child: Consideration of reports submitted by States parties under article 44 of the Convention – Fourth periodic reports of States parties due in 2011(Eritrea)*, paragraph 212, 2 January. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fERI%2f4&Lang=en.
7 United Nations General Assembly (2013) *Human Rights Council Working Group on the Universal Periodic Review: Eighteenth session – National report submitted in accordance with paragraph 5 of the annex to Human Rights (Eritrea)*, paragraph 38, 8 November. Available at https://www.upr-info.org/sites/default/files/document/eritrea/session_18_-_january_2014/a_hrc_wg.6_18_eri_1_e.pdf.
8 United Nations Convention on the Elimination of All Forms of Discrimination against Women (2014) *Committee on the Elimination of Discrimination against Women: Consideration of reports submitted by States parties under article 18 of the Convention – Fifth periodic report of States parties due in 2012* (Eritrea), paragraph 82, 6 May. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fERI%2f5&Lang=en.
9 United Nations General Assembly, *op. cit.*
10 Akinboyo, G. and R. Negash (2012) *The Habarawi Approach: Communities Taking Action to Eliminate Female Genital Mutilation/Cutting, prepared for the Ministry of Health, the National Union of Eritrean Women, and UNICEF/Eritrea, Asmara*, p.34. Available at https://www.unicef.org/eritrea/ECO_resources_socialchange.pdf.
11 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (2017) *2016 Annual Report of the UNFPA–UNICEF Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change*, p.33. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
12 National Statistics Office (NSO) [Eritrea] and Fafo AIS (2013) *Eritrea Population and Health Survey 2010. Asmara, Eritrea: National Statistics Office and Fafo Institute Applied International Studies*. Available at https://www.unicef.org/eritrea/resources_17043.html.
13 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting, *op. cit.*, p.33.

Cover image: Carlos Reis (2015) *Girl: From Asmara to Massawa disused railroad.* Available at https://flic.kr/p/GoPH5c. CCL: https://creativecommons.org/licenses/by-nc-sa/2.0/.

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/C.

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