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FGM... let's end it.

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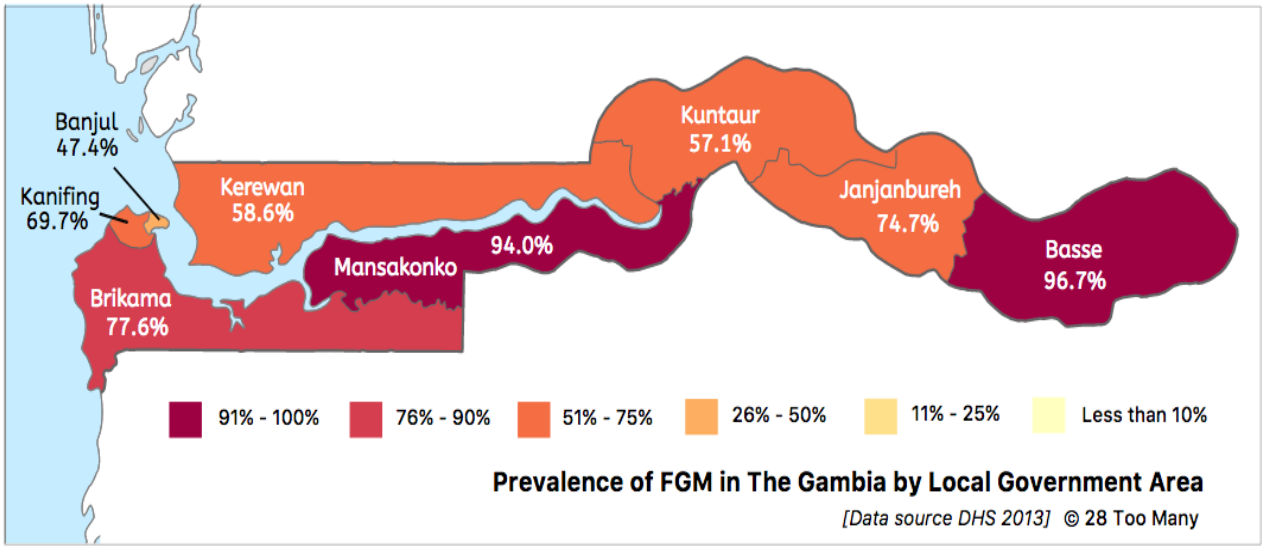
THE GAMBIA:

THE LAW AND FGM/C

September 2018

In The Gambia, the prevalence of FGM/C in women aged 15–49 is 74.9%.

Basse, the most rural region of the country, has the highest prevalence (96.7% of women aged 15–49); Banjul, the most urbanised area, has the lowest prevalence (47.4%).



- 54.8% of women aged 15–49 were cut before the age of five; 28.1% between the ages of five and nine.
- 'Cut, flesh removed' is the most common type of FGM/C practised.
- 95.7% of FGM/C is carried out by 'traditional circumcisers'.
- 65% of women who have heard of FGM/C think the practice should continue.

Source of data: The Gambia Bureau of Statistics (GBOS) and ICF International (2014) *The Gambia Demographic and Health Survey 2013*. Banjul, The Gambia, and Rockville, Maryland, USA: GBOS and ICF International. Available at **http://dhsprogram.com/pubs/pdf/FR289/FR289.pdf**.

*For further information on FGM/C in The Gambia, see **https://www.fgmcri.org/country/the-gambia/**.*

Domestic Legal Framework

Overview of Domestic Legal Framework in The Gambia	
The Constitution explicitly prohibits:	
X	Violence against women and girls
X	Harmful practices
X	Female genital mutilation/cutting (FGM/C)
National legislation:	
✓	Provides a clear definition of FGM/C
✓	Criminalises the performance of FGM/C
✓	Criminalises the procurement, arrangement and/or assistance of acts of FGM/C
✓	Criminalises the failure to report incidents of FGM/C
X*	Criminalises the participation of medical professionals in acts of FGM/C
X	Criminalises the practice of cross-border FGM/C
✓	***Government has a strategy in place to end FGM/C***

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

What is the Law Against FGM/C?

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

The Gambia's legal system is a mixture of English common law, Islamic law, and customary law.

The Constitution of Gambia (1996)[1] does not explicitly reference harmful practices or FGM/C. **Article 21** states that no person shall be subject to torture or inhuman, degrading punishment or other treatment. **Article 28 (Rights of Women)** assures equality and **Article 29 (Rights of Children)** commits to legislation enacted in the best interest of children.

The main law criminalising FGM/C in The Gambia is the Women's (Amendment) Act 2015, which introduced Sections 32A and 32B into the Women's Act of 2010.

Other laws relevant to the protection of women and girls against FGM/C in The Gambia include the **Criminal Code** and the **Children's Act 2005**.

What the Law Covers

The original **Women's Act 2010** did not refer to FGM/C or female circumcision; more generally, it placed an obligation on government to protect women from violence, ensure equality and protect women's rights, including the right to dignity and integrity of their persons.[2]

The Women's (Amendment) Act 2015[3] addressed the issue of harmful practices for the first time in The Gambia by introducing **Section 32A (Prohibition of female circumcision)** and **Section 32B (Accomplices to female circumcision)**, which criminalise the practice as follows:

- **Section 32A(1)** – 'female circumcision' is prohibited;
- **Section 32A (2)** – a person who engages in female circumcision commits an offence and is subject to punishment;
- **Section 32A (3)** – female circumcision includes:
  - **(a)** the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);
  - **(b)** the partial or total excision of the labia minora;
  - **(c)** the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;
  - **(d)** the stitching with thorns, straw, thread or by other means in order to connect the excision of the labia and the cutting of the vagina and the introduction of corrosive substances or herbs into the vagina for the purpose of narrowing it;
  - **(e)** symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or
  - **(f)** engaging in any form of female genital mutilation or cutting.
- **Section 32B(1)** – a person who requests, incites or promotes female circumcision by providing tools or by any other means commits an offence and is subject to punishment;
- **Section 32B(2)** – a person who knows that female circumcision is about to take place or has taken place and fails, without good cause, to warn or inform, as the case may be, the proper authorities promptly, commits an offence and is subject to punishment.

In addition, the following laws protect children from violence and harmful practices.

- **Chapter XXII (Offences endangering life and health) of the Gambian Criminal Code 1933**[4] criminalises, under **Section 210**, any person over 16 years of age with responsibility for a child under the age of 14 who is found to have treated or exposed a child to unnecessary suffering or injury. **Section 212** further criminalises anyone who causes grievous harm to another person, or who resists or prevents the arrest of another who has caused grievous harm.

- **Section 12 (Social, cultural and religious practices) of the Children's Act 2005**[5] states at **(1)**: 'Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being', and, specifically regarding FGM/C, sets out at **(3):** 'Genital mutilation or the circumcision of female children is prohibited'. Under this law, genital mutilation is defined as 'the partial or complete removal of any part of the genitals' and female circumcision as 'the removal of the clitoris by any means'. **The Children's (Amendment) Act** also followed in 2016, which outlawed child marriage in The Gambia.[6]

Medicalised FGM/C

Medicalised FGM/C is not widespread in The Gambia: less than 1% of women are cut by a health professional.[7] Almost all FGM/C continues to be carried out by traditional circumcisers.

The main law in The Gambia does not directly criminalise medicalised FGM/C. The wide scope of the **Women's (Amendment) Act 2015** does appear to apply universally and should therefore punish any health professional involved in the practice.

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. The Gambia borders Senegal, where prevalence remains as high as 77.8% in some southern regions, despite national legislation prohibiting the practice.

The movement of families and circumcisers across borders to perform FGM/C and avoid prosecution remains a problem across West Africa, and girls living in border communities are particularly vulnerable. **The Women's (Amendment) Act 2015** does not, however, specifically address this challenge and does not criminalise acts of cross-border FGM/C.

Penalties

The Women's (Amendment) Act 2015 establishes the following criminal penalties for violation:

- **Section 32A(2)(a)** – anyone who engages in female circumcision commits an offence and is liable on conviction to imprisonment for a term of three years or a fine of 50,000 Dalasi (US$1,060[8]), or both; and
- **Section 32A(2)(b)** – where female circumcision causes death, the punishment shall be life imprisonment.
- **Section 32B(1)** – anyone who requests, incites or promotes female circumcision by providing tools or by any other means commits an offence and is liable on conviction to imprisonment for a term of three years or a fine of 50,000 Dalasi (US$1,060[9]), or both.
- **Section 32B(2)** – failure to report female circumcision is an offence punishable on conviction by a fine of 10,000 Dalasi (US$212[10]).

In addition, **Section 210 of the Criminal Code 1933** sets out a penalty of up to two years' imprisonment, a fine or both for anyone treating or exposing a child to unnecessary suffering or injury, and **Section 212** sets out a penalty of life imprisonment for anyone causing grievous harm to another.

Implementation of the Law

Cases

Few prosecutions have reportedly taken place in The Gambia since the introduction of the **Women's (Amendment) Act 2015**. Case details are limited and information about whether any sentences were followed through is not widely available.

The first widely reported case in the Banjul Magistrate Court concerned the death of a five-month-old girl resulting from FGM/C in 2016. The accused included the girls' mother, grandmother and the cutter. Further details of whether charges were followed through are not available.[11]

The most recent report published by the UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation (*UNJP*) listed two arrests and cases brought to court during 2016.[12]

Relevant Government Authorities and Strategies

The Ministry for Women's Affairs is the government department responsible for giving guidance and policy proposals on issues affecting women in The Gambia. **The National Women's Council** and the **Women's Bureau**, as part of the Ministry, lobby for the rights of women and enforcement of the Women's Act. Other relevant authorities include the **Ministries of Health**, of **Education** and of **Justice**, the **Department of Social Welfare** and the **National Youth Council**.

The National Steering Committee on FGM/C (established in 2009) is responsible for coordinating work to end the practice across The Gambia, and a **National Plan of Action on FGM/C** was in place for 2013–2017.

In 2009, The Gambia also became part of the UNJP, the activities of which have included sensitisation and community-abandonment programmes, support services for women and girls affected by FGM/C, and training for health workers, traditional and religious leaders and law enforcement agents.

Further policy instruments put in place in The Gambia have also included a **National Plan of Action Against Gender Based Violence (2013–2017)** and **The National Gender Empowerment Policy (2010–2020)**.

Civil Society Observations

The Gambia has a wide network of non-governmental organisations (*NGOs*), including **The Gambia Committee on Harmful Traditional Practices Affecting the Health of Women and Children (*GAMCOTRAP*)**[13], working to end FGM/C and partnering with the UNJP, government ministries and the National Steering Committee. NGOs and civil society have made attempts to disseminate the content of the anti-FGM/C law since its passing through various sensitisation programmes and translations into local languages.

While it initially appeared that the new law opened up discussions in many communities where previously the subject was strictly taboo, the banning of FGM/C has also been met with strong resistance from those who believe it should continue in the name of tradition and religion. Activists widely welcomed the introduction of the Women's (Amendment) Act 2015 by former president Yahya Jammeh, but with a change of leadership in 2016 supporters of FGM/C claimed that the new law would no longer be applicable:

> *'Before the ban, all my three daughters were circumcised. By the time I had this one, the ban was in force and no-one was doing it here,' said one mother on the outskirts of the capital Banjul. 'Now that [Jammeh] left we are free to do it because Barrow does not ban it and he is going to remove the law.'*[14]

Activists are therefore concerned that such attitudes remain an ongoing challenge to implementing the law. Although the new president, Adama Barrow, as well as various government representatives, have indicated that the anti-FGM/C legislation remains in place, activists continue to urge for clarification and a categorical public statement in support of the content of the law.[15]

Civil society also notes the ongoing challenge of cross-border FGM/C between The Gambia and Senegal. At a cross-border meeting in late 2017 in the Upper River region, organised by the Gambian Women's Bureau and supported by the UNJP, security personnel were urged to work together within the border villages of the two countries to tackle the smuggling of girls across borders for FGM/C.[16]

Specifically regarding education on FGM/C legislation, the Girl Generation has worked with NGO partners in The Gambia to disseminate information on the law and implement training for law-enforcement officers.[17] It urges the State to develop guidelines on how government ministries and the judiciary should address cases of FGM/C by clarifying responsibilities of ministries and agencies and ensuring referral procedures and protection measures are clearly set out.[18]

Conclusions and Suggestions for Improvement

Conclusions

- The introduction of new legislation by the previous Government was a significant step forward in the work to end FGM/C in The Gambia. **Sections 32A and 32B of the Women's (Amendment) Act 2015** criminalise and set out the punishments for performing, procuring and aiding and abetting the practice of FGM/C. The law also addresses the failure to report the practice.
- The current law does not directly criminalise and punish FGM/C performed by medical professionals, nor does it criminalise cross-border FGM/C, which remains a challenge in some communities.
- There has been limited enforcement of the law to date and ongoing pressure from practising communities to continue performing FGM/C. Changes in the political administration have added an additional layer of uncertainty around the commitment of the new president to the anti-FGM/C law.

Suggestions for Improvement

National Legislation

- The content and meaning of the anti-FGM/C law needs to be publicly endorsed and promoted on an ongoing basis by President Barrow and all leading government authorities to demonstrate its importance in protecting women and girls across The Gambia.
- The law needs to urgently address movement across national borders and criminalise and punish the performance and procurement of all cross-border FGM/C.
- The law could be further strengthened by specifically criminalising any FGM/C performed or assisted by members of the medical profession.
- Laws should continue to be made accessible and easy to understand in all local languages.

Implementation of the Law

- Adequate monitoring and reporting of FGM/C cases in The Gambia 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.
- It would be beneficial to focus on further strengthening partnerships across borders where prevalence remains high and illegal activity continues.
- 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 (including the Supreme Islamic Council) 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.
- 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 essential.
- Where literacy rates are low, information around the law needs to be made available through different media channels and resources.
- 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.
- 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 telephone helplines and safe spaces) should be put in place for girls at risk of FGM/C.

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Appendix I: International and Regional Treaties

THE GAMBIA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1979	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1978	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1980	✓ 1993		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)	✓ 1985			
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1983	✓ 1983		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)			✓ 2000	
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2003	✓ 2005		

'**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.

1 *The Gambia's Constitution of 1996 with Amendments through 2004* (1996; updated 2004) Available at https://www.constituteproject.org/constitution/Gambia_2004.pdf?lang=en.

2 The Republic of The Gambia (2010) *Women's Act, 2010*. Available at http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90619/115464/F-1335047347/GMB90619.pdf.

3 World Bank (2018) 'Annex to Compendium: Gambian Legislation' in *Compendium of International and National Legal Frameworks on Female Genital Mutilation, February 2018*, p.143. Available at https://openknowledge.worldbank.org/bitstream/handle/10986/29293/123108.pdf?sequence=5&isAllowed=y.

4 *The Criminal Code* [extract] (undated) Available at www.ilo.org/dyn/natlex/docs/SERIAL/75289/107490/F973061365/GMB75289%20pp%201284_1316.pdf.

5 *Children's Act 38 of 2005* (2005) Available at http://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf.
6 UNICEF (2016) 'A big win for girls on the banning of child marriage in The Gambia', *Gambia*, 27 July. Available at https://www.unicef.org/gambia/media_10505.html.
7 The Gambia Bureau of Statistics (GBOS) and ICF International (2014) *The Gambia Demographic and Health Survey 2013*, p.223. Banjul, The Gambia, and Rockville, Maryland, USA: GBOS and ICF International. Available at http://dhsprogram.com/pubs/pdf/FR289/FR289.pdf.
8 *Currency conversion as at 19 June 2018 (https://www.xe.com/currencyconverter/).*
9 *Currency conversion as at 19 June 2018 (https://www.xe.com/currencyconverter/).*
10 *Currency conversion as at 19 June 2018 (https://www.xe.com/currencyconverter/).*
11 The Gambia Committee on Traditional Practices affecting the Health of Women and Children (2016) 'News Report: New Legislation on FGM Applied in Gambian Court', *Women's UN Report Network*, 21 March. Available at http://www.wunrn.com/2016/03/gambia-new-legislation-on-fgm-applied-in-gambian-court/.
12 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (2017) 2016 *Annual Report of the UNFPA-UNICEF Joint Programme on FGM/C: Accelerating Change*, p.38. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
13 Lamin S.M. Jawo (2017) 'Gambia: Gamcotrap Intensifies Community Outreach On FGM Laws in Nbr', *The Daily Observer (Banjul)*, 5 June. Available at http://allafrica.com/stories/201706050881.html.
14 Nellie Peyton and Lamin Jahateh (2018) 'With newfound democracy, Gambia faces resurgence in FGM and child marriage', *Reuters*, 23 January. Available at https://www.reuters.com/article/us-gambia-women-fgm/with-newfound-democracy-gambia-faces-resurgence-in-fgm-and-child-marriage-idUSKBN1FC0XA.
15 Mustapha Darboe (2017) 'Barrow urged to clear air on FGM', *The Standard*, 21 June. Available at http://standard.gm/site/2017/06/21/barrow-urged-clear-air-fgm/.
16 Abdoulie Nyockeh (2017) 'Gambia, Senegal Need to Unite to End FGM/C', *The Point (Banjul)*, 19 October. Available at http://allafrica.com/stories/201710190940.html.
17 Abdoulie Nyockeh (2017) 'Law enforcement agencies trains on Anti-FGM laws', *The Point*, 23 October. Available at http://thepoint.gm/africa/gambia/article/law-enforcement-agencies-trains-on-anti-fgm-laws.
18 Musu Bakoto Sawo (2017) 'Is the ban on FGM and child marriage in the Gambia the end of these practices?', *The Girl Generation*, 4 January. Available at https://www.thegirlgeneration.org/blog/ban-fgm-and-child-marriage-gambia-end-these-practices.

Cover image: Katie Sh (2017) *FARAFENNI, GAMBIA – JANUARY, 11, 2017: Unidentified three Gambian girls with books.* Shutterstock photo ID: 560009407.

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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