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FGM... let's end it.

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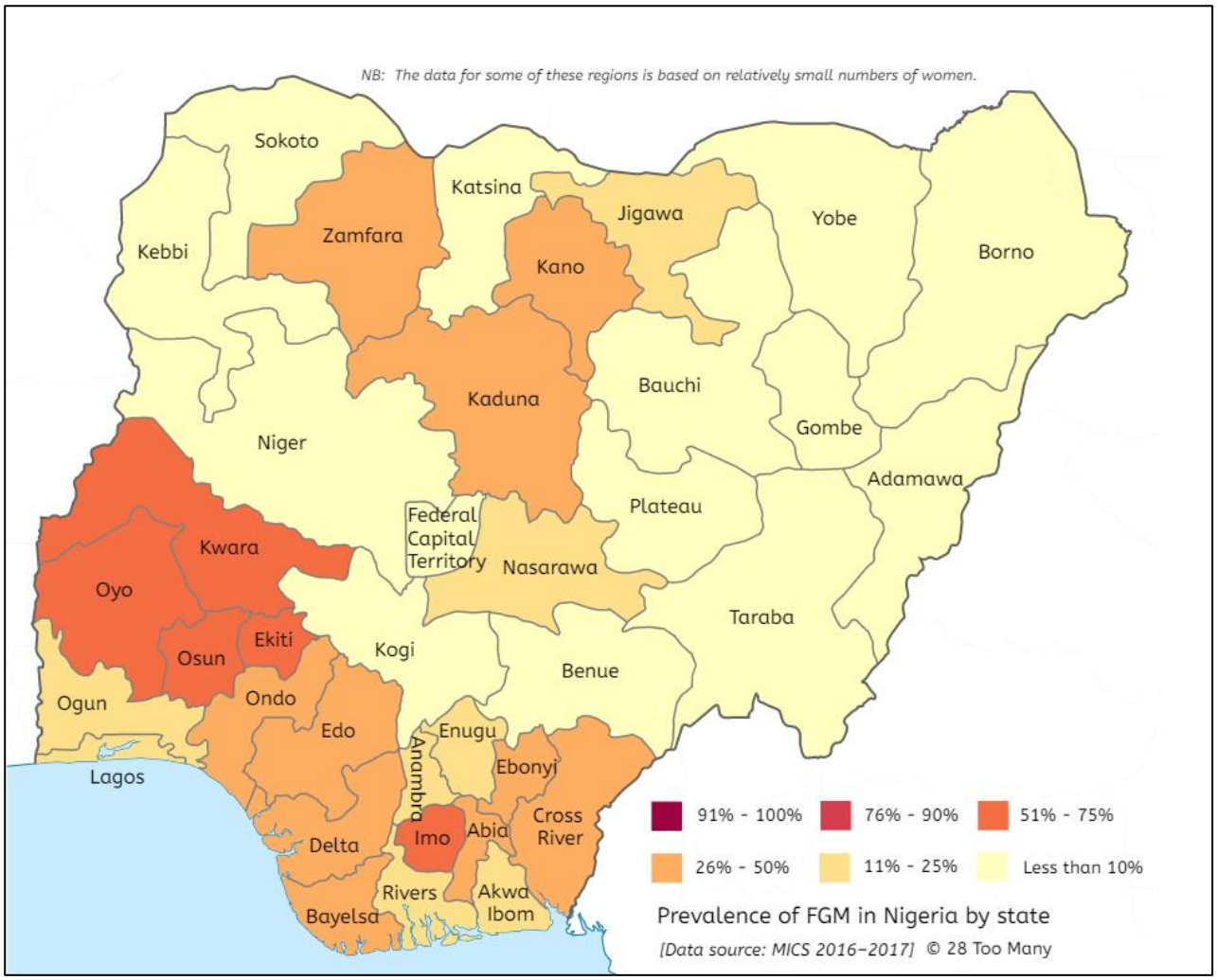
THE LAW AND FGM/C

June 2018

In Nigeria, the prevalence of FGM/C in women aged 15–49 is 18.4%.

20 million women and girls in Nigeria have undergone FGM/C.
This represents 10% of the global total.

The highest prevalence is in South East and South West Zones.



- 82% of women aged 15–49 who have undergone FGM/C were cut before the age of five.
- 'Cut, flesh removed' is the most common type of FGM/C practised. 'Other' types of FGM/C, including *Angurya*, *Gishiri* and the use of corrosive substances, are also practised in some areas of Nigeria.
- Around three-quarters of FGM/C is carried out by 'traditional circumcisers'.
- 64.3% of women and 62.1% of men in Nigeria aged 15–49 believe that FGM/C should be discontinued.

Sources of data:

National Population Commission (NPC) [Nigeria] and ICF International (2014) *Nigeria Demographic and Health Survey 2013.* Available at **http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf**.

National Bureau of Statistics (NBS) and United Nations Children's Fund (UNICEF) (2017) *Multiple Indicator Cluster Survey 2016–2017, Survey Findings Report.* Available at **https://mics-surveys-prod.s3.amazonaws.com/MICS5/West%20and%20Central%20Africa/Nigeria/2016-2017/Final/Nigeria%202016-17%20MICS_English.zip**.

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Nigeria	
The Constitution explicitly prohibits:	
X	Violence against women and girls
X	Harmful practices
X	Female genital mutilation/cutting (FGM/C)
National legislation:	
X	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***

What is The Law Against FGM/C?

An overview of the International and Regional Treaties signed and ratified by Nigeria can be found in Appendix I of this report.

Nigeria has a federal system of government comprising 36 states, and a mixed legal system of English common law, Islamic law (in 12 northern states) and traditional law. The legal system is complex, and both levels of government play a role in the enactment of laws prohibiting FGM/C in Nigeria: although the federal government is responsible for passing general laws, the state governments must then adopt and implement them in their respective states.

The **Constitution of the Federal Republic of Nigeria** (1999) does not specifically refer to violence against women and girls, harmful traditional practices or FGM/C; **Articles 15(2)** and **17(2)** prohibit discrimination and set out equality of rights respectively, and **Article 34(1)** provides that every individual is entitled to respect for the dignity of their person and, accordingly, no one 'shall be subject to torture, or to inhuman or degrading treatment.'[1]

The Violence Against Persons (Prohibition) Act, 2015 (the *VAPP Act*)[2], which came into force on 25 May 2015, is the first federal law attempting to prohibit FGM/C across the whole country. The VAPP Act aims to eliminate gender-based violence in private and public life by criminalising and

setting out the punishment for acts including rape (but not spousal rape), incest, domestic violence, stalking, harmful traditional practices and FGM/C.

The VAPP Act, as a federal law, is only effective in the Federal Capital Territory of Abuja, and, as such, the remaining states must pass mirroring legislation to prohibit FGM/C across the country.

Prior to the VAPP Act, several states had already enacted state laws dealing with child abuse, child protection issues, violence against women and girls and criminalising the practice of FGM/C, including:

- Bayelsa State – **FGM (Prohibition) Law (2004)**
- Cross River State – **The Girl-Child Marriages and Female Circumcision (Prohibition) Law (2000)**
- Ebonyi State – **Law Abolishing Harmful Traditional Practices Against Women and Children (2001)**
- Edo State – **Prohibition of Female Genital Mutilation Law (1999)**
- Enugu State – **FGM (Prohibition) Law (2004)**
- Rivers State – **Child Rights Act (2009)**

At the time of writing, the VAPP Act has not yet been implemented across all states of Nigeria and only 13 (mainly southern) states have put in place some form of law banning FGM/C. In some northern areas of the country, the **Sharia Penal Codes** of states including Zamfara, Kano Kebbi, Kaduna and Sokoto are in place to protect children against various forms of physical and psychological violence.

What The Law Covers

The **VAPP Act** does not provide a clear definition of FGM/C; **Section 6(1)** of the law opens with the simple statement, 'The circumcision or genital mutilation of the girl child or woman is hereby prohibited.'

- **Section 6(2)** criminalises and punishes anyone who performs, or engages another to perform, female circumcision or genital mutilation.
- **Section 6(3)** criminalises and punishes anyone who attempts to perform, or engage another to perform, the practice.
- Finally, **Section 6(4)** criminalises and punishes those who incite, aid, abet or counsel another to perform or attempt to perform FGM/C.

The **VAPP Act** does not expressly criminalise failure to report FGM/C that has taken place or is due to take place.

Harmful practices that risk the spread of HIV (for example, through unclean instruments used by traditional FGM/C practitioners) are also addressed in the **HIV and AIDS (Anti-Discrimination) Act, 2014,** under **Section 3(3),** which states, 'No culture, practice or tradition shall encourage practices that expose people to the risk of HIV infection.'[3]

Medicalised FGM/C

According to the most recent Nigeria Demographic and Health Survey (2013), 11.9% of girls aged 0–14 and 12.7% of women aged 15–49 who have had FGM/C in Nigeria were cut by a medical professional (mostly by a 'nurse/midwife').[4]

The **VAPP Act** does not clearly address FGM/C carried out by health professionals or in a medical setting; the broad nature of the law, however, would suggest that any member of the medical profession who performs or assists in FGM/C would also be guilty of a criminal offence and punished accordingly.

Regarding medical malpractice, the **Medical and Dental Practitioners (Disciplinary Tribunal) Rules, 2004** (the *Medical Act*), sets out in **Section 16** under 'Penalties for Professional Misconduct' that, where a registered person (i.e. a medical practitioner) is found guilty of professional misconduct by the medical Disciplinary Tribunal or is convicted by any court of law or tribunal for an offence considered incompatible with the status of a medical practitioner, they may be subject to penalties. Although this does not explicitly refer to FGM/C, if such an action is considered to be medical malpractice, it would thus fall under the scope of this law.[5]

In addition, the **National Health Act 2014**[6] under **Section 48(1)** addresses the removal of tissue, blood or blood product from the body of another living person. The action is liable to prosecution unless it is done with the informed consent of that person, for medical investigations and treatment in emergency cases (where the consent clause may be waived) and in accordance with prescribed protocols by the appropriate authority. **Section 48(2)** also states, 'A person shall not remove tissue which is not replaceable by natural processes from a person younger than eighteen years.'[7]

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. Nigeria shares borders with other countries where the existence and enforcement of laws varies widely, including Benin, Cameroon and Niger. There is a lack of information on whether the movement across national borders for the purpose of FGM/C is an issue for Nigeria.

The **VAPP Act** does not directly address cross-border FGM/C: it neither criminalises nor punishes FGM/C carried out on or by Nigerian citizens in other countries.

Penalties

The **VAPP Act** establishes the following criminal penalties for violation.

- The performance of FGM/C or engagement of another to perform FGM/C carries a punishment of imprisonment not exceeding four years or a fine not exceeding 200,000.00 Naira (US$554.80[8]), or both.
- Attempting to perform FGM/C or engaging another to perform FGM/C carries a punishment of imprisonment not exceeding two years or to a fine not exceeding 100,000.00 Naira (US$277.30[9]), or both.
- Anyone who incites, aids, abets, or counsels another person to perform FGM/C or engage another to perform FGM/C is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding 100,000.00 Naira (US$277.30[10]), or both.

Some individual states set out their own penalties for FGM/C.

- Cross Rivers state – **The Girl-Child Marriages and Female Circumcision (Prohibition) Law (2000), Section 4** sets out that any person who performs FGM/C, offers herself for FGM/C, coerces, entices or induces another to undergo FGM/C or allows any female who is either a daughter or ward to undergo FGM/C is liable on conviction to a fine of not less than 10,000 Naira (US$27.70[11]) or to imprisonment not exceeding two years for a first offender (and to imprisonment not exceeding three years without an option of fine for each subsequent offence).
- Ebonyi state – Following introduction of the VAPP Act, it brought in a five-year prison sentence for anyone who carries out FGM/C.
- Edo state – **The Prohibition of Female Genital Mutilation Law (1999)** sets out the penalty for performing FGM/C as not less than three years' imprisonment or a fine of not less than 3,000 Naira (US$8.30[12]) or both.[13]
- Rivers state – **The Child Rights Act (2009), Section 25** sets out that any person who directly or indirectly causes a female child to be subjected to FGM/C is liable on conviction to a fine not exceeding 50,000 Naira (US$138.60[14]) or imprisonment for a term of one year, or both.

In addition:

- punishments for medical malpractice under the **Medical Act (2004), Section 16(2)** include being struck off the relevant professional register or suspension from practice for a period not exceeding six months; and
- a person who commits an offence regarding the removal of tissue under the **National Health Act 2014** will be punished under **Section 48(3)(a)** with a fine of 1,000,000 Naira (US$2,773[15]) or imprisonment of not less than two years, or both.

Implementation of The Law

Cases

It has not been possible to identify any prosecutions brought under the VAPP Act in Nigeria since its introduction in 2015. The most recent report published by the UNFPA-UNICEF Joint Programme did not list any arrests, cases or convictions for FGM/C in Nigeria during 2016.[16]

Relevant Government Authorities and Strategies

In response to the passing of the VAPP Act, the **National Policy and Plan of Action for the Elimination of FGM/C in Nigeria (2013–2017)** was launched under the coordination of the Federal Ministry of Health and the Federal Ministry of Women, Affairs and Social Development.

The **National FGM/C Elimination Programme** that has been put in place is coordinated by a multi-sectoral National Technical Working Group (chaired by the Ministry of Health) and supported by the UNFPA-UNICEF Joint Programme to end FGM (*UNJP*).[17] Nigeria became part of the UNJP in 2014, partnering with federal ministries and state-level departments in Ebonyi, Ekiti, Imo, Lagos, Osun and Oyo.

There are a wide range of strategies and organisations working to end FGM/C in Nigeria, including community awareness programmes, health educators, media campaigns and lobbyists for anti-FGM/C legislation to be fully implemented. For further information and resources on Nigeria see **https://www.fgmcri.org/country/nigeria/**.

Civil Society Observations

State governments have, to date, been slow to respond to the introduction of the VAPP Act and civil society is, in many cases, campaigning hard for state laws to be adopted and/or implemented. Activists have noted that 'there is an inconsistency between the passing and enforcement of laws in Nigeria.'[18]

The details of anti-FGM/C legislation are not yet widely known or understood by many, including local police, and the public does not generally have access to the law and justice stakeholders. A recent survey by a local NGO, Society for the Improvement of Rural People (*SIRP*), among its community in the southern state of Enugu, found that 95% of respondents had not heard of the VAPP Act. Once the content and meaning of the law was explained to them, over 90% of respondents felt that the law should be domesticated in their state.[19]

Where information is publicly available, it is not always translated into local languages. Anti-FGM/C projects are also hampered by a lack of enforcement of the law at the local level and the continuing challenge of violence against women across Nigeria.[20] It is noted that the lack of both reported cases of FGM/C and information-sharing across the country is due to the reluctance of families to report FGM/C and risk going to court, and the absence of a centralised information-gathering-and-reporting system.

Civil society identifies a need for local police and judiciary to be sensitised around the anti-FGM/C legislation, but there are positive signs in some states where laws are in place; for instance, law-enforcement agents, including the police, the Nigeria Security and Civil Defense Corps (*NSCDC*) and Nigeria Immigration Services (*NIS*), have received training in Osun where FGM/C prevalence is highest at 76.6%.[21]

Civil society is concerned that the law is not yet deterring the traditional cutters who rely on FGM/C to maintain their income and status in the community, and that the law will push the practice underground. It is also suggested that medicalised FGM/C, which the law does not directly address, is on the increase in Nigeria and there is an urgent need to engage key medical regulatory bodies such as the Nigerian Medical Association.[22]

Conclusions and Suggestions for Improvement

Conclusions

- The VAPP Act criminalises and punishes those who perform, procure, aid and abet the practice of FGM/C. It does not directly address failure to report FGM/C, cross-border FGM/C or FGM/C carried out by a medical professional.
- As a federal law, the VAPP Act is only effective in the Federal Capital Territory of Abuja: all remaining states must pass mirroring laws to enact the legislation and prohibit FGM/C across the country.
- Knowledge of the law and enforcement is generally weak across Nigeria, and it has not been possible to identify any successful prosecutions to date.

Suggestions for Improvement

National Legislation

- A clear definition of FGM/C in the law is needed, which should include all types of FGM/C, including those specifically practised in Nigeria.
- The law needs to directly address medicalised FGM/C and, specifically, criminalise and punish the performance of FGM/C by health professionals.
- The law also needs to criminalise and punish any movement across national borders for the purpose of FGM/C.
- The law could be further strengthened around failure to specifically report knowledge of FGM/C, whether planned or already taken place.
- The law needs to be adopted consistently across all states as a matter of urgency to ensure inter-state movement for FGM/C does not become a problem if practising communities try to avoid prosecution.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

- The Federal and State Governments should ensure that adequate funding is available for anti-FGM/C programmes to disseminate clear and accurate information around the law.
- Local police and the judiciary need adequate support and training around the law and should be encouraged to apply sentences provided for by the legislation.
- The 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, should be encouraged.
- Tribunals could be encouraged to make sure any prosecutions relating to FGM/C are clearly reported, including by local media such as community radio, and made available in local languages.
- Effective monitoring and collection of data around enforcement and cases of FGM/C would help to inform strategies and programmes.
- Mandatory reporting of instances of FGM/C by medical staff in hospitals and health centres could be considered.
- Where they are currently unavailable and a need is identified, appropriate protection measures (for example, emergency telephone lines or safe spaces) should be put in place for girls at risk of FGM/C.
- Laws could be printed and widely distributed in local languages, to make them more widely available to the public, including in forms that can be used in areas of low literacy. Local community radio and other media channels, including mobile phone technology and social media platforms, should also be considered for dissemination of information on the law in Nigeria.

Appendix I: International and Regional Treaties

NIGERIA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1993	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1993	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1984	✓ 1985		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)				Not signed
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1991		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1982	✓ 1983		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1999	✓ 2001		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2003	✓ 2004		

'**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 *Constitution of the Federal Republic of Nigeria* (1999) Available at http://www.icnl.org/research/library/files/Nigeria/constitution2.pdf.
2 *Violence Against Persons (Prohibition) Act* (2015) Available at http://lawnigeria.com/LawsoftheFederation/Violation-Against-Persons-%28Prohibition%29-Act,-2015.html.
3 *An Act To Make Provision for the Prevention of HIV and AIDS-Based Discrimination and Protect the Fundamental Human Rights and Dignity of People Living with and Affected by HIV and AIDS for Related Matters* (2014) Available at http://lawnigeria.com/LawsoftheFederation/HIV-and-AIDS-%28Anti-Discrimination%29-Act,-2014.html.
4 National Population Commission (NPC) [Nigeria] and ICF International (2014) *Nigeria Demographic and Health Survey 2013*, p.357. Available at http://dhsprogram.com/pubs/pdf/FR293/FR293.pdf.
5 *Medical and Dental Practitioners (Disciplinary Tribunal) Rules* (2004) Available at http://www.mdcnigeria.org/Downloads/Cap%20M8.pdf.
6 *National Health Act* (2014) Available at http://lawnigeria.com/LawsoftheFederation/National-Health-Act,-2014.html.
7 *Although the National Health Act 2014 does not refer directly to the removal of flesh through FGM, Section 64 of the law interprets 'tissue' to mean 'human tissue, and includes flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete.'*
8 *As at 21 May 2018 (https://www.xe.com/currencyconverter/).*
9 *As at 21 May 2018 (https://www.xe.com/currencyconverter/).*
10 *As at 21 May 2018 (https://www.xe.com/currencyconverter/*).
11 *As at 21 May 2018 (https://www.xe.com/currencyconverter/*).
12 *As at 21 May 2018 (https://www.xe.com/currencyconverter/*).
13 Hon. Justice N. A. Imoukhuede (undated) *Female Genital Mutilation (FGM) A Crime In Edo State*. Available at http://edojudiciary.gov.ng/wp-content/uploads/2016/10/Femal-Genital-Multilation-Fgm-A-Crime-In-Edo-State-By-Hon-Justice-N-A.pdf.
14 *As at 21 May 2018 (https://www.xe.com/currencyconverter/*).
15 *As at 21 May 2018 (https://www.xe.com/currencyconverter/*).
16 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.56. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
17 The Girl Generation (undated) *FGM in Nigeria: Country Briefing*. Available at https://www.thegirlgeneration.org/sites/default/files/files/TheGirlGeneration-Nigeria_Country_Briefing-Final-PrintVersion-nomb-compressed.pdf.
18 Ayodamola Owoseye (2017) 'Why Nigerian govt must enforce laws against female genital mutilation – Expert', *Premium Times*, 16 November. Available at https://www.premiumtimesng.com/news/more-news/249572-nigerian-govt-must-enforce-laws-female-genital-mutilation-expert.html.
19 Stamp Out Gender-Based Violence (2018) *The Law And Female Genital Mutilation (FGM) In Nigeria: SIRP Bares All!*, 14 February. Available at http://stampoutgbv.blogspot.co.uk/2018/02/the-law-and-female-genital-mutilation.html.
20 *In 2017 Nigeria's largest city, Lagos, was ranked as 8th out of the 19 most dangerous megacities for women in the world and 6th-worst in terms of harmful practices such as FGM (see http://venturesafrica.com/lagos-cairo-kinshasa-ranks-among-top-10-most-dangerous-megacities-for-women-in-the-world/).*
21 National Population Commission (NPC) [Nigeria] and ICF International, *op. cit.,* p.349.
22 28 Too Many interview with Girl Generation Nigeria, August 2017.

Cover image: Joachim Huber (2006) *Girls selling smoked fish on the banks of the Niger river*. Available at https://flic.kr/p/3bNjr3. CCL: https://creativecommons.org/licenses/by-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/E.

This report was prepared in collaboration with TrustLaw, the Thomson Reuters Foundation's global, legal pro bono service that connects law firms and legal teams to NGOs and social enterprises that are working to create social and environmental change.

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