

THE LAW AND FGC

India

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

India is a federal parliamentary republic comprising 28 states and 8 union territories. Its population is the largest in the world. It has a common-law judicial system based on the English model and separate personal-law codes for Muslims, Christians and Hindus that cover family, marriage and inheritance.¹

A Note on Terminology

The practice of female genital mutilation/cutting (FGM/C) is generally referred to as *khafd* or *khafz* by Dawoodi Bohra women. The term 'mutilation' is regarded by some Bohras as inappropriate and associated with the more severe forms of FGM/C (the World Health Organization's Types 2 and 3 – see the box below). 'Circumcision' is generally used to refer to male circumcision. 'Female genital cutting' is more acceptable, so in this Law Report the terms 'FGC' and 'khafd' are used interchangeably.

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.²

Prevalence of FGC

There are no official statistical data to indicate the prevalence of FGC in India, as no health or other surveys have included questions about the practice. The Dawoodi Bohra is the only group in India known to carry out FGC regularly, and surveys by non-governmental organisations (NGOs) indicate a prevalence in the community of between 75%³ and 85%.⁴

The Dawoodi Bohra community comprises over a million people across 40 countries, although the majority live in India, mainly in the states of Gujarat, Maharashtra, Madhya Pradesh and Rajasthan.⁵

It has been suggested that FGC may be occurring on a smaller scale among other groups (such as the Sulemani Bohras and a sub-sect of Sunnis in Kerala), but no surveys of size have been conducted in these communities.

The most common type of FGC experienced by Dawoodi Bohra women, according to NGO surveys, falls under the World Health Organization's Type 1 classification (see the box on the previous page). However, two-thirds of those who have been cut are unsure about the nature or extent of the cutting they underwent, mostly as girls of six or seven, which is the age at which FGC usually occurs among the Dawoodi Bohra.⁶ Surveys suggest that about a third of women who are cut experience Type 1 FGC, which involves removing flesh (part or all of the clitoral hood plus all or part of the clitoris itself.)⁷

National Legal Framework

Applicable General Laws

There is no specific law criminalising FGC in India. However, the performance of FGC could fall under various general criminal laws and codes, depending on the circumstances and the degree of harm inflicted.

Bharatiya Nyaya (Second) Sanhita, 2023⁸

The Bharatiya Nyaya (Second) Sanhita (BNS) is the official criminal code of India, which came into effect on 1 July 2024 to replace the 1860 Indian Penal Code.

Under the **BNS Sections 114–117**, FGC Type 4 could be viewed as ‘hurt’, but if a girl experiences Type 1, 2 or 3, which involve the cutting away of flesh, it may be considered ‘grievous hurt’. All forms of FGC are therefore potentially prosecutable under the BNS, and would apply as an act that is done either with the intention to cause hurt (or grievous hurt), or in the knowledge that hurt (or grievous hurt) is likely to be caused.

- **Section 114: Hurt**

‘Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.’

- **Section 115: Voluntarily causing hurt**

‘(1) Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.’

- **Section 116: Grievous hurt**

The kinds of hurt designated ‘grievous’, which would include FGC Type 1 (partial or total removal of the clitoral hood and/or clitoris) are:

‘(d) Privation of any member or joint’; and

‘(e) Destruction or permanent impairing of the powers of any member or joint’.

- **Section 117: Voluntarily causing grievous hurt**

‘(1) Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt”.’⁹

There are two other sections of the BNS under which FGC is potentially prosecutable:

- **Section 129** refers to ‘criminal force’, which is defined as intentionally using force against any person without their consent, to commit, or intending to commit, an offence that is likely to cause injury/fear/annoyance to that person; and

- **Section 130** refers to 'assault', which includes any gesture or any preparatory act with an intention to, or knowledge that such act will, cause another person to be aware that criminal force is going to be used against them.¹⁰

Prevention of Children from Sexual Offences Act (2012)¹¹

*FGC was cited as a crime under **the Prevention of Children from Sexual Offences Act** (POCSO) by the former Minister for Women and Child Development, Maneka Gandhi, in 2017.¹²*

Under **Section 3 of the POCSO**, a person is said to commit 'penetrative sexual assault' if any object (not a penis) is inserted into a child's vagina, urethra or anus, or if they manipulate any part of the body of the child such that it leads to penetration into the child's vagina, urethra or anus.¹³

Aggravated penetrative sexual assault (**Section 5**) occurs when persons in positions of authority (for example, police officers, public servants, and staff in hospitals, education and religious institutions), or a relative or guardian of the child carry out the penetrative sexual assault.¹⁴

Under **Section 7**, (non-penetrative) sexual assault is committed when a person, with sexual intent, touches the vagina, or if they make the child or another person touch the child's vagina. Again, this becomes aggravated sexual assault if carried out by a person in a position of authority, or a relative or guardian (**Section 9**).¹⁵

Section 42 states that the provisions of this Act are in addition to any other law currently in force, and that in the case of any inconsistency, the provisions of the POCSO will override any other law. This is important as the penalties under the POCSO are greater than those for causing hurt or grievous hurt under the BNS:

[T]he offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code [BNS] as provides for punishment which is greater in degree.¹⁶

This Act could be relevant to a case of medicalised FGC, if cutting is carried out by medical practitioners in a clinic or hospital. This is discussed further below in the section 'Medicalised FGC'.

Protection of Women from Domestic Violence Act, 2005¹⁷

The **Protection of Women from Domestic Violence Act** (PWDVA) is a civil law that may offer some protection from FGC.

Section 3 defines the context of 'domestic violence' as being 'any act, omission or commission or conduct' that 'harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical' of a woman or child in the perpetrator's household.¹⁸

This includes 'physical abuse', which refers to 'any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or if it impairs the health or development' of the woman or child. It also includes assault, intimidation and force, although these could be pursued as criminal charges under **the BNS**.¹⁹

However, this civil-law act is limited in application to the actions of 'any adult male' who is, or has been, in 'a domestic relationship' with 'any woman', that 'domestic relationship' being defined as living together in a shared household, related by marriage or family.²⁰

Procuring, Aiding and Abetting FGC

Under **Sections 45 and 46 of the BNS**, 'abetment' and 'the abettor' are defined as anyone who voluntarily instigates another to commit an offence, aids an offence, engages another to undertake an offence, or conspires with others to commit an offence.²¹

Under **Section 16 of the POCSO**, an 'abettor' is defined as anyone who instigates an offence, aids an offence or conspires with others to commit an offence.²²

Allowing the Use of Premises

Although there is nothing in **the BNS** that specifically refers to allowing the use of one's premises for the purposes of FGC, it may fall under **Sections 45 and 46** as 'abetting' by providing and preparing a location to enable a crime to take place. Similarly, **Section 16 of the POCSO** may apply.

Providing or Possessing Tools

Although there is nothing in **the BNS** that specifically refers to providing or possessing tools for the purposes of FGC, it may fall under **Sections 45 and 46** as 'abetting' by providing and preparing the means for a crime to take place. Similarly, **Section 16 of the POCSO** may apply.

Failure to report FGC

Under **Section 211 of the BNS** a person who knows an offence has been or will be committed is legally bound to report it to the relevant public service. Failure to do so is a punishable offence.²³

Section 19 of the POCSO requires anyone (including the child) who has knowledge that an offence of sexual assault is going to occur, or that it has occurred, to report it as soon as possible to the local police or the Special Juvenile Police Unit.²⁴

Medicalised FGC

There is no specific legislation criminalising medical professionals who perform or assist in FGC, nor have any regulations about this been issued by India's Ministry of Health and Family Welfare. However, medical professionals could potentially be prosecutable under the **BNS** and **POCSO** clauses outlined above.

Surveys carried out by NGOs in 2017²⁵ found that between 74% and 92.5% of women who undergo FGC are cut by traditional practitioners. 15% are cut by health professionals (general practitioners, nurses or gynaecologists). The majority (86%) of cutting takes place in private residences, while 12% is done in health facilities.²⁶

The authors of one of these surveys posits that medicalised FGC will increase, as several respondents, in particular those living in large cities, want to move away from using traditional practitioners because of concerns about safety and hygiene, and because all the procedures that take place in medical facilities are performed by Bohra doctors.²⁷

The same survey found that, the younger the age of the girl, the greater the likelihood that she will undergo FGC in a medical facility.²⁸

Protecting Uncut Girls and Women

Under **Section 351 of the BNS**, anyone who threatens another with physical injury or damage to their reputation or property, to alarm or to cause that person to commit an act s/he is not legally bound to do commits the offence of criminal intimidation, which is punishable with *either imprisonment for up to two years and/or an unspecified fine*.²⁹

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.³⁰*

Penalties

Under **the BNS** there are a range of penalties, as follows, for causing hurt and grievous hurt, which could apply to those performing FGC.

- Under **Section 115(2)**, the punishment for voluntarily causing hurt is *imprisonment for up to a year and/or a fine of up to 10,000 rupees*.³¹
- Under **Section 117(2)**, the punishment for voluntarily causing grievous hurt is *imprisonment for up to seven years and an unspecified fine*.³²
- Under **Section 131**, the punishment for assault or criminal force is *imprisonment up to three months and/or a fine of up to 1,000 rupees* (depending on the degree of 'provocation', which would likely be irrelevant).³³
- For those assisting in FGC, **Section 56** states that *imprisonment may be up to a quarter of the longest term provided for that offence and/or the fine for that offence*.³⁴
- **Failing to report an offence** is covered by **Section 211(b)**, which states that a person who fails to pass on information to the relevant public servant, depending on the offence and the penalty for that offence, will be punished with *imprisonment for up to six months or a fine of up to 10,000 rupees*.³⁵

Under **the POCSO**, penalties for perpetrators and abettors range from *three years' imprisonment* for non-penetrative sexual assault, to *between five and seven years' imprisonment* for aggravated, non-penetrative sexual assault, to *ten years' imprisonment* for penetrative sexual assault and to *twenty years' or life imprisonment* for aggravated penetrative sexual assault (**Sections 4–10**).

The sentence for failing to report an offence under **the POCSO** ranges from *six months to one year of imprisonment*; this does not apply to the child reporting the offence (**Section 21**). However, this clause on mandatory reporting has proved to be problematic and controversial: social workers have argued that it will not work in the absence of a robust child-protection system.

It is, however, potentially useful in reducing medicalised FGC, as **the POCSO** requires those employed in hospitals, specifically doctors, to come forward with information about abuse.³⁶

Implementation of the Law

Court Cases

*No cases of FGC have been brought before the courts under **the BNS** (nor under **the Indian Penal Code**, which was in force until 1 July 2024). However, there are some cases that may have bearing on how the courts could treat FGC.*

Sunita Tiwari v. Union of India & Ors. (2019) 18 SCC 719³⁷

Facts

Ms Sunita Tiwari, an advocate, filed a petition to the Supreme Court of India for the ban of FGC. Reliance was placed on the **United Nations Convention on the Rights of the Child**, the **Universal Declaration of Human Rights** and **Article 21 of the Constitution of India**. Ms Tiwari argued that FGC should be an offence under the **Indian Penal Code**.

A counter-affidavit was filed, resisting the petition on a number of grounds including that various steps, commands and directions issued by competent religious authorities have made FGC an integral part of the religion of the Dawoodi Bohra community, and that this should be protected under **Article 26 of the Constitution of India**.

Judgement

The matter is to be placed before a larger bench of the Supreme Court. The Registry was directed to place the papers of the instant matter before the Honourable Chief Justice of India for obtaining appropriate directions in this regard. The case is still pending.

Commentary

This is the only case to make specific reference to FGC. It received media attention, and the Attorney General was quoted as saying that FGC 'is already an offence under several provisions of the Indian Penal Code and Protection of Children from Sexual Offences Act, and these sections could be invoked to prosecute those who indulge' in the practice.³⁸

Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of Uttar Pradesh, 1997 (4) SCC 606³⁹

In this case, the court noted:

[T]he denominational sect is also bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. . . . For instance, untouchability was believed to be a part of Hindu religious belief. But human rights denounce it and Article 17 of the Constitution of India abolished it and its practice in any form is a constitutional crime punishable under Civil Rights Protection Act, Article 15(2) and other allied provisions [that] achieve the purpose of Article 17.

Application

Using the principles laid down by the Supreme Court in this case, it can be argued that, while FGC is a religious practice of the Bohra community, the Bohra community is still bound by **the laws and Constitution of India**. This includes constitutional norms such as morality (**Article 26 of the Indian Constitution** is subject to morality), non-discrimination and equality.

Role of the State

See also Appendix III.

The **Constitution of India**⁴⁰ contains a number of sections that may be interpreted to support a legislative ban of FGC. **Fundamental Rights** that would apply include:

- **Article 14:** equality before law;
- **Article 15:** prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; and
- **Article 21:** protection of life and personal liberty.

It also includes provisions that may be interpreted as protecting/upholding the practice of FGM/C under the guise of freedom of religion, which may be used as a defence:

- **Article 25:** freedom of conscience and free profession, practise and propagation of religion;
- **Article 26:** freedom to manage religious affairs; and
- **Article 39**, which includes certain principles of policy to be followed by the State:

The State shall, in particular, direct its policy towards securing—

[. . .]

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.⁴¹

The Government of India has submitted three periodic reports to the Committee for the Elimination of Discrimination against Women (CEDAW) (in 2000, 2007 and 2014). Concluding observations by the CEDAW for all three reports make no mention of FGC and its harms on women's health, even though, across the 14 years, the CEDAW expressed concern at women's poor reproductive-health outcomes and their inability to access good healthcare.⁴² However, in December 2022, included in the response to India's fourth universal periodic review (presented to the United Nations' Human Rights Council) was a recommendation that it 'Legally adopt the World Health Organization definition of female genital mutilation, criminalize it by law, and establish a national action plan to eradicate the practice'.⁴³

Conclusions

Despite the known physical, psychological and emotional impacts of FGC, India has no specific laws or regulations in place to criminalise or ban the practice.

Accordingly, the term 'FGC' and its types remain undefined under Indian law.

However, despite the lack of specific laws banning FGC, general provisions of **the BNS** and **POCSO** criminalise activities that would include FGC (as summarised below).

The Bharatiya Nyaya (Second) Sanhita, which replaced the Indian Penal Code in July 2024, criminalises causing 'hurt' and 'grievous hurt' to any person, and the definitions of these terms are broad enough to cover FGC. The BNS also penalises aiding and abetting these offences.

Children under the age of 18 years also benefit from the **Protection of Children from Sexual Offences Act, 2012**. The provisions of the POCSO criminalise causing injury to the sexual organs of a child and the insertion of objects into and manipulation of parts of a child's body. Furthermore, the POCSO specifically addresses the commissioning of such activities by persons in authority or trust of a child, including the management or staff of religious institutions. It is also worth noting that, in the case of any inconsistency between the provisions of the POCSO and any other applicable law, the POCSO's provisions prevail. The POCSO also includes an obligation to report knowledge of a potential offence or an actual offence that has taken place. Additionally, aiding and abetting such offences is a crime under the POCSO. Its implementation is monitored by the police, applicable statutory authorities and government officers.

In the context of domestic relationships, the **Protection of Women from Domestic Violence Act, 2005** provides protection to women by including 'causing injuries' or 'injuring the health of a woman' within the scope of 'domestic violence'. This is a civil law, under which victims of domestic violence can approach the local magistrate to obtain an order prohibiting the perpetrator from committing or aiding or abetting such domestic violence. This may be a useful tool for family members looking to protect women and girls from FGC practices in a domestic situation. This Act also has provisions that impose an obligation to report the commission of an offence. Aiding and abetting an offence is also a crime under the Act. The implementation of the Act is monitored by the police, applicable statutory authorities and government officers.

Recommendations

Orchid Project recommends that:

1. as a first step, **a national survey be conducted** to confirm the extent of FGC in India 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. the Ministry of Health and Family Welfare, in conjunction with leaders of the Dawoodi Bohra community, **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;
3. **a law be drafted** that includes a clear definition of FGC (corresponding with the definition given by the World Health Organization), clarifies any uncertainty around which procedures are classified as 'female genital cutting', and provides specific penalties for people who arrange for and/or undertake FGC on a female minor and for failure to report its occurrence or likely occurrence; and
4. the Ministry of Health and Family Welfare **issue a warning** to all licensed medical practitioners (including general practitioners, midwives and nurses) that FGC is not to be carried out in any health premises and that those who perform FGC may lose their licences to practice if they continue to do so.

Appendix I:

International and Regional Treaties

India	Signed?	Ratified/ Acceded?	Reservations on Reporting? Yes/No
International			
Convention on the Elimination of All Forms of Discrimination against Women (1979)	Yes, 30 July 1980	Yes, 9 July 1993	<p>Yes, India gave two declaratory statements and a reservation:</p> <p>Declaration 1: ‘With regards to Articles 5(a) and 16(1) of the Convention, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.’</p> <p>Declaration 2: ‘With regard to Article 16(2) of the Convention, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriage, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.’</p> <p>Reservation: ‘With regards to Article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this Article.’</p> <p>India has not yet ratified the Optional Protocol to the CEDAW. This Optional Protocol was adopted by the UN General Assembly on 15 October 1999 and entered into force in December 2000. The Protocol creates access to justice for women at the international level if justice is denied at the national level.</p>

Convention on the Rights of the Child (1989)	Yes	<p>Yes, India has made the following declaration in respect of this convention:</p> <p>'While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party.'</p> <p>India ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 16 August 2005.</p>	
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

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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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