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FGM...
let's end it.

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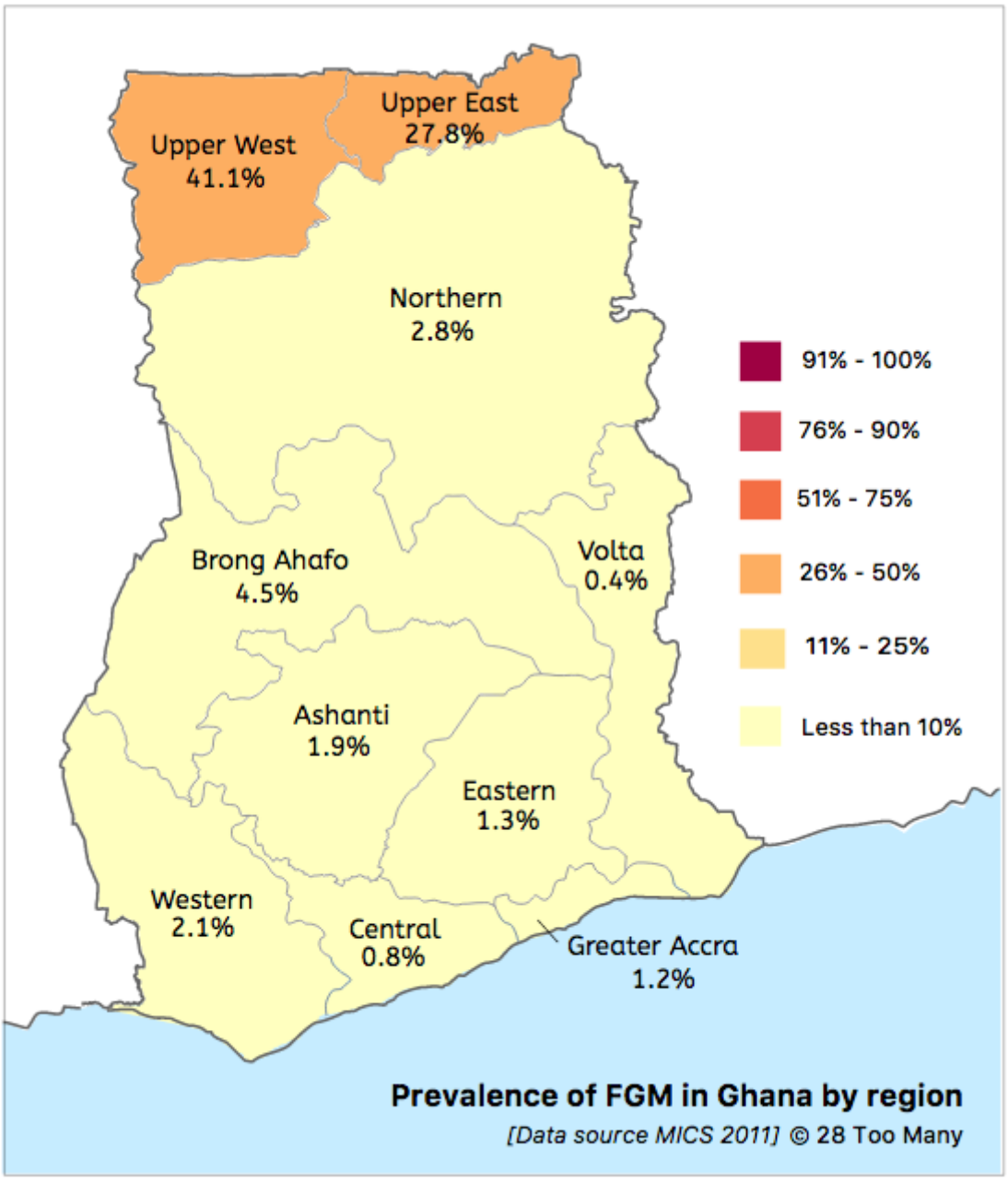


GHANA:
THE LAW AND FGM/C

September 2018

In Ghana, the prevalence of FGM/C in women aged 15–49 is 3.8%.

The departments with the highest prevalence are Upper West (41.1%) and Upper East (27.8%); all other regions are below 5%.



- Girls usually undergo FGM/C before the age of five.
- 'Flesh removed' is the most common type of FGM/C practised.
- 84% of FGM/C cases are carried out by traditional practitioners called *wanzams*.
- 94.2% of women aged 15–49 who have heard of FGM/C believe the practice should be stopped.

Source of data: Ghana Statistical Service (2011) *Ghana Multiple Indicator Cluster Survey with an Enhanced Malaria Module and Biomarker, 2011, Final Report*, p.225. Accra, Ghana. Available at **https://www.unicef.org/ghana/Ghana_MICS_Final.pdf.**

For further information on FGM in Ghana see ***https://www.fgmcri.org/country/ghana/***.

Domestic Legal Framework

Overview of Domestic Legal Framework in Ghana	
The Constitution explicitly prohibits:	
X	Violence against women and girls
✓	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
X	Criminalises the failure to report incidents of FGM/C
X*	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***

**Not specifically criminalised; the main law applies universally to anyone carrying out FGM/C (see below).*

What is The Law Against FGM/C?

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

The legal system in Ghana is based on a mixed system of English common law and customary law.

The **Constitution of Ghana**, passed in 1992, does not specifically address FGM/C, but **Article 15** states that 'the dignity of all persons shall be inviolable' and that no person shall be subjected to torture, cruel, inhuman, or degrading treatment or any other condition that 'detracts or is likely to detract from his dignity and worth as a human being'. **Article 26(2)** prohibits all customary practices that 'dehumanise or are injurious to the physical and mental wellbeing of a person' and **Article 28(3)** further states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Particularly relevant to FGM/C, **Article 39(2)** obliges the State to ensure that 'traditional practices which are injurious to the health and well-being of the person are abolished'.[1]

The main law relating to FGM/C in Ghana is the Criminal and Other Offences Act 1960 (Act 29), Section 69A (Female Gender Mutilation) (*COA 1960*).

In 1994 the Criminal Code (Amendment) Act inserted Article 69A to the COA 1960 to prohibit 'female circumcision'.[2] In 2007 this was further amended to 'female genital mutilation' and penalties were increased.[3]

What The Law Covers

Section 69A of the COA 1960 sets out a clear definition of FGM[4] and criminalises the performance of FGM/C and all those who procure or assist in the practice, as follows:

- **Section 69A(1)** – 'Anyone who carries out FGM and excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person commits an offence, and will be subject to punishment . . .'
- **Section 69A(2)** – 'Anyone who participates in or is concerned with a ritual or customary activity that subjects a person to FGM commits an offence and will be subject to punishment . . .'
- **Section 69A(3) sets out the following definitions:**

  'excise' means to remove the prepuce, the clitoris and all or part of the labia minora;

  'infibulate' includes excision and the additional removal of external genitalia and stitching or narrowing of the vaginal opening;

  'mutilate' includes any other injury caused to the female genital organ for cultural or other non-therapeutic reasons;

  'concerned with' means

  (a) to send to, take to, consent to the taking to or receive at any place, any person for the performance of female genital mutilation; or

  (b) to enter into an agreement whether written or oral to subject any of the parties to the agreement or any other person to the performance of female genital mutilation.

Section 69A of the COA 1960 does not specifically set out punishments for failing to report FGM/C at any stage. More generally, **Section 22 (*Duty to Prevent Felony*)** states that anyone failing to report or prevent the commission or completion of a felony (which includes FGM/C) is guilty of a misdemeanour.[5]

Protection Orders are not specified under the main FGM/C law in Ghana; however, they are available under the **Domestic Violence Act 2007**[6] and may be applied to protect a victim of FGM/C, but only if the order relates to a familial context. This Act also punishes the general use of derogatory or abusive language, but not FGM/C-specific verbal abuse.

Medicalised FGM/C

UNICEF has previously estimated that 9% of girls aged 0–14 who have had FGM/C in Ghana were cut by a health professional (as reported by their mothers).[7] While the national legislation does not directly criminalise FGM/C carried out by health professionals or in a medical setting, the wide scope of the **COA 1960** does appear to apply universally and should therefore punish any health professional involved in the practice.

Cross-Border FGM/C

It has been reported that the movement across national borders to practise FGM/C is a problem for Ghana; for example, FGM/C is practised in the north-eastern Bawku principality and in neighbouring communities across the border in Burkina Faso and Togo.[8] Action Aid Ghana staff have previously noted:

> [T]he cross-border activity of perpetrators of FGM is alarming, as most Ghanaian parents cross the borders to Togo and Burkina Faso to cut their children and bring them back to Ghana. This is because the communities that patronise the practice are now aware that FGM is criminal in Ghana.[9]

Section 69A of the COA 1960 does not specifically criminalise and punish cross-border FGM/C; more generally, the **Courts Act 1993 (Act 459) (as amended)**[10] permits prosecution in Ghana for crimes even where the defendant commits the offence outside Ghana and the act committed is not an offence in the jurisdiction where it was carried out. **Section 56(4)(n)** specifically states:

> Any person (whether a citizen of Ghana or not) is liable to be tried and punished in Ghana for the respective offence if he does an act which if done within the jurisdiction of the courts of Ghana would have constituted any of the following offences . . .
>
> (n) any other offence which is authorised or required by a convention or treaty to which the Republic is a signatory to be prosecuted and punished in Ghana wherever the offence was committed.

It is not known, however, if any prosecutions for cross-border FGM/C could have been or have actually been brought about under this legislation.

Penalties

The amendment to **Section 69A of the COA 1960** in 2007 increased penalties as follows:

- **Section 69A(1)** – anyone performing FGM/C commits an offence and is liable upon conviction to between five and ten years' imprisonment; and
- **Section 69A(2)** – anyone who participates or assists in FGM/C also commits an offence and is liable upon conviction to between five and ten years' imprisonment.

The failure to report any felony (which includes FGM/C) is considered a misdemeanour, and under Ghanaian law misdemeanours generally attract a punishment of imprisonment for not more than three years. Second-degree felonies generally attract a prison term of up to ten years and first-degree felonies a prison term of ten years to life imprisonment.

There is no stated penalty in the law for using derogatory or shaming language towards a woman refusing FGM/C in Ghana; however, **the Domestic Violence Act 2007** protects against derogatory or verbal abuse in general and punishes with a fine of not more than five hundred penalty units (equivalent to GH¢6,000 or approximately US$1,361[11]) or up to two years' imprisonment, or both.

Implementation of The Law

Cases

Information on FGM/C cases brought to court in Ghana is limited, and it is unknown to what extent law enforcement is proving successful in areas of higher prevalence or what the outcomes of any prosecutions made in recent years have been.

Following the 1994 amendment to the law, some successful prosecutions for performing FGM/C reportedly took place. The first was a male practitioner who was sent to prison and served at least five years.[12] Following this, in 2003 a 45-year-old farmer was found guilty of cutting three girls and was sentenced to five years' imprisonment[13], and in 2004 another woman, aged 70, was also sentenced to five years' imprisonment for cutting seven girls in the Bakwu East District.[14]

More recently, one report stated that, in 2015, a 13-year-old girl in the western Tain principality fled imminent FGM/C and reported it to the authorities. She was threatened and had to seek refuge after the three perpetrators involved were arrested by police. Following their release on bail, pressure from local community leaders and politicians not to send the case to court meant that it was still unresolved after two months. The final outcome of this case is not known.[15]

Relevant Government Authorities and Strategies

At the national level, there is strong government support to end FGM/C in Ghana. Several agencies are tasked with the eradication of the practice, including the **Ministry of Gender, Children and Social Protection**; the **Department of Social Development**; the **Domestic Violence Unit** of **the Police**; the **Commission for Human Rights and Administrative Justice**; and the **National Commission on Civic Education**.

The Ministry of Gender, Children and Social Protection organises programmes to raise awareness of violations of women's rights, including FGM/C and its subsequent health implications. These sensitisation programmes are primarily coordinated by the Ministry and involve local government authorities such as the **District Assembly**, the **Assembly members** and other organisations including the **Child Protection Network in the Upper West Region**, the **Police Domestic Violence and Victim Support Unit** (*DOVVSU*) and non-governmental organisations (*NGOs*) working in communities. Research is also conducted by the Ministry, supported by the **United Nations Children's Fund** (*UNICEF*).

Minister for Gender and Social Protection Otiko Afisa-Djaba stated in November 2017 that the Government is committed to ensuring that perpetrators of FGM/C are made to face the law, adding that support systems have been put in place for victims.[16]

Civil Society Observations

While available data suggests that FGM/C prevalence in Ghana has fallen in younger age groups[17], civil society notes that new cases continue to be reported, particularly in the Upper West and Upper East, where pressure remains from local traditional and religious leaders to continue the practice. It is reported that 'FGM is increasingly performed on younger girls, who are less likely to resist or report the crime. Some families apparently also send their daughters abroad to have the procedure carried out with impunity.'[18] An investigator at the DOVVSU has also been quoted as saying that because FGM/C 'is known to be illegal, it is carried out when girls are as young as one month old.'[19]

NGOs such as the Ghanaian Association for Women's Welfare (*GAWW*), a national division of the Inter African Committee (*IAC*) set up in 1984, include the promotion and implementation of the anti-FGM/C law in their work, but still report instances where, despite FGM/C cases being reported to the police, perpetrators have not been charged.[20] The Ghanaian chapter of the International Federation of Women Lawyers (*FIDA*) has also previously called for the police, government prosecutors and the courts to become better informed about the law against FGM/C so that they can be more proactive: 'It takes a highly informed Judiciary to make an accurate assessment on the damages of FGM and thereby prescribe stiffer sentences on offenders.'[21]

There is continuing cooperation amongst organisations working on anti-FGM/C programmes across borders, such as between Ghana and Togo.[22] However, challenges remain, such as local resistance and accessibility to some of the more-frequently-practising communities in remote rural areas.

Conclusions and Suggestions for Improvement

Conclusions

- The main law in Ghana, the COA 1960, Section 69A, criminalises the performance, procurement, aiding and abetting of FGM/C. It appears to have contributed to a decline in the practice since its enactment in 1994.
- The law does not specifically refer to FGM/C carried out by health professionals or in a medical setting, although it applies universally to anyone carrying out the practice.
- The main law currently does not criminalise or punish the failure to report FGM/C or instances of cross-border FGM/C.
- The Government, in partnership with other agencies and civil society, has worked to strengthen legislation and educate communities on the meaning of the law. However, challenges remain in some areas, most notably in the Upper West and Upper East, where FGM/C is still widely practised and families are crossing borders or cutting their girls at a younger age to avoid prosecution.

Suggestions for Improvement

National Legislation

- The main FGM/C law requires further strengthening to urgently address the issue of cross-border FGM/C, and the procurement or performance of FGM/C in another country should be criminalised and subject to punishment.
- The main law should also address the failure to report FGM/C that has or is due to take place; it should be criminalised and subject to punishment.
- Given that medicalised FGM/C appears to be practised in some circumstances in Ghana, the performance of FGM/C by a health professional or in a medical setting should be explicitly criminalised and punishments set out in the appropriate legislation.
- Laws need to be made accessible and easy to understand in all local languages.

Implementation of the Law

- Anti-FGM/C programmes should continue to disseminate clear, easy-to-understand and accurate information around the law, and strengthen partnerships across borders, particularly in the north of the country, where the prevalence of FGM/C is highest.
- 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.
- 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 essential.
- All professions must continually be trained around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM/C.
- Mandatory reporting of instances of FGM/C by medical staff in hospitals and health centres could be considered.
- Where these are currently unavailable and a need is identified, appropriate protection measures (for example, the provision of emergency telephone lines or safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I:
International and Regional Treaties

GHANA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)	✓ 2000	✓ 2000		
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)	✓ 2000	✓ 2000		
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1980	✓ 1986		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)	✓ 2000	✓ 2000		
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)			✓ 1989	
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1997			
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2003	✓ 2007		

'**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 *The Constitution of the Republic of Ghana* (1992) Available at http://www.politicsresources.net/docs/ghanaconst.pdf
2 *Act (484 of 1994) to amend the Criminal Code, 1960 (Act 29) to include in the Code the offence of female circumcisions and for connected purposes* (1994) Available at https://cyber.harvard.edu/population/fgm/ghana.fgm.htm.
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Cover image: Anton_Ivanov (2017) *TECHIMAN, GHANA – JAN 15, 2017: Unidentified Ghanaian beautiful girl in a pink hat in a village. Ghana people suffer of poverty due to the bad economy.* Shutterstock photo ID: 575177587.

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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