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FGM... let's end it.

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UGANDA:

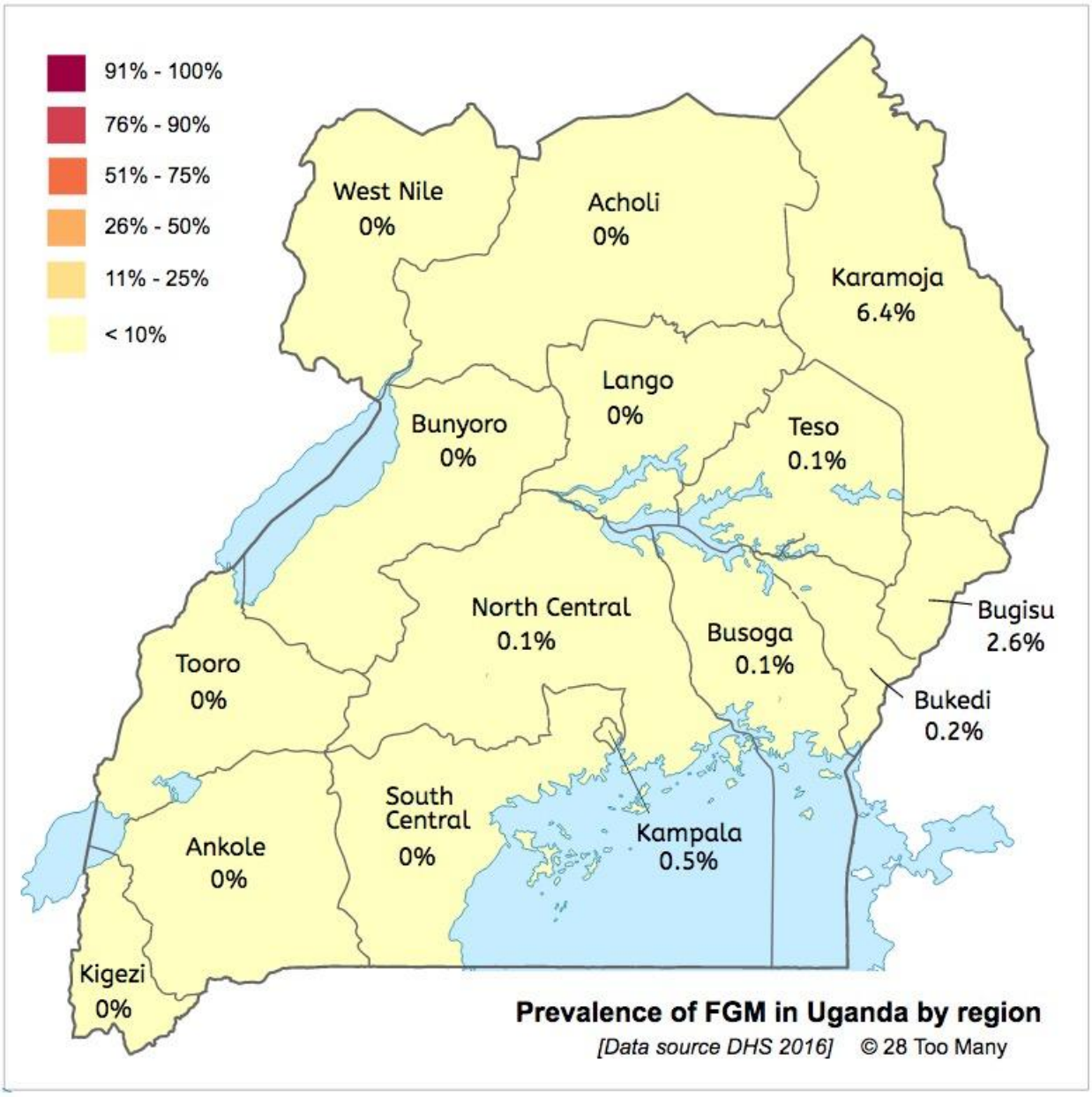
THE LAW AND FGM/C

May 2018

In Uganda, the prevalence of FGM/C in women aged 15–49 is 0.3%.

It is mostly practised by the Sabiny and the Pokot.

The highest prevalence is in the Karamoja region in the north-east.



- Girls are typically cut at age 10 and older.
- The Sabiny primarily practise Type II; the Pokot, Type III.
- FGM/C is performed by older women called 'surgeons', but they have no medical training.
- More than 80% of Ugandan women think the practice should be stopped.

Source of data: Uganda Bureau of Statistics (UBOS) and ICF (2018) *Uganda Demographic and Health Survey 2016*, p.162. Kampala, Uganda and Rockville, Maryland, USA: UBOS and ICF. Available at **https://dhsprogram.com/pubs/pdf/FR333/FR333.pdf**.

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Uganda	
The Constitution explicitly prohibits:	
✓	Violence against women and girls
✓	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
✓	Criminalises the participation of medical professionals in acts of FGM/C
✓	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 Uganda can be found in Appendix I of this report.

Uganda has a mixed legal system of English common law and customary law.[1]

The **Constitution of the Republic of Uganda (1995)**[2] protects women and their rights under **Article 33** and specifically prohibits under **33(6)** 'Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status . . .' Further, **Article 44** states that no person shall be subjected to any form of 'torture and cruel, inhuman or degrading treatment'.

The main law criminalising FGM/C in Uganda is the Prohibition of Female Genital Mutilation Act 2010 (the *FGM Act 2010*).[3]

In 2010, just prior to the introduction of the FGM Act 2010, the organisation Law and Advocacy for Women in Uganda filed a petition in the Constitutional Court[4] seeking declarations that the custom and practice of FGM/C is inconsistent with the Constitution of Uganda (1995) and violates various articles therein and, as such, should be declared unconstitutional. The petition was successful and uncontested. The responsibility of the judiciary in upholding the law and eliminating FGM/C formed part of the judgement and concluded, 'The judiciary being part of the State machinery is enjoined to address this issue aggressively whenever it comes before court by involving innovative and progressive interpretation of the laws. Failure to do so would be tantamount to a breach by the State of its international obligations.'

What the Law Covers

The **FGM Act 2010** is a comprehensive piece of legislation that sets out the offences and punishments for FGM/C in Uganda. It defines 'FGM' as 'all procedures involving partial or total removal of the external female genitalia for non-therapeutic purposes.'

Part II (*The Offence of Female Genital Mutilation*) of the FGM Act 2010 outlines the criminal offences related to the following aspects of FGM/C:

- **Section 2** – carrying out FGM/C;
- **Section 3** – aggravated FGM/C, whereby **(a)** the offence results in death of the victim, **(b)** the offender is a parent, guardian or has authority over the victim, **(c)** the victim suffers a disability, **(d)** the victim is infected with HIV as a result of the FGM/C, or **(e)** FGM/C is carried out by a health worker;
- **Section 4** – carrying out FGM/C on oneself;
- **Section 5** – attempts to carry out FGM/C;
- **Section 6** – procuring, aiding or abetting FGM/C; and
- **Section 7** – participating in any event that leads to FGM/C.

Part II also states that neither consent (under **Section 9**) nor any culture, custom, ritual, tradition or religion (under **Section 10**) is a defence to the crime of FGM/C in Uganda. **Sections 11** and **12** provide protection to women and girls who have not undergone FGM/C, together with their husbands, parents or relatives, from discrimination when engaging and participating in any economic, social, political or other activities in the community.

Part III (*Court Orders and Jurisdiction*) grants a magistrate's court the authority, under **Section 14**, to issue protective orders if they are satisfied that a girl or woman is likely to undergo FGM/C. If the application is in respect of a child, the Family and Children Court has authority to issue appropriate orders for the child as it deems necessary.

Part IV (*Duty to Report*) sets out the duty to report FGM/C to the police or another authority for appropriate action. **Section 16** requires any person to report any awareness of FGM/C, whether the procedure is in progress, has occurred in the past or is planned. It is illegal not to report such knowledge to the police or another authority within 24 hours. It is also a criminal offence to threaten, harm or inhibit anyone who is reporting or planning to report FGM/C.

The following Ugandan laws also address harm caused by the practice of FGM/C.

- **Section 6 of the Children Act 1997 (as amended by the Children (Amendment) Act 2016) (amending Section 7 of 1997 Act)**[5] prohibits and punishes harmful customary or cultural practices as follows: 'A person shall not expose a child to any customary or cultural practice that is harmful to his or her health, wellbeing, education or social-economic development.'
- The **Penal Code Act 1950** (the *Penal Code*)[6] also provides under **Section 219** that any person who unlawfully does grievous harm to another commits a serious crime subject to punishment.

Medicalised FGM/C

Data readily available for Uganda does not give any indication of the number of women or girls who may have been subjected to FGM/C by a health worker.

Section 3 (*Aggravated female genital mutilation*) of the FGM Act 2010 states that, if FGM/C is carried out by a 'health worker', it is classified as 'aggravated FGM' and the perpetrator is liable on conviction to life imprisonment. 'Health worker' is defined as a person qualified in the promotion of health, the prevention of disease and the care of the sick and who is registered and enrolled under the Medical and Dental Practitioners Act[7], the Nurses and Midwives Act[8] or the Allied Health Professionals Act[9].

The lack of data on medicalisation could indicate that the classification of FGM/C performed by a health worker as 'aggravated' has prevented medicalised FGM/C from becoming prevalent in Uganda. However, the lack of information could also indicate under-reporting for a variety of reasons, including the perception that the medicalised form of FGM/C is 'safe' or that the repercussions are too severe for practitioners or individuals to come forward and report.

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. Uganda shares borders with other countries where the existence and enforcement of laws varies widely, including Kenya, South Sudan and Tanzania. 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 girls living in border communities, such as the Pokot and Sabiny communities on the eastern border with Kenya, are particularly vulnerable.

Recent reports have suggested that uncut, married women in Uganda are under increasing pressure to undergo FGM/C from their husbands and society because they are not allowed to participate in community life, such as serving elders, collecting food and attending traditional meetings, despite the protections set forth in **Section 12 (*Protection of persons whose wives, daughters or relatives have not undergone female genital mutilation*) of the FGM Act 2010**. The strength of the law in Uganda may therefore be undermined by women crossing, or being taken across, the border into Kenya to be cut in secret.[10]

Section 15 (*Extra-territorial jurisdiction*) of the FGM Act 2010 criminalises cross-border FGM/C by stating that the offences and punishments set out in the act apply equally when 'committed outside Uganda where the girl or woman upon whom the offence is committed is ordinarily resident in Uganda.' Therefore, Ugandan nationals who are members of these border communities and who cross the national boundary for FGM/C are subject to punishment under the FGM Act 2010.

Penalties

The penalties for offences set out under **Part II of the FGM Act 2010** reflect both the perpetrator of the crime and the degree of harm caused:

- **Section 2** – a person who performs FGM/C is liable on conviction to imprisonment of up to ten years;
- **Section 3** – a person committing aggravated FGM/C is liable on conviction to life imprisonment;
- **Section 4** – carrying out FGM/C on oneself carries a punishment of up to ten years in prison;
- **Sections 5**, **6** and **7** – anyone who attempts to carry out, procure, aid or abet FGM/C, or participates in any event leading to FGM/C is liable on conviction to imprisonment of up to five years;
- **Section 8** – where the offender who attempts, procures, aids or participates in any event leading to FGM/C is the parent, guardian, husband or a person having authority or control over the victim, the offender is liable on conviction to imprisonment of up to eight years; and
- **Sections 11** and **12** – any person who discriminates against a woman or girl who has not undergone FGM/C or their husbands, parents or relatives is liable on conviction to imprisonment of up to five years.

Following conviction under the FGM Act 2010, under **Section 13** the court may also order the offender to pay compensation to the victim of an amount considered by the court as just, having regard to the injuries suffered by the victim and their medical and other expenses.

Anyone failing to report FGM/C or threatening, harming or in any way inhibiting someone who is reporting or planning to report FGM/C under **Section 16** is liable on conviction to a fine not exceeding twelve currency points[11] (approximately US$65.00)[12] or imprisonment of up to six months, or both.

Anyone found guilty of exposing a child to any customary or cultural practice under **Section 7 of the Children Act 1997** is liable on conviction to imprisonment of up to seven years or a fine not exceeding 168 currency points[13] (approximately US$910)[14], or both.

Any person who unlawfully does grievous harm to another under **Section 219 of The Penal Code Act 1950** is liable to imprisonment for seven years.

Regional FGM/C Law

In 2016 the East Africa Community (including Kenya, South Sudan, Tanzania and Uganda) enacted the **East African Community Prohibition of Female Genital Mutilation Act** (*EAC Act*)[15] to promote cooperation in the prosecution of perpetrators of FGM/C through 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' 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 regional law has content similar to the FGM Act 2010 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; and
- **Article 11** – Imprisonment for a minimum of three years or a fine of not less than US$1000, 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 and supported by exchange of criminal intelligence, training of key personnel and strengthening of cross-border security. Finally, the law states at **Article 16** that '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

While some arrests have been made and cases brought to court in Uganda since the FGM Act 2010 was introduced, generally, implementation of the national law and its enforcement remain a challenge. The practice continues in very remote rural areas where support for the practice remains strong, and FGM/C has increasingly been performed in secret.

Media reports over the last few years suggest there have been many arrests, but few actual prosecutions in Uganda. Isolated cases have been reported, such as the following from 2014.

- Two women were charged under the FGM Act 2010 for procuring and participating in the practice on seven girls in Moroto District. They were sentenced to between three and ten years in prison.[16]
- Five men and women were sentenced to four years in prison for performing, procuring and aiding FGM/C in Kapchorwa District.[17]

It is not known if there were appeals in these cases or whether these sentences were followed through.

The most recent report published by the UNFPA-UNICEF Joint Programme listed 32 reported cases and six arrests, but none brought to court in Uganda during 2016.[18]

Relevant Government Authorities and Strategies

Work to end FGM/C in Uganda is overseen by the **Ministry of Gender, Labour and Social Development**. Together with the Ministry of Health and the National Population Council, it works in cooperation with national law enforcement, justice bodies and district governments and receives policy and programme advice from the **National FGM Alliance**.[19] Strategies to tackle gender-based violence, including FGM/C, are set out in **The National Policy on Elimination of Gender Based Violence in Uganda (2016)** and its **National Action Plan 2016–2021**.[20]

In 2009, Uganda also joined the list of countries under the **UNFPA-UNICEF Joint Programme to end FGM**. Supported programmes include high-level engagement in parliament and among church leaders around FGM/C and the enforcement of the law, sensitisation campaigns through the media, cross-border advocacy meetings and targeted interventions in schools.

Civil Society Observations

Although recent data has suggested a decline in FGM/C prevalence in Uganda following efforts by the Government and development partners, prevalence among practising communities in the eastern and north-eastern regions remains high. Among members of civil society, concerns remain about the limited effectiveness and implementation of the Ugandan law in these areas. Ongoing challenges include:

- police access to remote communities where the continuation of FGM/C is fiercely protected by traditional groups;
- a high turnover of police officers and the need for ongoing high-quality training;
- poor awareness of the content and meaning of the law in practising communities;
- women and girls being cut in secret in hidden and remote locations to avoid prosecution;
- difficulties in collecting evidence, including medical, to support prosecutions;
- an increasing number of girls running away from home to avoid FGM/C and seeking shelter and protection; and
- traditional cutters continuing their trade despite the law, as it is their primary source of income.

The uncontrolled movement across national borders for FGM/C also remains a significant challenge undermining efforts to end the practice in the region. Observations of Ugandans crossing into Kenya with no fear of arrest continue, as the Kenyan ban on FGM/C is allegedly not enforced in these areas.[21]

Conclusions and Suggestions for Improvement

Conclusions

- The FGM Act 2010 in Uganda is a comprehensive law against FGM/C. It clearly defines 'FGM' and criminalises the performance, procurement, attempting, aiding and abetting of all forms of the practice. Both medicalised FGM/C and cross-border FGM/C are criminalised and punished under this legislation.
- The FGM Act 2010 also addresses the failure to report FGM/C and protects uncut women and their families from discrimination. Penalties reflect both the perpetrator and the severity of the crime.
- The FGM Act 2010 has not been strictly enforced in rural areas where prevalence remains highest, and few successful cases have been through the courts since the legislation was introduced.
- The uncontrolled movement across national borders to avoid prosecution remains a significant challenge.

Suggestions for Improvement

National Legislation

- As a member of the East African Community, Uganda should fully implement the detailed legislation incorporated in the EAC Act to tackle cross-border FGM/C and facilitate regional cooperation.

- The national law itself should be strengthened by reflecting in full the detailed content of the EAC Act. It should also ensure that victims who are pressured by society into agreeing to FGM/C are not subject to further punishment.

- 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 Uganda would improve efficiency and inform policy-makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- Improved procedures for collecting evidence in FGM/C cases would also contribute to successful prosecutions.
- Anti-FGM/C programmes, particularly those focussed in high-prevalence areas, should disseminate clear, easy-to-understand and accurate information around the law.
- It would be beneficial to focus on further strengthening partnerships across borders, as set out under the EAC Act, where illegal activity continues to take place.
- It would be beneficial to increase 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.
- Judges and local law enforcers need further support and training around the law and 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.
- Mandatory reporting and recording 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 safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

UGANDA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1995	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1987	
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*)			✓ 1986	
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1986	✓ 1986		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1992	✓ 1994		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2003	✓ 2010		

'**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.

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1 *Note: customary law is in effect only when it does not conflict with statutory law.*

2 *Constitution of the Republic of Uganda* (1995) Available at http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf.

3 *The Prohibition of Female Genital Mutilation Act* (2010) Available at http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Uganda/uganda_fgm_2010_en.pdf.

4 *Law & Advocacy for women in Uganda v. Attorney General (Constitutional Petition No. 8 of 2007)* (2010) UGCC 4, Uganda: Court of Appeal/Constitutional Court, 28 July 2010. Available at http://www.refworld.org/cases,UGA_CC,4cf3a53f2.html.

5 The Republic of Uganda (2016) *The Children (Amendment Act), 2016*. Available at https://www.bettercarenetwork.org/sites/default/files/Children%20%28Amendment%29%20Act%202016.pdf.

6 *The Penal Code Act* (1950) Available at http://www.icla.up.ac.za/images/un/use-of-force/africa/Uganda/Penal%20Code%20Act%20Uganda%201950.pdf.

7 *The Medical and Dental Practitioners Act* (undated) Available at https://www.cehurd.org/wp-content/uploads/downloads/2011/10/medical-and-dental-practioners-act-Chapter_272.pdf.
8 *The Nurses and Midwives Act* (undated) Available at https://www.cehurd.org/wp-content/uploads/downloads/2011/10/nurses-and-midwives-act-Chapter_274.pdf.
9 *The Allied Health Professionals Act* (undated) Available at http://www.ahpc.ug/Allied%20Health%20Professionals%20Act,%20Cap%20268.pdf.
10 David Mafabi (2018) 'Married Women Now Undergoing Circumcision', *Daily Monitor*, 19 January. Available at http://www.monitor.co.ug/News/National/Married-women-now-undergoing-circumcision-FGM/688334-4269400-k8b075/index.html.
11 *One currency point is the equivalent of 20,000 Uganda Shillings.*
12 *Value date of 30 March 2018, Bloomberg Generic Composite rate UGX:USD.*
13 *One currency point is act as the equivalent of 20,000 Uganda Shillings.*
14 *Value date of 30 March 2018, Bloomberg Generic Composite rate UGX:USD.*
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19 *Ibid*.
20 Ministry of Gender, Labor and Social Development (2017) *16 Days of Activism Campaign Against Gender Based Violence*. Available at http://www.faweuganda.org/index.php/cedaw-project/367-16-days-of-activism-campaign-against-gender-based-violence.
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Cover image: Papa Bravo (2016) *Portrait of unidentified children belonging to the Ruhija tribe of Uganda on June 5, 2016 in Ruhija, S. Uganda. Ruhija is close-to-last living mountain gorillas habitat*. Shutterstock photo ID: 569468893.

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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