

THE LAW AND FGC

Brunei

November 2024



About Orchid Project

Orchid Project is a UK- and Kenya-based non-governmental organisation (NGO) catalysing the global movement to end female genital cutting (FGC). Its strategy for 2023 to 2028 focuses on three objectives:

1. to undertake research, generate evidence and curate knowledge to better equip those working to end FGC;
2. to facilitate capacity-strengthening of partners, through learning and knowledge-sharing, to improve programme designs and impacts for the movement to end FGC; and
3. to steer global and regional policies, actions and funding towards ending FGC.

Orchid Project's aim to expedite the building of a knowledge base for researchers and activists is being fulfilled in the **FGM/C Research Initiative**.

About ARROW

The Asian-Pacific Resource and Research Centre for Women is a non-profit women's NGO with a consultative status with the Economic and Social Council of the United Nations and an observer status with the United Nations Framework Convention on Climate Change. Based in Kuala Lumpur, Malaysia, ARROW has been working since 1993 to champion women and young people's sexual and reproductive rights. ARROW occupies a strategic niche in the Asia-Pacific region and is a Global-South-based, feminist and women-led organisation that focuses on the equality, gender, health and human rights of women.

About Asia Network to End FGM/C

The Asia Network to End Female Genital Mutilation/Cutting (FGM/C) is a group of civil-society actors, led by Orchid Project and ARROW, working across Asia to end all forms of FGM/C. It does this by connecting, collaborating and supporting Asian actors and survivors to advocate for an end to this harmful practice.

Overview of National Legal Framework

X	Specific law/provision criminalising FGC
X	Provides a definition of FGM/C
✓	Criminalises the performance of FGC
✓	Criminalises the procurement, arrangement and/or assistance of acts of FGC
X	Obligation for medical and certain other professionals to report incidents of FGC to the authorities
X	Criminalises the participation of medical professionals in acts of FGC

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Orchid Project seeks updates on the data and invites comments on the content and suggestions as to how these reports can be improved.

Introduction

Brunei Darussalam is a small country in South East Asia of less than 6,000 square kilometres. It has an estimated population of half a million. It is an absolute monarchy – which means the Sultan of Brunei is both head of state and head of government (prime minister of Brunei) – with a legislative council comprising 36 appointed members. It has a dual legal system of common law and Sharia law.

A Note on Terminology

Sunat, meaning ‘female circumcision’, rather than ‘female genital mutilation’ (*FGM*), is the term most commonly used by Malay Muslims, as they do not regard the practice to be ‘mutilation’. ‘Female genital cutting’ (*FGC*) and ‘*sunat*’ are therefore used interchangeably in this Law Report, according to context.

‘The region’ is used when referring to similarities in the practice across Malaysia, Singapore and Thailand.

Female genital cutting is classified into four major types by the World Health Organization:

Type 1: This is the partial or total removal of the clitoral glans (the external and visible part of the clitoris, which is a sensitive part of the female genitals), and/or the prepuce/clitoral hood (the fold of skin surrounding the clitoral glans).

Type 2: This is the partial or total removal of the clitoral glans and the labia minora (the inner folds of the vulva), with or without removal of the labia majora (the outer folds of skin of the vulva).

Type 3: Also known as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoral prepuce/clitoral hood and glans.

Type 4: This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g., pricking, piercing, incising, scraping and cauterizing the genital area.¹

Prevalence of FGC

There are no official statistical data to indicate the prevalence of FGC in Brunei Darussalam, as no health or other surveys have included questions about FGC. There is, however, anecdotal evidence of its occurrence in media stories and a reference to it in a statement presented to the United Nations by the Government.

In 2022, 73.8% of Brunei's population were Malay Muslims.² Surveys in **Malaysia** have suggested the prevalence of FGC among Malay Muslims in that country to be between 86% and 99.3%.³

Similarly, surveys among Malays in Malaysia, Singapore and Thailand found that most girls are cut before the age of one year and many are cut before they are six months old, although FGC may occur up to the age of ten.⁴

In the absence of Brunei-specific data, it is not known what type(s) of FGC is practised in the country. Among Malay women across the region, the forms of FGC most commonly experienced are Type 1 and Type 4 (see the box on the previous page). This is confirmed throughout the research literature, the ritual being variously described as 'a minute cut', 'not "incised or removed"', nicking, pricking, scratching and piercing 'a little'. The term 'just a little' is frequently used to reflect its difference to the more intrusive FGC Types 2 and 3 that occur in some African countries and involve the cutting away of significant amounts of flesh. The 'little' described by Malay women reflects their view that the types of FGC they experience are not 'mutilation' and should not be treated as such.

National Legal Framework

Applicable General Laws

There is no specific law against FGC in Brunei. However, the performance of FGC may be criminalised under various general criminal laws and codes, depending on the level and intentionality of harm.

The Penal Code⁵

- **Section 319** of the Penal Code defines 'hurt' as follows: 'Whoever causes bodily pain, disease or infirmity to any person is said to "cause hurt".'⁶
- **Section 320** defines 'grievous hurt', which includes '(h) any hurt which endangers life, or which causes the sufferer to be during the space of 20 days in severe bodily pain, or unable to follow his ordinary pursuits.'⁷
- Under **Section 321 (Voluntarily causing hurt)**, a person is said to voluntarily cause hurt when he or she commits an act '(a) with the intention of thereby causing hurt to any person; or (b) with the knowledge that he is likely thereby to cause hurt to any person and does thereby cause hurt to any person'⁸
- Under **Section 322 (Voluntarily causing grievous hurt)**, a person is said to be voluntarily causing grievous hurt:
 - '(a) if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt; and
 - '(b) if the hurt which he causes is grievous hurt'⁹

*FGC Types 1 and 4 are unlikely to be regarded as 'grievous hurt' (although Type 2 may), but 'hurt' as described in **Section 319** and the act of 'voluntarily causing hurt' as described in **Section 321** may be applied to FGC.*

There are various exceptions set out in the Penal Code on which individuals who perpetrate FGC may attempt to rely if prosecuted. These are included in **Chapter IV, General Exceptions:**

Chapter IV, Section 89 states,

Nothing which is done in good faith for the benefit of a person under 12 years of age, or of unsound mind, by, or by consent either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person:

Provided that this exception does not extend to —

[. . .]

(c) the voluntary causing of grievous hurt or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(d) the abetment of any offence, to which the committing of which offence it would not extend.¹⁰

Since most girls are cut in infancy or before the age of two, their consent cannot be obtained, so it is the parent or guardian's consent on a girl's behalf that is the critical factor here, and any possible defence that they acted 'in good faith for the benefit of a person under 12 years of age'.

This reliance on consent 'in good faith for the benefit of a person under 12 years of age' applies also to **Section 92 – Act done in good faith for benefit of a person without consent:**

Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided that this exception does not extend to —

[. . .]

(c) the voluntary causing of hurt or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt; and

(d) the abetment of any offence, to the committing of which offence it would not extend.¹¹

However, **Section 90 – Consent known to be given under fear or misconception, and consent of child or person of unsound mind** makes it clear that a child under 12 years of age cannot be assumed to have given consent in most circumstances:

A consent is not such a consent as is intended by any section of this Code if —

(a) the consent is given by a person under fear of injury or under a misconception of fact; and

- (b) the person doing the act knows, or has reason to believe, that —
 - (i) the consent was given in consequence of such fear or misconception;
 - (ii) the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or
 - (iii) unless the contrary appears from the context, the consent is given by a person who is under the age of 12 years.¹²

Sharia Penal Code 2013¹³

Islam is the state religion in Brunei, and, in addition to the Penal Code, there is the **Syariah (Sharia) Penal Code 2013 (SPC)**. Muslims and non-Muslims may be prosecuted under this code, which includes offences such as murder, rape and theft that previously were within the jurisdiction of the criminal courts.¹⁴

As in the Penal Code, the SPC contains no reference to FGC, but it describes 'hurt' in similar terms to those in the Penal Code – as 'dismemberment or hurt of', 'destruction or impairment of any function or use of', or 'permanently disfiguring' any part of the body (**Articles 167 and 168**).¹⁵

Article 169 includes 'a mother or father who causes hurt to his own child' among those who can be said to cause hurt and are liable to conviction.¹⁶ However, like the Penal Code, the SPC allows for the same defence of acts done in good faith for the child's benefit.

Children and Young Persons¹⁷

Under **Section 28 (Ill-treatment etc. of children and young persons) of the Children and Young Persons Act:**

- (1) Any person who, being a person having the care of a child or young person —
 - (a) abuses, assaults, neglects, abandons or exposes him in a manner likely to cause him physical or emotional injury or who causes or permits him to be abused, assaulted, neglected, abandoned or exposed . . .

is guilty of an offence . . .¹⁸

FGC Types 1 and 4 could fall under this **Section 28(1)(a)** as an assault on a girl causing physical and emotional injury, or an act causing her to be assaulted.

Married Women¹⁹

Section 18A (Interpretation of this Part), sub-section 1 of the Married Women act states that

‘domestic violence’ means the commission of any of the following acts—

- (a) wilfully or knowingly causing, or attempting to cause, a family member [to be] in fear of hurt;
- (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt

Under this section, ‘family member’ includes ‘(b) a child of that person and their descendants, including an adopted child and step-child’

FGC Types 1 and 4 could fall under **Section 18A(b)** – ‘causing hurt’ to a child family member.

This act (under **Sections 18B, C, D and E**) also allows protection orders to be made against a family member, for the protection of another family member, if the court is satisfied that the person against whom the order is made is likely to commit domestic violence to the protected person. These orders can carry a power of arrest if violated.

Theoretically, a protection order with a power of arrest could be put in place to prevent FGC taking place. However, in reality this is unlikely to be done, as it would require one parent to apply for an order against the other on behalf of the infant girl.

Procuring, Aiding and Abetting FGC

Under **Section 108 (Abettor) of the Penal Code**, a person is an ‘abettor’ if they instigate an offence, arrange an act with others with the same intention or knowledge as that of the perpetrator, or if they participate in the offence itself.²⁰

Article 183 of the Sharia Penal Code similarly describes an abettor of hurt as including one who instigates the offence or takes part in the offence.²¹

This would mean that a parent who procures the services of someone else (for example, a health professional or traditional cutter) to undertake FGC on a girl would be abetting the offence of causing hurt.

Allowing the Use of Premises

There is no law specifically criminalising allowing the use of one’s premises for FGC. However, knowingly allowing one’s premises to be used for an offence might be regarded as abetting that offence.

Providing or Possessing Tools

Similarly, there is no law criminalising the provision or possession of tools or equipment to be used for the purposes of FGC, but knowingly providing such tools might be regarded as abetting the offence.

Failure to Report FGC

There are no sections in the abovementioned acts that criminalise failing to report a crime.

Medicalised FGC

There are no data about whether FGC in Brunei is becoming medicalised. There is no law criminalising it being conducted in health facilities by medical professionals, nor has there been a directive by Brunei's Ministry of Health about using health facilities for the practice.

However, in Malaysia, for the past couple of decades, Malay girls have increasingly undergone FGC performed by doctors and nurses or midwives, and younger mothers are more likely to arrange for medical professionals to perform FGC on their daughters.²²

According to one survey of Malaysian respondents, medical doctors are the most preferred persons to perform cutting (73%).²³

Given the closeness of Brunei to Malaysia and that the majority of Brunei citizens share Malay ethnicity, it is likely FGC in Brunei is also being increasingly undertaken by health professionals.

Protecting Uncut Girls and Women

There are no legal provisions to protect uncut women and girls (and their families) from derogatory or abusive language, or from discrimination and actions that exclude them from society and community activities because of their uncut status.

Protecting Victims and Witnesses

There are no mechanisms for the protection of victims and witnesses in FGC cases, or provisions for protection orders for potential victims, although a case could potentially be brought under the **Married Women's** act, defining FGC as domestic violence within the context of the family.

Committee on the Elimination of Discrimination against Women

Committee on the Rights of the Child

Joint Statement

V. Criteria for determining *harmful practices*

15. *Harmful practices are persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that such practices cause to the victims surpasses the immediate physical and mental consequences and often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status. The practices are therefore reflected in the work of both Committees.*
16. *For the purposes of the present joint general recommendation/general comment, practices should meet the following criteria to be regarded as harmful:*
- (a) They constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions;*
 - (b) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;*
 - (c) They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age and other intersecting factors;*
 - (d) They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.²⁴*

Penalties

The Penal Code²⁵

The **Penal Code** provides punishment for the offences laid out in **Sections 319–322** (see Applicable General Laws above):

Section 323 (Punishment for voluntarily causing hurt)

Whoever . . . voluntarily causes hurt shall be punished with *imprisonment for a term not exceeding 3 years and [a] fine*.

Section 325 (Punishment for voluntarily causing grievous hurt)

Whoever . . . voluntarily causes grievous hurt, shall be punished with *imprisonment for a term not exceeding 10 years and whipping*.²⁶

*As discussed earlier, it is unlikely that FGC Types 1 and 4 would be regarded as 'grievous hurt' and, therefore, the punishment for 'hurt' as defined in **Section 323** would likely apply.*

The **Penal Code** also provides punishment for 'abetment' under **Section 108**. Punishment depends on the consequences of the abetment and may be the same as that for undertaking the offence. Some examples are included in **Sections 109** and **110**.²⁷

The Sharia Penal Code²⁸

Chapter 2 of this Code provides similar penalties for causing hurt and abetting an offence.²⁹

Children and Young Persons³⁰

Section 28 of this act sets up penalties for the ill treatment of children and young persons. The perpetrator 'will be liable on conviction to *a fine not exceeding \$20,000, imprisonment for a term not exceeding 10 years with or without whipping not exceeding 10 strokes, or both*.'

Married Women³¹

The violation of a protection order can result in *a fine being imposed and/or compensation paid to the victim*, taking into account the pain and the nature and extent of the physical or mental injury.³²

Implementation of the Law

Court Cases

There have been no prosecutions for the offence of FGC in Brunei; for example, as ‘hurt’ or ‘grievous hurt’ under **the Penal or Sharia Codes**.

Role of the State

See also Appendix III below.

Only recently has the Government of Brunei acknowledged that *sunat* occurs in the country, but it did not link *sunat* with FGM/C.

There was no mention of the practice in the Government’s combined initial and second periodic reports to the Committee on the Elimination of Discrimination against Women (CEDAW) in November 2013;³³ nor, disappointingly, was it raised by the CEDAW in its *List of issues and questions in relation to the combined initial and second periodic reports of Brunei Darussalam* of 10 March 2014.³⁴

However, the CEDAW subsequently did raise the issue of FGC with the State in November 2014 in its *Concluding observations on the combined initial and second periodic reports of Brunei Darussalam*, stating its deep concern at the ‘high prevalence and denial of the grave nature of female genital mutilation’.³⁵ The CEDAW went on to urge the State to eliminate FGC by changing attitudes through awareness-raising campaigns targeting community, traditional and religious leaders; health and education professionals; and the general public, making it clear that the practice is a form of gender-based discrimination and violence and is not sanctioned by religion. The State was also asked to conduct studies on the practice and adopt legislation that would specifically criminalise FGC and ensure that perpetrators are prosecuted and adequately punished.

The issue was raised again with the Brunei Government in 2016 by the UN Convention on the Rights of the Child in its *Concluding observations on the combined second and third periodic reports of Brunei Darussalam*, which again recommended the criminalisation of FGC. It also urged the State to set up awareness and education programmes to teach religious and community leaders about the harmful results of FGC and its impacts on the physical and psychological health of girls.³⁶

In 2019 the UN’s universal periodic report on human rights in Brunei reiterated the point, urging Brunei Darussalam to eliminate this practice, expeditiously adopt legislation to specifically criminalise it, and prosecute and punish perpetrators.³⁷

In June 2020, the Government of Brunei responded to a request raised by the Secretary-General of the UN to provide information in relation to *General Assembly resolution A/RES/73/149 on Intensifying global efforts for the elimination of female genital mutilation*. Brunei's response was:

Female genital mutilation can be charged under section 320 of the Penal Code (Chapter 22) as an offence of causing grievous hurt, which is punishable with imprisonment for a term not exceeding 10 years and whipping. Under section 320, 'grievous hurt' includes privation of any member, and any hurt which endangers life, or which causes the sufferer to be during the space of 20 days in severe bodily pain, or unable to follow his ordinary pursuits.³⁸

The State, therefore, appears to confirm that it may be possible to bring a case under the Penal Code for 'grievous hurt', but that no such cases have been brought. This suggests that the Government knows the practice exists, but does not recognise any harm in it. However, as discussed above, rarely could the types of FGC practised in Brunei be described as causing 'grievous hurt', but they could be described as causing 'hurt'.

In 2021 the US Government published its *Brunei 2020 International Religious Freedom Report*, in which it noted that the Ministry for Religious Affairs:

has declared circumcision for Muslim girls (sunat) a religious rite obligatory under Islam and describes it as the removal of the hood of the clitoris (Type I per World Health Organization classification). The government has stated it does not consider this practice to be female genital mutilation/cutting (FGM/C) and has expressed support for the World Health Organization's call for the elimination of FGM/C. In his 2017 fatwas, the State Mufti declared that both male and female circumcision are required and specified that female circumcision involves a 'small cut above the vagina'.³⁹

Following the submission of the national report for its third periodic review by the Human Rights Council in May 2019, the Government of Brunei received a further recommendation to enact anti-FGC legislation.⁴⁰ No further action appears to have been taken by the Government since then.

Conclusions

The Ministry of Religious Affairs has declared cutting for Muslim girls (*sunat*) a religious rite, obligatory under Islam, and describes it as the removal of the hood of the clitoris (Type 1 under the World Health Organization classifications).⁴¹

The Brunei Government has stated that it does not consider this practice to be female genital mutilation/cutting and has expressed support for the World Health Organization's call for the elimination of FGM/C.

The State Mufti – an Islamic jurist qualified to issue opinions on points of Islamic law – has declared through *fatwas* that both 'male and female circumcision' are required under Islamic law.⁴²

Although there is no specific national legislation prohibiting FGC, there are general laws under which a case could be brought. These include the following.

- **The Penal Code:** FGC could be charged under either **Section 319**, as an offence 'causing hurt', or under **Section 320**, as an offence causing 'grievous hurt' (although this is less likely to apply to FGC Types 1 and 4). The penalty for causing 'hurt' is 'imprisonment for a term not exceeding 3 years and [a] fine'. Various other offences under the Penal Code may apply to abetting FGC.
- **The Sharia Penal Code:** This mirrors much of the Penal Code in relation to offences of 'hurt' and the penalties for it.
- **Children and Young Persons:** FGC could be prosecuted under **Section 28** as an offence by a person who has care of a child or young person, where the relevant person abuses, assaults or exposes the child or young person in a manner likely to cause him or her physical or emotional injury.
- **Married Women:** FGC could be classed as an act of 'domestic violence'. This legislation provides that protection orders and expedited orders (with powers of arrest) may be made to protect family members against acts of domestic violence that have been, are being, or are likely to be committed against them.

Recommendations

Orchid Project recommends that:

1. as a first step, **a national survey be** conducted to confirm the extent of FGC in Brunei and to gather data about the age at which girls undergo cutting, who performs it and in what facilities (including hospitals and general practitioner clinics), the types of FGC that occur and the reasons for the continuance of the practice;
2. with regard to medicalised FGC, the Government of Brunei's Ministry of Religious Affairs and Ministry of Health **take note of a leaflet produced by the Malaysian Doctors for Women & Children (MDWC)** in 2023. This leaflet aims to provide accurate information about the practice of female cutting in Malaysia to healthcare professionals, with the ultimate objective of bringing about the cessation of the practice in Malaysia.⁴³ The MDWC's leaflet could be distributed widely among medical professionals in Brunei, to sensitise them to the harms FGC can cause;
3. the Ministry of Health **issue a warning** to all licensed medical practitioners (including general practitioners, midwives and nurses) that FGC must not be carried out in healthcare facilities and that healthcare professionals who continue to do so may lose their licences to practice;
4. the Government of Brunei's Ministry of Religious Affairs **set up a national working group** tasked with developing and implementing programmes of education and awareness-raising about the health problems and other harms FGC causes in communities in which it is practised; and,
5. although it is hoped that education and awareness-raising about the harms of FGC will lead to a reduction in the practice, the Government consider **introducing legislation that criminalises FGC**. This could take the form of a specific law criminalising FGC, which includes a clear definition of FGC that corresponds to the one given by the World Health Organization and clarifies any uncertainty around what types of cutting are classified as FGC; provides specific penalties for people who arrange, undertake or assist in the process of FGC on a minor girl or adult woman; and criminalises the failure to report its occurrence or likely occurrence.

Appendix I:

International and Regional Treaties

Brunei	Signed?	Ratified/ Acceded?	Reservations on Reporting? Yes/No
International			
Convention on the Elimination of All Forms of Discrimination against Women (1979)	Yes	Yes (no date)	Yes: 'The Government of Brunei Darussalam expresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam and, without prejudice to the generality of the said reservations, expresses its reservations regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention.'
Convention on the Rights of the Child (1989)	Yes	Yes, (no date)	Yes: 'The Government of Brunei Darussalam expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State religion, and without prejudice to the generality of the said reservations, in particular expresses its reservations on Article 14, Article 20 paragraph 3, and Article 21 subparagraphs b, c, d and e of the Convention.'
The Organisation of Islamic Co-operation – Cairo Declaration on the Elimination of FGM (CDEFGM) (2003)	No	N/A	N/A

'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.

Appendix II:

CEDAW General Recommendation No. 14: Female Circumcision

*Adopted at the Ninth Session of the Committee on the Elimination of Discrimination
against Women, in 1990*

(Contained in Document A/45/38 and Corrigendum)

The Committee on the Elimination of Discrimination against Women,

Concerned about the continuation of the practice of female circumcision and other traditional practices harmful to the health of women,

Noting with satisfaction that Governments, where such practices exist, national women's organizations, non-governmental organizations, specialized agencies, such as the World Health Organization, the United Nations Children's Fund, as well as the Commission on Human Rights and its Submission on Prevention of Discrimination and Protection of Minorities, remain seized of the issue having particularly recognized that such traditional practices as female circumcision have serious health and other consequences for women and children,

Noting with interest the study of the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children, as well as the study of the Special Working Group on Traditional Practices,

Recognizing that women are taking important action themselves to identify and to combat practices that are prejudicial to the health and well-being of women and children,

Convinced that the important action that is being taken by women and by all interested groups needs to be supported and encouraged by Governments,

Noting with grave concern that there are continuing cultural, traditional and economic pressures which help to perpetuate harmful practices, such as female circumcision,

Recommends to States parties:

- (a) That States parties take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include:

The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices;

The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women;

The encouragement of politicians, professionals, religious and community leaders at all levels including the media and the arts to cooperate in influencing attitudes towards the eradication of female circumcision;

The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision;

- (b) That States parties include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel including traditional birth attendants to explain the harmful effects of female circumcision;
- (c) That States parties invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices;
- (d) That States parties include in their reports to the Committee under articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.⁴⁴

Appendix III: Role of the State

United Nations

CEDAW/C/GC/31/Rev.1CRC/C/GC/18/Rev.1

**Convention on the Elimination of All Forms of Discrimination against Women
Convention on the Rights of the Child**

**Committee on the Elimination of
Discrimination against Women**

Committee on the Rights of the Child

*Joint general recommendation No. 31 of the Committee on the Elimination of
Discrimination against Women/general comment No. 18 of the Committee on the
Rights of the Child (2019) on harmful practices** **8 May 2019**

39. The Committees recommend that the States parties to the Conventions:

- (a) Accord priority to the regular collection, analysis, dissemination and use of quantitative and qualitative data on harmful practices disaggregated by sex, age, geographical location, socioeconomic status, education level and other key factors, and ensure that such activities are adequately resourced. Regular data collection systems should be established and/or maintained in the health-care and social services, education and judicial and law enforcement sectors on protection-related issues;
- (b) Collect data through the use of national demographic and indicator surveys and censuses, which may be supplemented by data from nationally representative household surveys. Qualitative research should be conducted through focus group discussions, in-depth key informant interviews with a wide variety of stakeholders, structured observations, social mapping and other appropriate methodologies.

[. . .]

55. The Committees recommend that the States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices. . .

[. . .]

60. The Committees recommend that the States parties to the Conventions ensure that any efforts undertaken to tackle harmful practices and to challenge and change underlying social norms are holistic, community-based and founded on a rights-based approach that includes the active participation of all relevant stakeholders, especially women and girls.

[. . .]

69. The Committees recommend that the States parties to the Conventions:

- (a) Provide universal, free and compulsory primary education that is girlfriendly, including in remote and rural areas, consider making secondary education mandatory while also providing economic incentives for pregnant girls and adolescent mothers to complete secondary school and establish non-discriminatory return policies;
- (b) Provide girls and women with educational and economic opportunities in a safe and enabling environment where they can develop their self-esteem, awareness of their rights and communication, negotiation and problem-solving skills;
- (c) Include in the educational curriculum information on human rights, including those of women and children, gender equality and self-awareness and contribute to eliminating gender stereotypes and fostering an environment of nondiscrimination;
- (d) Ensure that schools provide age-appropriate information on sexual and reproductive health and rights, including in relation to gender relations and responsible sexual behaviour, HIV prevention, nutrition and protection from violence and harmful practices;
- (e) Ensure access to non-formal education programmes for girls who have dropped out of regular schooling, or who have never enrolled and are illiterate, and monitor the quality of those programmes;
- (f) Engage men and boys in creating an enabling environment that supports the empowerment of women and girls.

[. . .]

73. The Committees recommend that the States parties to the Conventions:

- (a) Provide all relevant front-line professionals with information on harmful practices and applicable human rights norms and standards and ensure that they are adequately trained to prevent, identify and respond to incidents of harmful practices, including mitigating negative effects for victims and helping them to gain access to remedies and appropriate services;
- (b) Provide training to individuals involved in alternative dispute resolution and traditional justice systems to appropriately apply key human rights principles, especially the best interests of the child and the participation of children in administrative and judicial proceedings;
- (c) Provide training to all law enforcement personnel, including the judiciary, on new and existing legislation prohibiting harmful practices and ensure that they are aware of the rights of women and children and of their role in prosecuting perpetrators and protecting victims of harmful practices;

- (d) Conduct specialized awareness and training programmes for health-care providers working with immigrant communities to address the unique health-care needs of children and women who have undergone female genital mutilation or other harmful practices and provide specialized training also for professionals within child welfare services and services focused on the rights of women and the education and police and justice sectors, politicians and media personnel working with migrant girls and women.

[. . .]

81. The Committees recommend that the States parties to the Conventions:

- (a) Develop and adopt comprehensive awareness-raising programmes to challenge and change cultural and social attitudes, traditions and customs that underlie forms of behaviour that perpetuate harmful practices;
- (b) Ensure that awareness-raising programmes provide accurate information and clear and unified messages from trusted sources about the negative impact of harmful practices on women, children, in particular girls, their families and society at large. Such programmes should include social media, the Internet and community communication and dissemination tools;
- (c) Take all appropriate measures to ensure that stigma and discrimination are not perpetuated against the victims and/or practising immigrant or minority communities;
- (d) Ensure that awareness-raising programmes targeting State structures engage decision makers and all relevant programmatic staff and key professionals working within local and national government and government agencies;
- (e) Ensure that personnel of national human rights institutions are fully aware and sensitized to the human rights implications of harmful practices within the State party and that they receive support to promote the elimination of those practices;
- (f) Initiate public discussions to prevent and promote the elimination of harmful practices, by engaging all relevant stakeholders in the preparation and implementation of the measures, including local leaders, practitioners, grass-roots organizations and religious communities. The activities should affirm the positive cultural principles of a community that are consistent with human rights and include information on experiences of successful elimination by formerly practising communities with similar backgrounds;
- (g) Build or reinforce effective partnerships with the mainstream media to support the implementation of awareness-raising programmes and promote public discussions and encourage the creation and observance of self-regulatory mechanisms that respect the privacy of individuals.

[. . .]

87. The Committees recommend that the States parties to the Conventions:
- (a) Ensure that protection services are mandated and adequately resourced to provide all necessary prevention and protection services to children and women who are, or are at high risk of becoming, victims of harmful practices;
 - (b) Establish a free, 24-hour hotline that is staffed by trained counsellors, to enable victims to report instances when a harmful practice is likely to occur or has occurred, and provide referral to needed services and accurate information about harmful practices;
 - (c) Develop and implement capacity-building programmes on their role in protection for judicial officers, including judges, lawyers, prosecutors and all relevant stakeholders, on legislation prohibiting discrimination and on applying laws in a gender-sensitive and age-sensitive manner in conformity with the Conventions;
 - (d) Ensure that children participating in legal processes have access to appropriate child-sensitive services to safeguard their rights and safety and to limit the possible negative impacts of the proceedings. Protective action may include limiting the number of times that a victim is required to give a statement and not requiring that individual to face the perpetrator or perpetrators. Other steps may include appointing a guardian ad litem (especially where the perpetrator is a parent or legal guardian) and ensuring that child victims have access to adequate child-sensitive information about the process and fully understand what to expect;
 - (e) Ensure that migrant women and children have equal access to services, regardless of their legal status.⁴⁵

References

- 1 World Health Organization (2024) *Female genital mutilation*, 5 February. Factsheet. Available at <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.
- 2 Brunei Darussalam Department of Statistics, Department of Economic Planning and Statistics, Ministry of Finance and Economy (2021) *Report of the Population Estimates*, p.4. Available at <https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/POP/2023/RPT.pdf>.
- 3 ***See Orchid Project's Country Profile: FGC in Malaysia (2024), pp.46-47. A similar prevalence has been found among Malay women in Singapore and Thailand.***
- 4 ***Ibid., p.56.***
- 5 *Chapter 22: The Penal Code* (1951; revised 2021) Chapter 22. Available at https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/P/CHAPTER%2022.pdf.
- 6 *Ibid.*, p.139.
- 7 *Ibid.*, p.139.
- 8 *Ibid.*, pp.139–140.
- 9 *Ibid.*, p.140.
- 10 *Ibid.* p.50.
- 11 *Ibid.*, pp.51–52.
- 12 *Ibid.*, pp.51–52.
- 13 *Syariah Penal Code Order 2013* (2013). Available at https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/Syariah%20penal%20code%20order2013.pdf.
- 14 *Ibid.*
- 15 *Ibid.*, p.1736.
- 16 *Ibid.*, pp.1736–1737.
- 17 *Chapter 219: Children and Young Persons* (2006; revised 2012). Available at https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/C/CHAPTER%20219.pdf.
- 18 *Ibid.*, pp.23–24.
- 19 *Chapter 190: Married Women* (1999; revised 2014). Available at https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/M/CHAPTER%20190.pdf.
- 20 *Chapter 22: The Penal Code, op. cit.*, pp.58–59.
- 21 *Syariah Penal Code Order 2013, op. cit.*, p.1741.
- 22 Abdul Rashid and Yufu Iguchi (2019) 'Female Genital Cutting in Malaysia: A Mixed-Methods Study', *BMJ Open*, 9(4), p.4, e025078. Available at <https://doi.org/10.1136/bmjopen-2018-025078>.
- 23 Salleha Khalid, Suhaila Sanip, Rafida Hanim Mokhtar, Maizatul Azma Masri, Mohd Shamsir Muhammad Aris, Muhammad Riduan Wan Deraman and Nuurain Amirah Mohd Razi (2017) 'The study of knowledge, attitude and practice towards female circumcision among female patients at O&G Outpatient Department, Hospital Ampang, Selangor, Malaysia', *Ulum Islamiyyah*, 21, p.20. Available at <https://doi.org/10.33102/uij.vol21no0.22>.
- 24 Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child (2019) *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices*, 8 May. CEDAW/C/GC/31/Rev.1CRC/C/GC/18/Rev.1. Available at <https://documents.un.org/doc/undoc/gen/g19/134/42/pdf/g1913442.pdf>.
- 25 *Chapter 22: The Penal Code, op. cit.*

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- 26 *Ibid.*, pp.139–140.
- 27 *Ibid.*, pp.60–61.
- 28 *Syariah Penal Code Order 2013, op. cit.*
- 29 *Ibid.*, pp.1736–1740.
- 30 *Chapter 219: Children and Young Persons, op. cit.*
- 31 *Chapter 190: Married Women, op. cit.*
- 32 *Ibid.*, p.19.
- 33 CEDAW (2013) *Brunei State Party’s Report to CEDAW for initial and second periodic reports due in 2011*, 1 November. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=25&DocTypeID=29.
- 34 CEDAW (2014a) *List of issues and questions in relation to the combined initial and second periodic reports of Brunei Darussalam*, 10 March. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FBRN%2FQ%2F1-2&Lang=en.
- 35 ***This quotation is taken directly from the CEDAW report, and Orchid Project has not been able to ascertain the source(s) of their statements regarding FGC prevalence in Brunei.***
CEDAW (2014b) *CEDAW/C/BRN/CO/1-2: Concluding observations on the combined initial and second periodic reports of Brunei Darussalam*. Available at <https://www.ohchr.org/en/documents/concluding-observations/cedawcbrnc1-2-concluding-observations-combined-initial-and>.
- 36 Committee on the Rights of the Child (2016) *Concluding observations on the combined second and third periodic reports of Brunei Darussalam*, 24 February. Available at <https://www.ohchr.org/en/documents/concluding-observations/crcbrnc2-3-concluding-observations-combined-second-and-third>.
- 37 United Nations Office of the High Commissioner for Human Rights (2019) *Human Rights Council Working Group on the universal periodic review thirty-third session*, 6–17 May. Compilation on Brunei Darussalam available at <https://digitallibrary.un.org/record/3798023?ln=en&v=pdf>.
- 38 The Permanent Mission of Brunei Darussalam (2020) *Letter to UN Women*, 9 June. Available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/A-75-279-Submission-Brunei-en.pdf>.
- 39 United States Department of State, Office of International Religious Freedom (2020) *Brunei 2020 International Religious Freedom Report*, p.7. Available at <https://www.state.gov/wp-content/uploads/2021/05/240282-BRUNEI-2020-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.
- 40 United Nations Human Rights Council (2019) *Thematic List of Recommendations*. Available at <https://www.ohchr.org/en/hr-bodies/upr/bn-index>.
- 41 United States Department of State etc., *op. cit.*, p.10.
- 42 *Ibid.*, p.10.
- 43 Dr Hannah Nazri, Dr Janani Devaraja, Dr Syed Hadi Arief, Dr Rafeeq Ruslan, Dr Zafira Azih, and Ashvinderjit Kaur Amarjit Singh (2023) *Empowering Healthcare Professionals: Unveiling the Harms of Female Circumcision in Malaysia*. Malaysian Doctors for Women & Children. Available at https://arrow.org.my/wp-content/uploads/2023/12/Empowering-Healthcare-Professionals_Unveiling-the-Harms-of-Female-Circumcision-in-Malaysia-1.pdf.
Malaysian Doctors for Women & Children is an academic forum of Malaysian doctors who are passionate about the scientific discourse of non-medical cultural practices that impact women and children.
- 44 ***Available at <https://www.refworld.org/legal/general/cedaw/1990/en/27729>.***
- 45 Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, *op. cit.*

All cited texts in this Law Report were accessed between 1 July 2024 and 31 October 2024, unless otherwise noted.

This report analyses and discusses the application of national (criminal) laws to the commission of FGC and any possible related crimes. It also explores other legal factors deemed relevant, such as legal obligations to report the commission or likely upcoming commission of FGC, available legal protective measures for girls and women at risk of FGC, and any obligations of national governments in relation to FGC.

The initial research conducted for this report consisted of a questionnaire prepared by Allen Overy Shearman Sterling (A&O Shearman*) with input from certain local law firms, local non-governmental organisations and/or other information providers (together, *the Information Providers*). The information contained in the responses to that questionnaire was then reviewed by Orchid Project, updated and used as the basis of further research from relevant sources.

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