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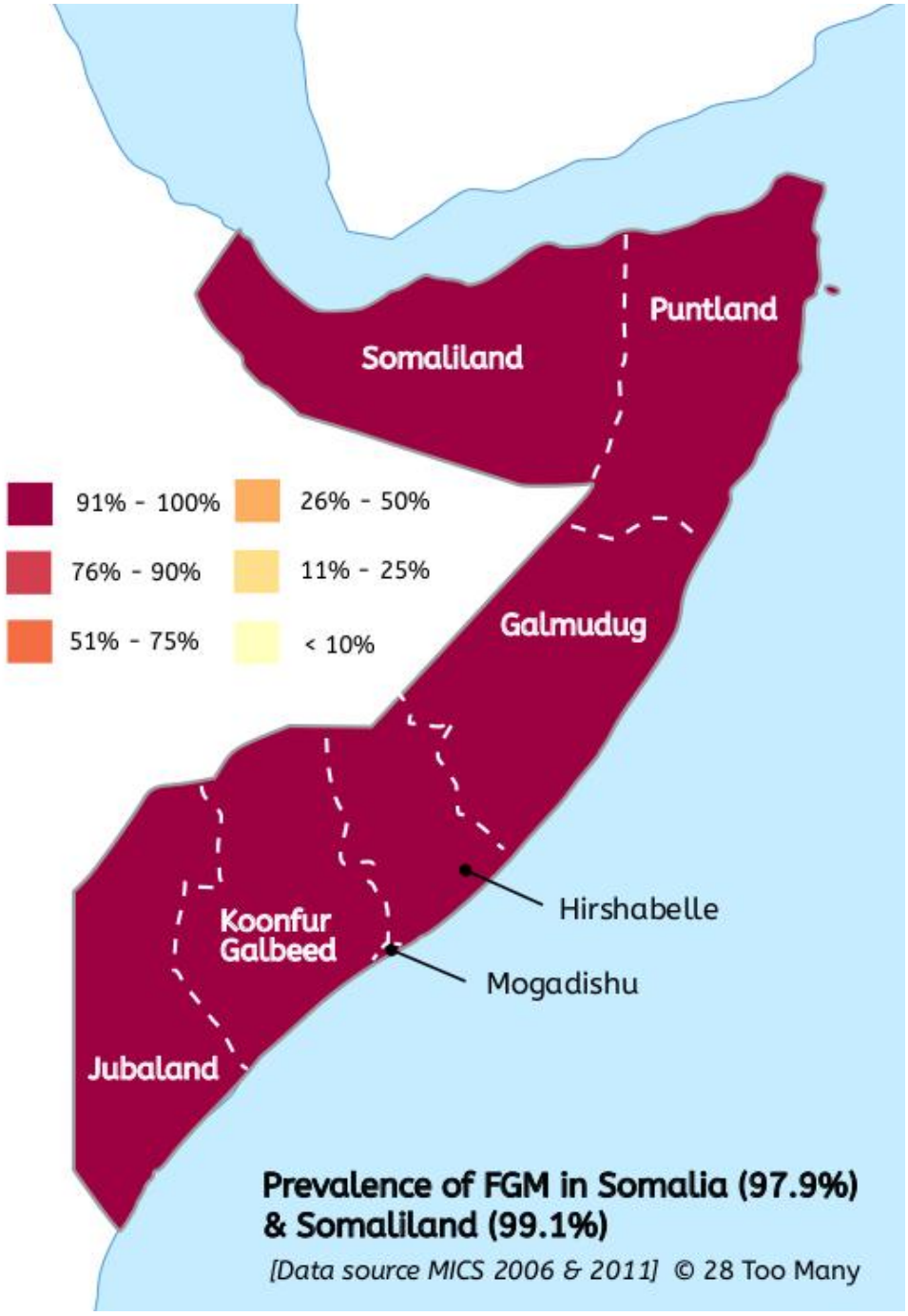


SOMALILAND:

THE LAW AND FGM/C

August 2018

In Somaliland, the prevalence of FGM/C in women aged 15–49 is 99.1%.



- Most girls are cut between the ages of 4 and 14.
- 85% of women have undergone Type III ('sewn closed'/infibulation, also referred to as 'Pharaonic Circumcision').
- FGM/C is usually performed by traditional practitioners.
- 69% of women aged 15–49 who have heard of FGM/C believe it should be discontinued.

Source of data: UNICEF Somalia and Somaliland Ministry of Planning and National Development (2014) *Somaliland Multiple Indicator Cluster Survey 2011, Final Report*. Nairobi, Kenya: UNICEF, Somalia and Somaliland Ministry of Planning and National Development, Somaliland. Available at **https://www.unicef.org/somalia/SOM_resources_somalilandmics4_finalreport.pdf.**

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Somaliland	
The Constitution explicitly prohibits:	
X	Violence against women and girls
✓	Harmful practices
X	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***

Jurisdictional Background

In 1991 Somaliland declared independence from the Federal Republic of Somalia. Somaliland has its own political system, government, police force and currency[1], but its self-declared independence remains unrecognised by the United Nations, and Somalia continues to consider Somaliland as a federal member state. A separate report titled '**Somalia: The Law and FGM/C**' can be found at **https://www.fgmcri.org/country/somalia/**.

What is the Law Against FGM/C?

Somaliland's legal system is a mixture of civil law, Islamic (Sharia) law, and customary law. Sharia law takes precedence over all laws, and customary law also has a strong influence. This mixed system can lead to conflict and is not generally supportive of women's rights.[2]

Somaliland is not listed as a separate jurisdiction among the signatories to the international and regional treaties most relevant to protecting women and girls from FGM/C. However, the **Constitution of the Republic of Somaliland (2001)**[3] confirmed compliance with all international agreements and treaties formerly signed and ratified by Somalia in **Article 10(1)**, 'provided that these

do not conflict with the interests and concerns of the Republic of Somaliland'. These are listed in Appendix I of this report.

In addition, Somaliland signed and ratified the **Convention on Rights of the Child** in May 2002. Although Somaliland is an unrecognised state and not a member of the United Nations, in signing this Convention, Somaliland expressed its commitment to respect and enforce it within its territory.

While Somalia did not sign or ratify the **Universal Declaration of Human Rights**, Somaliland declares in **Article 10(2)** of its **Constitution** that 'the Republic of Somaliland recognises and shall act in conformity with United Nations Charter and with international law, and shall respect the Universal Declaration of Human Rights.'[4]

The **Constitution of Somaliland** does not refer specifically to FGM/C. **Article 8** addresses Equality of Citizens and provides at **(2)** that 'programmes aimed at eradicating long lasting bad practices shall be a national obligation'. **Article 24** states that everyone shall have the right to security of his person, that injury to the person is prohibited, and that crimes 'against human rights' such as torture and 'mutilation' shall have no limitation periods.

Of particular relevance to FGM/C, **Article 36** of Somaliland's **Constitution** sets out The Rights of Women, and confirms that:

1. The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women save for matters which are specifically ordained in Islamic Sharia.
2. The Government shall encourage, and shall legislate for, the right of women to be free of practices which are contrary to Sharia and which are injurious to their person and dignity.

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

Regarding national legislation in general, **Article 130(5) of the Constitution** states:

> All the laws [of the Federal Republic of Somalia] which were current and which did not conflict with the Islamic Sharia, individual rights and fundamental freedoms shall remain in force in the country of the Republic of Somaliland until the promulgation of laws which are in accord with the Constitution of the Republic of Somaliland.

This therefore includes the **Somali Penal Code, Law No. 05/1962** of the Federal Republic of Somalia which came into force on 2 April 1964 (the *Penal Code*).[5]

In February 2018 the Ministry of Religious Affairs in Somaliland issued a *fatwa* (an Islamic law ruling) banning the most severe type of FGM/C, Type III (Infibulation). It stated that those who perform this type of FGM/C will face punishment and victims would be eligible for compensation (it did not, however, provide details of punishments or who would pay compensation and what amount).[6]

A proposed bill from the Ministry of Labour and Social Affairs that would criminalise and punish FGM/C throughout Somaliland was also reportedly due to be drafted and put before parliament in 2018, but no further details of its content are currently available.

What the Law Covers

There is no definition of FGM/C in the **Constitution of Somaliland** (in which it is assumed to be included in 'practices . . . which are injurious to [a woman's] person and dignity' – see above). There is no indication as to whether the prohibitions in the Constitution or *fatwa* cover only those who perform FGM/C or if they could also include those who plan, procure, aid or assist acts of FGM/C, or those 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** remains applicable to all jurisdictions in both Somalia and Somaliland, and makes it a criminal offence to cause *hurt* to another that results in physical or mental illness, 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

An increase of medicalised FGM/C has been reported in Somaliland: a recent study by the Population Council[7] suggests that more nurses and midwives are now performing FGM/C (particularly those types referred to as *sunna*) at healthcare facilities or in private homes. There is no data, however, on the number of women and girls who have undergone medicalised FGM/C across Somaliland. Current national legislation does not criminalise FGM/C carried out by a health professional or in a medical setting.

The Somaliland Nurses and Midwifery Association is reportedly working closely with the UNFPA on the development of a draft policy intended to prohibit doctors, nurses, midwives and other healthcare workers from performing FGM/C under any circumstances. It is proposed that any of these medical professionals who violate the policy will have their licence revoked according to the Somaliland National Health Professions Commission's (*NHPC*) guiding principles and by-laws.

Cross-Border FGM/C

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

The absence of any national legislation banning FGM/C in both Somaliland and Somalia gives families from neighbouring countries the opportunity to move across borders to avoid prosecution. Again, there is no data on the number of girls who are taken across borders to be cut.

It is also observed that many Somali women and girls from the Western diaspora (for example, in the USA, Australia, the UK and other European countries) may be taken to Somaliland for FGM/C because there is less risk of being caught.

Penalties

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

Under **Article 440(1) of the Somali 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 arrests or court proceedings in Somaliland. There is also no evidence of the Penal Code being used to prosecute perpetrators of FGM/C.

No cases of malpractice have been identified against health professionals for performing FGM/C in Somaliland. There have been instances where girls have bled to death or experienced adverse side effects following medicalised FGM/C, but it appears that such cases were settled privately between the medical practitioners and the families, sometimes with the help of community elders to mediate. These cases are not reported publicly.

Relevant Government Authorities and Strategies

The leading government department responsible for gender issues, including work to end FGM/C in Somaliland, is the **Ministry of Labour and Social Affairs** (*MOLSA*). **The Ministries of Health, of Justice and of Religion** also have responsibility.

In 2009 Somalia as a whole became part of the **UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation** (*UNJP*). The UNJP works with government departments and a range of implementing partners at all levels to engage communities (such as the **Somaliland Youth Peer Education Network [Y-PEER]**), develop communications strategies, provide protection and support services for women and girls affected by FGM/C, 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/C legislation.

The Government has highlighted the challenge of ending FGM/C in several national documents in recent years, including in terms of improving reproductive health in a National Health Policy drafted by the Ministry of Health in 2011, which identified the need for policy to end FGM/C in the Somaliland National Development Plan for 2012–16. As of 2016, however, the Government of Somaliland did not have an agreed national policy or strategy in place to end FGM/C. The UNJP in its most recent report states that a draft policy is waiting to be taken to the Council of Ministers.[8]

In the run up to the November 2017 presidential elections in Somaliland, it was reported that all three candidates publicly pledged to outlaw the practice of FGM?C. Musa Bihi Abdi, who went on to become president, stated:

> *What is needed now is the political leadership to bring focus and clarity to this campaign led by Somaliland's hundreds of activists and campaigners. If I am elected president, I will do exactly that.*[9]

Civil Society Observations

There is a strong civil society network in Somaliland working to mobilise the community to end FGM/C, and changes in the practice have been observed. These efforts, however, still face many challenges and are not being fully supported because of the continued absence of national policy and legislation banning FGM/C.

Challenges reported by civil society across all regions of Somalia, including Somaliland, are the continuing absence of accurate data on the prevalence of FGM/C, short-term and insecure funding, poor monitoring and evaluation of programmes and the different understandings across the country of what FGM/C is. Regarding the latter, it is noted that FGM/C in Somalia/Somaliland 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.[10] Hence, any new legislation requires clear definitions and understanding of all types of FGM/C.

While activists welcomed the issuing of the recent *fatwa* and the commitment of religious leaders to end the practice, they expressed concern that it has no legal significance without supporting legislation and it does not call for a ban on all types of FGM/C (only the most severe type; it still sanctioned a 'nicking' form of FGM/C to draw blood).[11] This is significant because recent research in Somaliland shows that there has been a shift, particularly in urban areas, away from Type III FGM/C ('Pharaonic circumcision') to alternative *sunna* types. This change has also been accompanied by an apparent reduction in the age of cutting.[12] As such, the continuing acceptance of the *sunna* cut impedes the work of civil society and progress in national policy and legislation.[13]

Conclusions and Suggestions for Improvement

Conclusions

- FGM/C prevalence in Somaliland remains one of the highest in the world and evidence suggests there has been 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 not explicitly prohibited under the Somaliland Constitution, and 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 in the region.
- Ending FGM/C in Somaliland 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 Somaliland 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 Somaliland.
- The law requires clear definitions of all types of FGM/C practised across Somaliland.
- 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.
- 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 actions will contribute to efforts to end the practice in Somaliland.

- 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 Somaliland 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 and safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

SOMALILAND*	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			
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)	(Somalia signed in 2006)			

* ***Article 10(1) of the Constitution of Somaliland (2001)*** *accepted the treaties previously signed and ratified by the Federal Government of Somalia. Somaliland signed the CRC in May 2002. Status of Maputo Protocol in Somaliland unknown.*

'**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 BBC News (2017) *Somaliland Profile*. Available at http://www.bbc.co.uk/news/world-africa-14115069.
2 Maria Beata Tungaraza (2007; updated 2008) *Women's Human Rights in Somaliland*, p.54. Available at http://www.progressio.org.uk/sites/default/files/Womens-human-rights-in-Somaliland.pdf.
3 *The Constitution of the Republic of Somaliland was approved by referendum on 31 May 2001 (see http://www.icla.up.ac.za/images/constitutions/somaliland_constitution.pdf).*
4 *Ibid.*
5 *Penal Code: Legislative Decree No. 5 of 16 December 1962* (1962) Available at http://www.somalilandlaw.com/Penal_Code_English.pdf.
6 Nita Bhalla (2018) 'Somaliland issues fatwa banning female genital mutilation', *Reuters*, 8 February. Available at https://www.reuters.com/article/us-somalia-fgm-fatwa/somaliland-issues-fatwa-banning-female-genital-mutilation-idUSKBN1FR2RA.
7 R. A. Powell and M. Yussuf (2018) *Changes in FGM/C in Somaliland: Medical narrative driving shift in types of cutting*. Evidence to End FGM/C: Research to Help Women Thrive. New York: Population Council. Available at http://www.popcouncil.org/uploads/pdfs/2018RH_FGMC-Somaliland.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 Anna Davis (2017) 'Almost all Somaliland women have undergone female genital mutilation', *Evening Standard*, 10 November. Available at https://www.standard.co.uk/news/world/almost-all-somaliland-women-have-undergone-female-genital-mutilation-a3687831.html.
10 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.
11 Verity Bowman (2018) 'Somaliland set to ban FGM but activists fear new law will fall short', *The Guardian*, 23 February. Available at https://www.theguardian.com/global-development/2018/feb/23/somaliland-ban-female-genital-mutilation-activists-fear-law-will-fall-short.
12 R. A. Powell and M. Yussuf, *op. cit.,* p.22
13 Richard A. Powell, Mohamed Yussuf, and Bettina Shell-Duncan (Population Council) (2018) 'Curbing the Cut: The Somaliland Dilemma', *28 Too Many*, 5 June. Available at https://www.28toomany.org/blog/2018/jun/5/curbing-the-cut-the-somaliland-dilemma/.

Cover image: Free Wind 2014 (2010) *HARGEISA, SOMALIA - JANUARY 12, 2010: First school Sunshine of Hargeysa. In Somaliland, there are a number of primary and secondary schools, with the acute shortage of material resources and funds*. Shutterstock photo ID 180090746.

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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