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FGM... let's end it.

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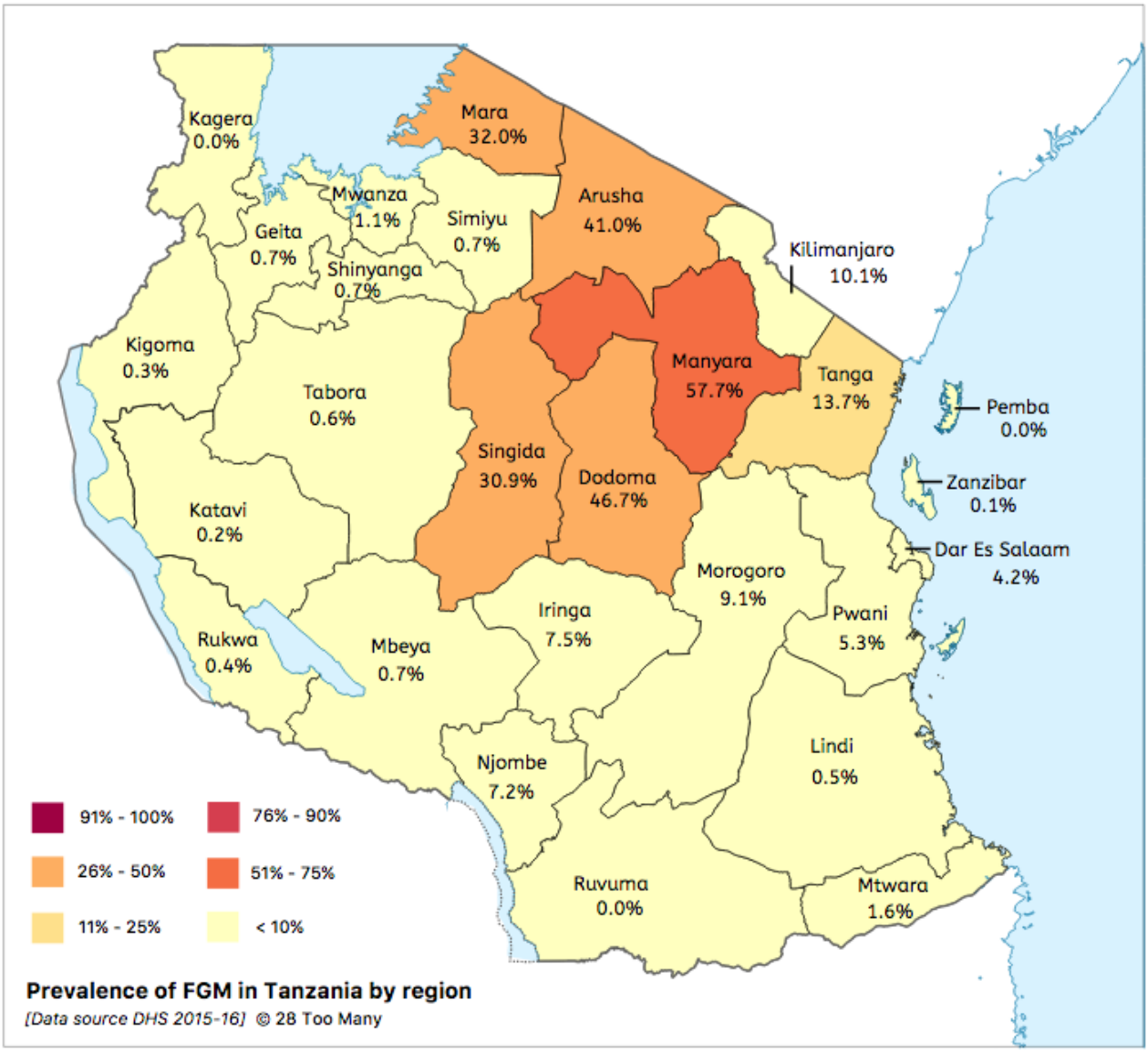


TANZANIA:
THE LAW AND FGM/C

May 2018

In Tanzania, the prevalence of FGM/C in women aged 15–49 is 10%.

The regions with the highest prevalence are in the centre and north of the country.



- Women generally undergo FGM/C as infants or after the age of 13.
- 'Cut, flesh removed' is the most common type of FGM/C practised.
- Almost all FGM/C is carried out by traditional practitioners.
- 95% of women who have heard of FGM/C do not think the practice should be continued.

Source of data: Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC) [Tanzania Mainland], Ministry of Health (MoH) [Zanzibar], National Bureau of Statistics (NBS), Office of the Chief Government Statistician (OCGS), and ICF (2016) *Tanzania Demographic and Health Survey and Malaria Indicator Survey (TDHS-MIS) 2015-16*. Dar es Salaam, Tanzania, and Rockville, Maryland, USA: MoHCDGEC, MoH, NBS, OCGS, and ICF. Available at **https://dhsprogram.com/pubs/pdf/FR321/FR321.pdf**.

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Tanzania	
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 Tanzania can be found in Appendix I of this report.

Tanzania's legal system is based on English common law; judicial review of legislative acts is limited to matters of interpretation.

Although the **Constitution of Tanzania (1977)**[1] does not directly reference harmful practices or FGM/C, **Article 9** imposes an obligation on the State to respect and preserve human dignity and rights, to accord men and women equal rights and to eradicate all forms of discrimination. **Article 13** addresses equality further and states that 'all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law' and charges the State to implement procedures that take into account that 'no person shall be subjected to torture or inhuman or degrading punishment or treatment.' **Article 16** also states, 'Every person is entitled to respect and protection of his person' and 'privacy of his own person'.

The main law criminalising FGM/C in Tanzania is the Sexual Offences Special Provisions Act 1998 (*SOSPA*), which amended Section 169 of the Penal Code and prohibits FGM/C on girls under the age of 18 years.[2]

What the Law Covers

Article 21 of the SOSPA does not give a definition of FGM/C; it inserts a new **Section 169A(1)** into the **Penal Code** prohibiting the performance and procurement of FGM/C as follows:

> *21. The Penal Code is hereby amended by inserting immediately after section 169 the following:*
>
> *169A.-(l) Any person who, having the custody, charge or care of any person under eighteen years of age, ill treats, neglects or abandons that person or causes female genital mutilation or procures that person to be assaulted, ill treated, neglected or abandoned in a manner likely to, cause him suffering or injury to health, including injury to, or loss, of sight or hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.*[3]

Therefore, anyone committing FGM/C on a person under 18 years of age who is under their custody, charge or care will be subject to punishment.

Failure to report FGM/C that has taken place or is planned is not directly addressed under this law.

In addition, the **Law of the Child Act 2009**[4] protects persons under the age of 18, and **Article 13(1)** makes it a criminal offence to 'subject a child to torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child.' As a child protection law, **Article 18** also allows the court to issue a care order or an interim care order to remove the child from any harmful situation.

Medicalised FGM/C

The prevalence of medicalised FGM/C appears to be low in Tanzania: approximately 1–2% of women and girls are thought to be cut by a health professional.

The **SOSPA**, under **Section 169A**, does not refer to FGM/C carried out by health professionals or in a medical setting.

Addressing medical malpractice, however, the **Medical, Dental and Allied Health Professionals Act of 2016**[5] defines professional misconduct under **Section 3** as where 'the practitioner has fallen short of standard of conduct expected among members of the profession, and such falling short is considered to be unacceptable or dishonourable to the profession.' Although this law does not address harmful practices such as FGM/C, under **Sections 6 and 7** it gives powers to the Medical Council established under the Act to promote and enforce medical ethics and to 'caution, censure, suspend from practice, erase from the Register, Roll and List after being found guilty and convicted of an offence of professional misconduct' any professional. This includes anyone lowering the esteem or integrity of the profession.

In 1995 The Medical Association of Tanzania published ***Guiding Principles on Medical Ethics and Human Rights in Tanzania (1995)***[6]. This document notes under **Principle 7 (on 'Medical Care for Vulnerable and Disadvantaged Groups')** that 'hazards to the health of the girl child include adverse traditional practices such as genital mutilation' and requires doctors to 'expose the dangers of such practices with the aim of changing such beliefs and attitudes which support them.' Further to this, a reference to physicians' responsibilities to prevent FGM/C is made at **Principle 11 (on 'Health Promotion and Preventive Medicine')**, which states that they should 'seek, through community

participation, to modify adverse social behaviour such as early marriage, female genital mutilation, that have a deleterious effect on women's health.'

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. Tanzania shares borders with other countries where the existence and enforcement of anti-FGM/C laws varies, including Kenya and Uganda. The movement of families across borders to perform FGM/C remains a complex challenge for the campaign to end FGM/C in East Africa, and women and girls living in border communities can be particularly vulnerable.

According to media reports, the movement across the border for FGM/C continues between Tanzania and Kenya. In the Kuria community, for instance, circumcisers reportedly continue to cross from Kenya in the knowledge that the law in Tanzania is not as strict and they may avoid prosecution.[7]

Whilst the police are working with their Kenyan counterparts to tackle this movement (for instance, in the Tarima/Rorya Special Zone)[8], the current national legislation in Tanzania fails to support these efforts by not addressing cross-border FGM/C. **Section 169A** neither explicitly criminalises nor punishes FGM/C carried out on or by Tanzanian citizens in other countries. However, **Article 6(b) of the Tanzanian Penal Code** does state that the jurisdiction of the Courts of Tanganyika for the purposes of the Code extends to 'any offence committed by a citizen of Tanganyika, in any place outside Tanganyika.'[9]

Penalties

The new **Section 169A (2) in the Penal Code**, as stated in **Article 21 of SOSPA**, sets out the following penalties for anyone performing and procuring FGM/C in Tanzania:

- imprisonment for not less than five years and not exceeding 15 years;
- a fine not exceeding 300,000 shillings (approx. US$135); or
- both the fine and imprisonment.

The perpetrator will also be ordered to pay compensation to the victim of the crime of an amount determined by the court.

In addition, any person in violation of **Section 13(1) of the Law of the Child Act 2009** shall under **Section 14** be liable on conviction to a fine not exceeding five million shillings (approx. US$2,200), or to imprisonment for a term not exceeding six months, or both.

Regional FGM/C Law

In 2016 the East Africa Community (which includes Kenya, South Sudan, Tanzania and Uganda) enacted the **East African Community Prohibition of Female Genital Mutilation Act** (*EAC Act*)[10] to promote cooperation in the prosecution of perpetrators of FGM/C through the harmonisation of laws, policies and strategies to end FGM/C across the region. The EAC Act aims to raise awareness about the dangers of FGM/C and provide for the sharing of information, research and data.

The EAC Act defines FGM/C at **Article 2** as 'all procedures that involve partial or total removal of the external female genitalia, or other injury to the female organ for non-medical reasons' and sets out its objectives in **Article 3**, which include **(a)** prohibiting FGM/C as a 'trans-national crime' across member states, **(b)** setting minimum penalties for FGM/C, **(c)** establishing institutions to foster co-operation and **(d)** developing and harmonising policies, laws, strategies and programmes to prosecute offenders, prevent FGM/C and provide services to victims and girls at risk of FGM/C.

The content of the regional law is similar to the Kenyan FGM Act 2011 and sets out the following penalties in **Part II (*Female Genital Mutilation and Related Offences*)**:

- **Article 4(1)** – performance of FGM/C carries a punishment of a minimum of three years' imprisonment;
- **Articles 4(2) & (3)** – 'aggravated' FGM/C carries a punishment of imprisonment for life. 'Aggravated' FGM/C occurs if the procedure results in the death or disability of the victim, or if she is infected with HIV, or if the perpetrator is a parent, guardian or health worker;
- **Article 10 –** anyone using derogatory or abusive language or ridiculing a woman (or her male partner) for undergoing or not undergoing FGM/C will be imprisoned for a minimum of six months;
- **Article 11 –** imprisonment for a minimum of three years or a fine of not less than US$1,000, or both, applies to anyone procuring, aiding or abetting the practice of FGM/C (under **Article 5**), participating in cross-border FGM/C (under **Article 6**), using premises for FGM/C (under **Article 7**), possessing cutting tools or equipment (under **Article 8**) or failing to report FGM/C that has taken place, is taking place or is planned (under **Article 9**).

Further protective measures are set up in Article 12, which states that compensation may be sought from the perpetrator for the victim of FGM/C, and in Article 13, under which, if EAC state members are satisfied that a girl or woman is at risk of undergoing FGM/C, they may issue protection orders.

Part IV (*Miscellaneous Provisions*) of the EAC Act requires member states to adopt comprehensive FGM/C laws and include in their national budgets resources to protect women and girls from FGM/C, provide support services to victims, and undertake public-education and sensitisation programmes on the dangers of FGM/C. A regional database on cross-border FGM/C will be established, supported by exchanges of criminal intelligence, training of key personnel and strengthening of cross-border security. Finally, and of note for Tanzania, the law states at **Article 16**, 'This Act shall take precedence over other Partner State laws to which its provisions relate' (i.e. the penalties may be higher than those that currently exist in member states).

Implementation of the Law

Cases

Enforcement of the anti-FGM/C law in Tanzania has been variable, and there is an absence of comprehensive information on the number of cases brought to court and the outcome of any prosecutions. It has been reported that most police stations do not have sufficient documented records on FGM/C cases and this undermines efforts to eradicate the practice.[11] A lack of evidence

and social pressures on victims often mean cases are withdrawn before reaching court or witnesses fail to appear.

Media reports over the last few years reveal that police in the northern districts of Tanzania, such as the Mara region, have made a number of arrests during the December 'cutting season'. Examples include the following.

- December 2013: police in northern Tanzania broke up an illegal FGM/C ceremony and rounded up 38 people, including 7 cutters, 21 girls and their parents. Some were due to appear in court, but no further case details are available.[12]
- December 2016: eight women were arrested and charged with performing FGM/C on hundreds of girls in the Tarime district.[13]
- December 2016: two women were charged with FGM/C on a 14-year-old girl in the Serengeti district. The women – her grandmother and the cutter – were sentenced to three years in prison and fines of 300,000 shillings each, and were ordered to pay the teenage victim 2 million shillings each as compensation upon completion of their sentences.[14]
- January 2017: a 16-year-old single mother and her great-grandmother were arrested in the Manyara region after the death of a new-born girl following the performance of FGM/C by the older woman on the infant when she was just five days old. No further case details are available.[15]

Relevant Government Authorities and Strategies

The Ministry of Health, Community Development, Gender, Elderly and Children is responsible for issues relating to violence against women and girls in Tanzania. The strategy to tackle harmful practices, such as FGM/C and child marriage, is set out in **The National Plan of Action to End Violence against Women and Children 2017–2022**.[16] It sets out the measures to be taken to end FGM/C, including the development of a communication strategy and advocacy campaigns involving religious and influential leaders and policy-makers 'to promote positive norms and values and address gender inequalities' through community dialogue, data collection and training across ten regions. Regarding the law, the Plan aims to engage police forces and local government authorities to respond sensitively and appropriately to cases of FGM/C.

The Government works in partnership with a range of international and national non-governmental organisations, including the **Tanzania Coalition against FGM**. Members, such as the **Network Against Female Genital Mutilation**, carry out various interventions, including awareness campaigns and training workshops in practising communities. They also operate safe shelters for girls escaping FGM/C and train local police and magistrates to ensure the law is understood and the justice system is accessible to all community members (through the establishment of 'Police Gender Desks' at regional and district levels).[17]

Other strategies to combat FGM/C have included the introduction of courses on the prevention of FGM/C for medicine, health and social-science students across three universities.[18]

Civil Society Observations

Although available data suggests a gradual trend towards lower FGM/C prevalence among younger women in Tanzania in response to government and civil society efforts[19], there remain concerns on the limited effectiveness and implementation of the anti-FGM/C law, including:

- insufficient knowledge of the law;
- inadequate police resources and poor investigation methods;
- reluctance of victims to testify against family and community members;
- bribery of local leaders and members of the judiciary to drop cases;
- threats of violence from the community against police intervention; and
- new techniques being adopted to avoid prosecution, including cutting infant girls.[20]

Civil society also notes that the law is failing to support girls who are at risk of FGM/C in remote rural areas and who continue to run away and seek refuge in shelters. Police and court officials need adequate training to deal with FGM/C cases, and there is a necessity for investigations and prosecutions to be sped up and adequate protection for victims and witnesses to be provided. Civil society also urges for strengthened national laws on cross-border FGM/C to support police efforts and discourage Kenyan cutters from practising in Tanzania to avoid prosecution.

There have also been calls on the Government to amend the law to protect women and girls of all ages, not just those under 18.[21] The law is also structured in a manner that attributes criminal liability to only those who are parents, guardians or have custody over the girl and, as such, means that those closest to the victim are the ones most likely to face criminal charges.[22] This brings a number of challenges in itself and does not address the fact that all perpetrators of FGM/C should be subject to punishment, including traditional practitioners and anyone who assists them.

The national law does not currently criminalise the use of derogatory language against uncut women, although this is addressed in the regional EAC Act. However, as well as protection from abusive language, uncut women and girls (and their families) should also be protected by the law from all forms of intimidation and actions that exclude them from society, including from family and community activities.

Conclusions and Suggestions for Improvement

Conclusions

- **Article 21 of SOSPA**, which inserted **Section 169A into the Penal Code**, criminalises and punishes the performance and procurement of FGM/C on girls under 18 years of age by anyone who has custody, charge or care of the girl. It does not, however, give a clear definition of FGM/C, nor explicitly address medicalised FGM/C, cross-border FGM/C or the failure to report FGM/C.
- Implementation and enforcement of the law remains weak in rural areas of Tanzania, where prevalence remains high, and many cases do not progress through the courts. There is a lack of police resources, adequate training and documented evidence, and knowledge of the law remains poor.
- Cross-border movement between Kenya and Tanzania remains a huge challenge.
- Although many gaps remain in the national legislation, the Tanzanian Government, as a member of the East African Community, can move forward by implementing in full the **EAC Act** enacted in 2016. This takes precedence over the national law and is a much more comprehensive piece of legislation to tackle FGM/C and promote cross-border participation.

Suggestions for Improvement

National Legislation

- As a member of the East African Community, Tanzania should fully implement the EAC Act (which takes precedence over national law) to tackle FGM/C.
- The national law itself could also be strengthened by reflecting the detailed content of the EAC Act and ensuring protection for women and girls of all ages and punishment for all perpetrators, including medical professionals. Those victims who are pressured by society into agreeing to FGM should not be subject to further punishment.
- The national law needs to clearly address cross-border FGM/C and the failure to report FGM/C that has taken place or is planned.
- The law needs to protect uncut women and girls (and their families) from both abusive language and actions that exclude them from society, including from family events and community activities.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

- Adequate monitoring and reporting of FGM/C cases in Tanzania would improve efficiency and inform policy-makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around the law.

- There needs to be a focus on further strengthening partnerships across borders where illegal activity continues to take place.
- Increased involvement of local and religious leaders in education around the law should be encouraged, including education on their responsibilities and the importance of the law in protecting women and girls in their communities.
- Judges and local police need adequate support and training around the law and enforcement procedures. They 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.
- Increased support and protection for victims and witnesses in FGM/C cases is needed.
- Where literacy rates are low, information around the law needs to be made available through different media channels and resources, particularly in remote rural areas, where girls are at greatest risk.
- 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 helplines or safehouses) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

TANZANIA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1976	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1976	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1980	✓ 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	✓ 1984		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1998	✓ 2003		
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 United Republic of Tanzania (1977) *The Constitution of the United Republic of Tanzania of 1977*. Available at http://zlsc.or.tz/documents/tanzania%20constitution-%202009.pdf.
2 The United Republic of Tanzania (1998) *The Sexual Offence Special Provisions Act 1998*. Available at http://tanzania.go.tz/egov_uploads/documents/The_Sexual_Offence_Special_Provisions_Act,_4-1998_en.pdf.
3 *Ibid*., p.14.
4 *The Law of the Child Act* (2009). Available at http://mcdgc.go.tz/data/Law_of_the_Child_Act_2009.pdf.
5 The United Republic of Tanzania (2016) *The Medical, Dental and Allied Health Professionals Act, 2016.* Available at http://parliament.go.tz/polis/uploads/bills/1478781466-A%20BILL-THE%20MEDICAL,%20DENTAL%20AND%20ALLIED%20HEALTH%20PROFESSIONALS%20ACT,%202016%20_FOR%20PRINTING_%20PRINT.pdf.
6 Medical Association of Tanzania (1995) *Guiding Principles on Medical Ethics and Human Rights in Tanzania*. Available at http://www.mat-tz.org/component/content/article/1-latest-news/87-mat-documents.html.
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9 *Tanganyika: the former sovereign state (1961–1964), comprising the mainland part of present-day Tanzania.*
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Cover image: Aleksandar Todorovic (2014) *Masai women with traditional ornaments, review of daily life of local people on February 9, 2014. Tanzania*. Shutterstock photo ID: 187549787.

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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