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FGM... let's end it.

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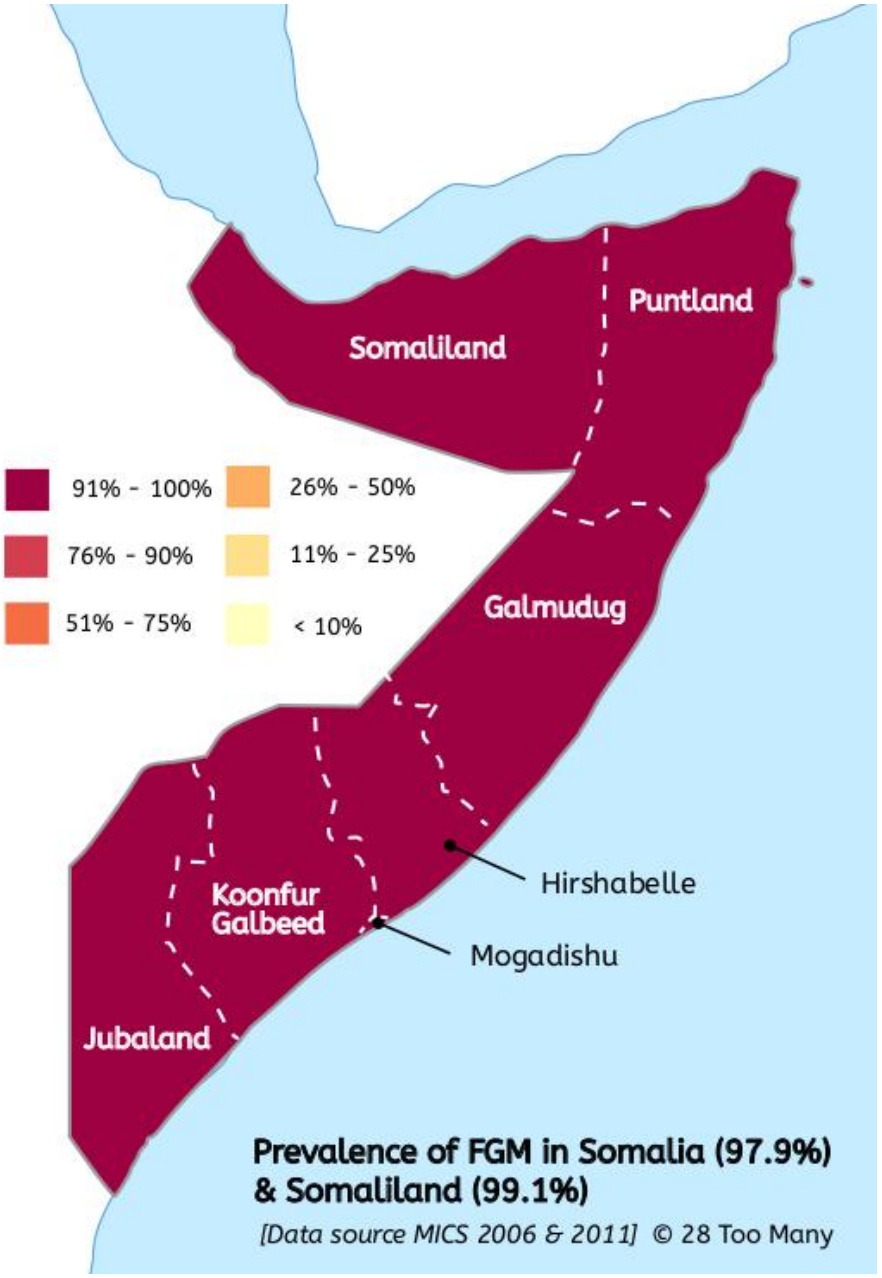
SOMALIA:

THE LAW AND FGM/C

July 2018

In Somalia, the prevalence of FGM/C in women aged 15–49 is 97.9%.

The central and southern regions of the country have the highest prevalence, at 99.2%.



- Most girls are cut between the ages of five and nine.
- Nearly 80% of women have undergone Type III ('sewn closed'/infibulation, also referred to in Somalia as 'Pharaonic Circumcision').
- FGM/C is usually performed by traditional practitioners.
- 64.5% of women aged 15–49 believe that FGM/C should continue.

Source of data: UNICEF and MICS (2006) *Somalia: Multiple Index and Cluster Survey*, p. 138. Available at **https://mics-surveys-prod.s3.amazonaws.com/MICS3/Eastern%20and%20Southern%20Africa/Somalia/2006/Final/Somalia%202006%20MICS_English.pdf.**

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Somalia	
The Constitution explicitly prohibits:	
X	Violence against women and girls
X	Harmful practices
✓	Female genital mutilation/cutting (FGM/C)
National legislation:	
X	Provides a clear definition of FGM/C
X	Criminalises the performance of FGM/C
X	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
X*	***Government has a strategy in place to end FGM/C***

* *The State Government of Puntland does, however, have a strategy to abandon FGM/C.*

Jurisdictional Background

For the purposes of the legal analysis in this report, the **Federal Republic of Somalia** is taken to comprise five federal States, including Puntland, but excluding Somaliland. In 1991 **Somaliland** declared independence from Somalia. Somaliland has its own government, but its self-declared independence remains unrecognised by the United Nations, and Somalia continues to consider Somaliland as a federal member state. A separate Country Report titled '**Somaliland: The Law and FGM/C**' can be found at **https://www.fgmcri.org/country/somalia/**.

In 1998 **Puntland** was declared an autonomous state of the Federal Republic of Somalia. While Somalia has only recently started to review the situation in relation to FGM/C across the country, Puntland has made more progress in recent years towards ending FGM/C and its law and strategies form part of this report on Somalia.

What is the Law Against FGM/C?

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

Somalia's legal system is a mixture of civil law, Islamic law and customary law (referred to as *Xeer*).

The Constitution of Somalia (2012)[1] states at **Article 4,** 'After the Shari'ah, the Constitution of the Federal Republic of Somalia is the supreme law of the country.' It protects human dignity and equality under **Articles 10 and 11** respectively, and, most significantly in relation to FGM/C, sets out under **Article 15(4)** that:

Circumcision of girls is a cruel and degrading customary practice,
and is tantamount to torture.
The circumcision of girls is prohibited.

Article 29(2) further provides, 'Every child[2] has the right to be protected from mistreatment, neglect, abuse or degradation.'

There is currently no national legislation in Somalia that expressly criminalises and punishes the practice of FGM/C.

The Penal Code, Law No. 05/1962[3] (the *Penal Code*), which came into force on 2 April 1964, is applicable to all jurisdictions in Somalia (and Somaliland) and makes it a criminal offence to cause *hurt* to another that results in physical or mental illness.

In 2015, it was reported that work had begun to initiate a bill that would criminalise FGM/C across all of Somalia, and the Ministry of Women Affairs and Human Rights has declared its willingness to introduce FGM/C-eradication laws in Somalia; however, no specific bill has yet been proposed.[4]

Specifically, in Puntland, there is currently FGM/C legislation awaiting parliamentary approval[5], and in 2016 the **Sexual Offences Act** was enacted, which demonstrates a commitment to addressing harmful practices.[6] An Islamic ruling (*fatwa*) against FGM/C has also been signed in Puntland (see Relevant Government Authorities and Strategies below).

What the Law Covers

There is no definition of FGM/C in either the **Constitution** (in which it is referred to as 'circumcision of girls') or in the religious *fatwa*, which simply states that it 'bans all forms of female genital mutilation/cutting (FGM/C)'. There is no reference to whether the prohibitions cover only those who perform FGM/C, or if it could also include those who plan, procure, aid or assist acts of FGM/C, or who fail to report FGM/C that has already, or is due to, take place.

In the absence of national legislation prohibiting all forms of FGM/C, the **Somali Penal Code** makes it a criminal offence to cause *hurt* to another and sets out the associated punishments. Under **Article 440(3),** *hurt* is deemed 'very grievous' if it results in **(b)** 'loss of a sense' or **(c)** 'loss of a limb, or a mutilation which renders the limb useless, or the loss of the use of an organ or of the capacity to procreate.'

Medicalised FGM/C

The increase of medicalised FGM/C has been reported throughout Somalia, but there is no data available on the number of women and girls who have been cut by a health professional or in a medical setting. It is reported that medicalisation in Somalia is a result of those families on higher incomes and with better education believing it will 'reduce the harm' of FGM/C.[7] There is no legislation currently in place at the national level criminalising and punishing medicalisation of the practice.

In Puntland, an inter-ministerial decree against FGM/C developed by the Ministry of Health and signed in 2014 states that there will be no medicalisation of FGM/C[8] and it has the authority to shut down clinics and hospitals that continue the practice, and arrest perpetrators. It also entitles the Government of Puntland to cancel the licences of medical professionals who practice FGM/C in their clinics, and doctors' associations have been asked to hold their members accountable for practising FGM/C by revoking their memberships. This inter-ministerial policy is now being disseminated by stakeholders, but currently it lacks an implementation plan and accountability framework.[9]

Cross-Border FGM/C

In some countries where FGM/C has become illegal, the practice has been pushed underground and across borders. Somalia shares borders with countries where the prevalence of FGM/C and the existence and enforcement of anti-FGM/C laws vary, including Ethiopia and Kenya.

There are many Somalis living in the border regions of Ethiopia and Kenya, and the absence of national legislation banning FGM/C in Somalia allows the practice to continue, as families move across borders to avoid prosecution. There is no accurate data on the number of girls who are taken across borders to be cut.

It is also suggested that many Somali women and girls from the Western diaspora (for example, in the USA, Australia, the UK and other European countries) are taken to Somalia for FGM/C because there is no risk of prosecution.

Penalties

There are currently no penalties set out in the law of Somalia for practising FGM/C.

Although the **Constitution of Somalia** prohibits FGM/C, there is no specific law or provision that establishes a punishment for breach of the Constitution. However, the Constitution provides for judicial review as a means to protect the supremacy of the Constitution and mandates the Human Rights Commission and Ombudsman to protect the Constitution.

Under **Article 440(1) of the Penal Code**, the penalty for causing *hurt* to another is imprisonment for three months to three years. Where the *hurt* is deemed to be 'grievous' **(2)**, the penalty is imprisonment for three to seven years, rising to six to twelve years where the *hurt* is deemed to be 'very grievous' **(3)**.

Implementation of the Law

Cases

In the absence of national legislation on FGM/C, there are no reported cases of arrest or court proceedings in Somalia. There is also no evidence of the Penal Code being used to prosecute perpetrators of FGM/C.

No cases have been identified as arising from the *fatwa* declared in Puntland, nor any instances of malpractice brought against a health professional for performing FGM/C. There have been instances where girls have bled to death or experienced adverse side effects following medicalised FGM/C, but it appears such cases were settled privately between the medical practitioner and the family, sometimes with the mediation of community elders. These cases are not reported publicly.

Relevant Government Authorities and Strategies

The leading government departments responsible for work to end FGM/C in Somalia are the **Federal Ministry of Women and Human Rights Development** (*MOWHRD*) in Central South and the **Ministry of Women's Development and Family Affairs** (*MOWDAFA*) in Puntland. In addition, across all zones, the **Ministry for Religious Affairs and Endowment, Ministry of Health** (*MOH*) and **Ministry of Youth** all contribute to the work to end FGM/C. Since 2015, the federal MOWHRD and the MOH have co-chaired an FGM/C taskforce meeting to coordinate anti-FGM/C work.[10] It has not been possible, however, to obtain any details of a formal government strategy to end FGM/C across the whole of Somalia.

In 2009 Somalia became part of the **UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting** (*UNJP*). The UNJP works with government departments and a range of implementing partners at all levels to engage communities, develop communications strategies, provide protection and support services for women and girls affected by FGM and establish religious leaders' networks throughout the country. An integral part of the UNJP strategy is also to support Somali efforts to develop policy and anti-FGM legislation.

In March 2014, the President of Puntland approved an official government policy outlawing all forms of FGM/C. The policy aimed for 'total abandonment of FGM/C practices in the Puntland through effective Government FGM/C abandonment strategies and approaches for sustainable behaviour change at the family and at the society levels.'[11] The strategy in Puntland currently being disseminated by stakeholders includes generating reliable data on FGM/C, sensitising the community, working with religious leaders and health professionals, and utilising the media. However, there is no formal implementation plan as yet, and parliamentary legislation to support the work is still not in place.

Shortly before the Puntland policy was approved, In November 2013, 18 prominent religious leaders signed a *fatwa* (an Islamic law ruling) against FGM/C, which was witnessed by the then Puntland Minister of Justice, Religious Affairs and Rehabilitation, the Deputy Minister of Health and the Deputy Minister of Women and Family Social Affairs.[12] The *fatwa* had been drafted by a committee of seven members and justified the abandonment of all forms of FGM/C on health and religious grounds.[13]

In July 2014 both the Somalia and Puntland Governments signed the **Girl Summit Charter on Ending FGM, Child, Early and Forced Marriage**.[14]

Civil Society Observations

There is a network of NGOs in Somalia working with the Government and the UNJP to mobilise the community at the local level and implement the different strategies to end the practice. These efforts, however, still face many challenges and are not being fully supported because of the continued absence of national legislation banning FGM/C.

Challenges reported by civil society in Somalia include a continuing absence of accurate data on the prevalence of FGM/C, short-term and insecure funding, poor monitoring and evaluation of programmes and different understandings in Somalia of what FGM/C is. Regarding the latter, it is noted that FGM/C in Somalia is interpreted to be Type III ('Infibulation') or 'Pharaonic circumcision', whereas all other Types are referred to as 'Sunna', which people believe is sanctioned by Islam.[15] Hence, any legislation requires clear definitions and understanding of all types of FGM/C.

Civil society continues to campaign hard for FGM/C to be banned in Somalia. In 2016 the prime minister was successfully lobbied by campaigners to sign a petition calling for the passing of a bill against FGM/C.[16] Efforts continue to date to make this pledge into a reality.

Conclusions and Suggestions for Improvement

Conclusions

- FGM/C prevalence in Somalia remains the highest in the world and evidence suggests that there has been very little change over time. There is an absence of up-to-date, accurate data on the practice to inform policy and programmes.
- FGM/C is prohibited under the Somali Constitution, but the continuing lack of a national law criminalising and punishing all forms of FGM/C undermines the efforts of all parties working to end the practice within the country.
- Ending FGM/C in Somalia will continue to be a complex challenge, but the implementation of national legislation is a key part of the strategy; it will show the Government's commitment to protecting women and girls and eradicating the harmful practice.

Suggestions for Improvement

National Legislation

- There is an urgent need to adopt robust national policy and pass legislation in Somalia to protect women and girls, of all ages, from all types of FGM/C. Laws need to be drafted after full consultation with all members of society, and the Government should draw on the experience of other FGM/C-practising countries that have implemented legislation to ensure the content of the law is applicable and enforceable in the context of Somalia.
- The law requires clear definitions of all types of FGM/C practised across Somalia.
- The law needs to criminalise and punish all perpetrators of the practice (including those who perform, procure, aid or abet FGM/C). Instances of medicalised FGM/C and cross-border FGM/C need to be considered, too.
- Addressing the failure to report FGM/C that is planned or has taken place is a further key consideration in protecting women and girls through national laws.
- The Government also has a responsibility to protect uncut women and girls (and their families) from verbal abuse, physical threats and exclusion from society. Such provisions are included in the laws of some other countries (for example, Uganda).
- Laws also need to protect all victims of FGM/C: women and girls who are pressured by society into agreeing to FGM/C should not be subject to prosecution and further punishment.
- The same provisions should be adopted in laws across all states and regions of Somalia.
- All relevant laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

Once national legislation is in place prohibiting FGM/C, the following key actions will contribute to efforts to end the practice in Somalia.

- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around 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.
- 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.
- Adequate monitoring and reporting of FGM/C cases in Somalia would improve efficiency and inform policy makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- All professions (including those in health and education) need training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM/C.
- Increased support and protection for victims and witnesses in FGM/C cases is essential.
- 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.
- Where literacy rates are low, information around the law needs to be made available through different media channels and resources.
- 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 helplines or safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

SOMALIA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1990	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1990	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)				Not signed
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 1990	
Convention on the Rights of the Child (1989) (*CRC*)	✓ 2002	✓ 2015		Not bound by Articles 14, 20 and 21
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1982	✓ 1985		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1991			
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2006			

'**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 *Somalia's Constitution of 2012* (2012) Available at https://www.constituteproject.org/constitution/Somalia_2012.pdf.
2 *Article 29 (8) of the Somali Constitution (2012) defines 'child' as any person under 18 years of age.*
3 *Penal Code: Legislative Decree No. 5 of 16 December 1962* (1962) Available at http://www.somalilandlaw.com/Penal_Code_English.pdf.
4 - Goobjoog News (2015) *Somalia will soon ban FGM, Human Rights Minister says*, 17 August. Available at http://goobjoog.com/english/somalia-will-soon-ban-fgm-human-rights-minister-says/.
- A. Abdirahman (2015) 'Somalia to introduce law prohibiting Female Genital Mutilation', *Horseed Media*, 3 August. Available at https://horseedmedia.net/2015/08/03/somalia-to-introduce-law-prohibiting-female-genital-mutilation/.
5 Abdirizak Shiino (2014) 'Somalia: Puntland bans Female Genital Mutilation (FGM)', *Horseed Media*, 11 March. Available at https://horseedmedia.net/2014/03/11/puntland-bans-fgm/.
6 United Nations Population Fund (2016) 'Puntland passes law against sexual offences', *ReliefWeb*, 5 September. Available at https://reliefweb.int/report/somalia/puntland-passes-law-against-sexual-offences.
7 Dr Sheena Crawford and Sagal Ali (2015) *Situational Analysis of FGM/C Stakeholders and Interventions in Somalia*. Available at http://www.heart-resources.org/wp-content/uploads/2015/11/Situational-analysis-if-FGM-stakholders-and-interventions-somalia-UN.pdf.
8 UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation (2017) *2016 Annual Report of the UNFPA-UNICEF Joint Programme on FGM/C: Accelerating Change*, p.62. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
9 Information supplied by the Population Council.
10 UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation, *op. cit.*
11 UNICEF Somalia (2014) *Regional authority in Somalia introduces an official policy to end FGM/C*. Available at https://www.unicef.org/somalia/reallives_14437.html.
12 UNICEF Somalia (2013) *Important Religious Ruling against all forms of female circumcision signed in Puntland*, North Eastern Somalia. Available at https://www.unicef.org/somalia/reallives_13980.html.
13 MOJ, MOFSA, MOH (undated) *Religious Fatwa for Banning All Forms of FGM/C*. Available at https://www.unicef.org/somalia/SOM_resources_fatwa.pdf.
14 Girl Summit 2014 (2014) *The Girl Summit Charter on Ending FGM and Child, Early and Forced Marriage*. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346027/GS-CharterEnglish.pdf.
15 Dr Sheena Crawford and Sagal Ali, *op. cit.*
16 BBC News (2016) *Somalia Prime Minister Sharmarke backs anti-FGM campaign*, 23 March. Available at http://www.bbc.co.uk/news/world-africa-35882404.

Cover image: Oxfam East Africa (2010) *Asha, 30 – 'To solve Somalia's problems, Somali people must lead the way.'* Creative Commons Attribution 2.0 Generic lic.

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.

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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