

THE LAW AND FGC

Malaysia

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

Malaysia is a country in South East Asia with an estimated population of 35 million. 63.5% of the population are Muslim, and Islam is the country's official religion. The main ethnic group is the Bumiputera (69.4% of the citizen population), a little more than half of whom are ethnic Malays. The remainder are indigenous peoples, including the Orang Asli, the Dayak and the Anak Negeri.¹ The Malays' dominant position in society is confirmed in **Article 153 of the Constitution**.² Other large ethnic groups in Malaysia are Chinese (6.9 million) and Indian (2 million); in addition, there are approximately 2.7 million non-Malaysian residents.³

Malaysia is a federal parliamentary constitutional monarchy in which all states have hereditary rulers, except for two, which have governors appointed by the government. The country comprises 13 states and 3 federal territories. It has a dual legal system comprising common law and Islamic law, and religion is a state matter. **The Constitution** grants states the power to apply their versions of Islamic law to certain topics and to give jurisdiction to Sharia courts over personal law, matters related to religious practice and offences deemed to be against the precepts of Islam.⁴ Under the Malaysian dual judicial system, *fatwas* only gain the force of law when they have been adopted and published by an individual state as part of its own legislation.⁵

A Note on Terminology

Globally, the term most often used to describe the practice is 'female genital mutilation/cutting'. 'Female genital mutilation', or 'FGM', is perceived to be a term imposed by the West and not reflective of cutting as practised in the region. The word 'mutilation' is deemed to be imprecise. Since the term 'cutting' appears to be the more widely understood term within South East Asian literature, with words like *sunat wanita* or 'cutting' already normalised, this Law Report uses the term 'female genital cutting' or 'FGC' to refer to the practice. '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.⁶

Prevalence of FGC

No official surveys of FGC across Malaysia have been carried out. However, a certain homogeneity in the findings of academic research suggests the prevalence of FGC to be about 93% of the female, ethnic Malay population (or more than 7.5 million girls and women).

There is also anecdotal evidence that FGC is practised by members of the Orang Asli and Sabah and Sarawak's indigenous populations. No FGC is found among the Chinese and Indian populations.⁷

FGC among Malays usually occurs before the girl reaches the age of one, often before six months, and sometimes as young as 14 days after birth, although FGC can be carried out at any age up to ten years.

Research has found that younger mothers are cutting their daughters at younger ages than their own mothers cut them, and are increasingly using doctors, often in healthcare clinics.⁸

The most common types of FGC carried out among affected girls and women in Malaysia fall into the World Health Organization's Types 1 and 4.⁹ The World Health Organization defines Type 1 as the partial or total removal of the clitoral glans and/or the prepuce/clitoral hood, and Type 4 as 'all other harmful procedures to the female genitalia for non-medical purposes, e.g., pricking, piercing, incising, scraping and cauterizing the genital area.'¹⁰ 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.

A few girls have, however, been found to experience Type 2 ('partial or total removal of the clitoral glans and the labia minora'), and it has been suggested that this is occurring more often due to the growing trend for girls to undergo cutting in a hospital or clinic, which sometimes leads to deeper cuts being made.¹¹

For more information about the context and prevalence of FGC in Malaysia, please see Orchid Project's **Country Profile: FGC in Malaysia**.

National Legal Framework

Applicable General Laws

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

Types 1 and 4 FGC could be viewed as 'hurt' or 'grievous hurt' and, therefore, potentially be prosecutable under the **Penal Code**, as set out below.

The Penal Code (Act 574)¹²

The Penal Code of Malaysia is a federal law that applies throughout the country, except for the states of Sabah and Sarawak, which have their own penal codes.

Note

Penal Code offences are not within the jurisdiction of the Sharia (Islamic) Court, which only has jurisdiction over matters that relate to the personal and family laws of Muslims, such as marriage, divorce, inheritance, custody, maintenance, apostasy and offences against the precepts of Islam.

Under the **Ninth Schedule of the Federal Constitution of Malaysia**,¹³ each state can enforce Sharia law on offences against precepts of Islam committed by Muslims (provided they do not fall within the general ambit of criminal law). Each state may prescribe different punishments. Sharia courts are subject to the supervision and control of the rulers of the states, or the *Yang di-Pertuan Agong*, and their decisions are not subject to appeal or review by the civil courts, except on questions of jurisdiction or constitutionality.

- Under **Section 319**, 'Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.'¹⁴

- Under **Section 320**:

The following kinds of hurt only are designated as 'grievous':

[. . .]

(d) privation of any member or joint;

(e) destruction or permanent impairing of the powers of any member or joint;

[. . .]

(h) any hurt which endangers life, or which causes the sufferer to be, during the space of ten days, in severe bodily pain, or unable to follow his ordinary pursuits.¹⁵

- Under **Section 321**, 'Whoever acts with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, and does cause hurt to any person, is said "voluntarily to cause hurt".'¹⁶
- Under **Section 322**, '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".'¹⁷

The Penal Code also includes examples of defences, listed below, that could conceivably be employed in relation to causing 'hurt' and 'grievous hurt'.

- **Section 92 Act done in good faith for the benefit of a person without consent** could not be used as a defence on the basis that FGC is done in good faith, even without the consent of the girl (if it is impossible for her to give consent; for example, if she is too young, as would be the case in most instances of FGC), as this section does not extend to the voluntarily causing hurt, attempting to cause hurt or assisting in any act that is likely to cause hurt.¹⁸
- **Section 95 Act causing slight harm** states,
 - Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.¹⁹

As Type 4 FGC as practised in Malaysia is often described as a 'nick' or 'pierced a little', this defence of 'causing slight harm' of which 'no person of ordinary sense and temper would complain' could perhaps be used. However, all forms of FGC have been found, in an audit by the Malaysian Ministry of Health in 2018, not only to have no benefits, but also potentially to have harmful side-effects, such as a baby losing her clitoris.²⁰ According to doctors such as Nawal Nour, director of the Global Women's Health Centre at Harvard Medical School, 'There are girls who suffer short and long-term consequences, even from Type IV.' These can range from excessive bleeding to infertility.²¹

For further information about the potential damage caused by FGC Types 1 and 4, which could counter the use of Article 95 as a defence, please see Orchid Project's **Country Profile: FGC in Malaysia**.

The Child Act 2001 (Act 611)²²

Scope of **the Child Act 2001**:

- **Section 1(2):** 'This Act applies throughout Malaysia.'
- **Section 2:** 'Child' means: 'a person under the age of eighteen years'.²³

The relevant sections that would make Types 1 and 4 FGC prosecutable under this Act are as follows.

- **Section 17 Meaning of child in need of care and protection:**

A child is deemed to be in need of care and protection if 'the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused'²⁴

A child is

physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, haemorrhaging, the rupture of a viscus, a burn, a scald²⁵

A child is

emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development²⁶

Some of these types of injuries may be incurred as a result of FGC Types 1 and 4.

- **Section 31 Ill-treatment, neglect, abandonment, or exposure of children:**

Any person who, having the care of a child, 'abuses, neglects, abandons or exposes the child in a manner likely to cause [the child] physical or emotional injury or causes or permits [the child] to be so abused, neglected, abandoned or exposed' commits an offence.²⁷

Application to Women and Girls of All Ages

Malaysia operates both a common-law system and a Sharia (Islamic) law system. The latter applies only to Muslims and covers the family, marriage, religious and personal aspects of life. **The Penal Code** applies to Muslims as well as people of other religions in relation to all criminal offences.

Procuring, Aiding and Abetting FGC

Several sections of the **Penal Code** may criminalise assisting in, arranging or carrying out FGC.

- **Sections 107 and 108** define 'abetment' (and an 'abettor') as instigating an offence, commanding a person to commit an offence, conspiring with one or more persons to commit an offence, failing to act in a way that would prevent an offence occurring or aiding an offence.²⁸
- **Sections 111–114** make the abettor liable even if a different act/s occurs to that which they thought was going to be done, or if the abettor participates in an act that has a different effect from that intended by them, even if they are absent from the actual committing of the offence.²⁹

Allowing the Use of Premises

There does not appear to be any law that specifically criminalises allowing the use of one's premises for FGC. However, knowingly permitting one's premises to be used for the purposes of FGC may be considered abetment of the offence.

Providing or Possessing Tools

There does not appear to be any law that specifically criminalises the provision or possession of tools that might be used for FGC. However, knowingly providing tools to be used for the purposes of FGC could be considered abetment of the offence.

Failure to Report FGC

There does not appear to be any law that specifically criminalises the failure to report FGC, but **Section 116 of the Child Act** does protect informers:

- (1) Any person who gives any information that a child is in need of protection shall not incur any liability for defamation or otherwise in respect of the giving of such information.
- (2) The giving of any information that a child is in need of protection shall not, in any proceedings before any Court or in any other respect, be held to constitute—
 - (a) a breach of professional etiquette or ethics; or
 - (b) a departure from accepted standards of professional conduct.³⁰

Medicalised FGC

Although there is no specific reference to FGC being a criminal offence when performed by a health professional (a doctor, nurse or midwife), the **Code of Professional Conduct** sets standards that could be applied to FGC, possibly making the performance of FGC serious professional misconduct.

Code of Professional Conduct³¹

Members of the medical profession in Malaysia are required to abide by **the Code of Professional Conduct of the Malaysian Medical Council** (the *Council*), which in turn is authorised by the **Medical Act 1971** to exercise disciplinary jurisdiction over its registered members.

Note

Section 29(2) of the Medical Act 1971 provides, 'The Council may exercise disciplinary jurisdiction over any registered person who', among others, 'has been alleged to have committed serious professional misconduct as stipulated in the Code of Professional Conduct and any other guidelines and directives issued by the Council'.

In exercise of the Council's disciplinary jurisdiction, under **Section 30** it may: (a) reprimand; (b) order the medical practitioner's registration be subjected to certain conditions; (c) suspend the medical practitioner's registration, during which suspension the medical practitioner cannot practise; or (d) strike off the medical practitioner from the Register, after which the medical practitioner cannot practise.³²

FGC is a traditional practice that is not medically necessary and for which there is no evidence that it resolves any health condition of any girl. The World Health Organization's definition of FGC is,

[A]ll procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. The practice has no health benefits for girls and women and cause[s] severe bleeding and problems urinating, and later cysts, infections, as well as complications in childbirth and increased risk of newborn deaths.³³

The Code sets out what constitutes 'serious professional misconduct', which includes:

- Under **Part 2, paragraph 1.1 (Responsibility for Standards of Medical Care to Patients)**, serious disregard or neglect by a medical practitioner of their professional duties to their patients can lead to the Council starting disciplinary proceedings.
- Under **Part 2, paragraph 1.4 (Consent for Medical Examination and Treatment)**, 'Obtaining valid consent is an important component of a sound doctor-patient relationship. For the consent to be valid, it should satisfy the requirements of informed consent.' However, as most girls undergo FGC in infancy, they are not able to give

consent; therefore, it is the parents' or guardians' consent that must be given, and it is the duty of the medical practitioner to inform them of the nature of the procedure and any potential impacts it may have on the health and wellbeing of the girl.

Protecting Uncut Girls and Women

There is no legislation in the Penal Code or other acts protecting girls and women who have not undergone FGC from derogatory or abusive language, or from discrimination and actions that exclude them from society and community activities.

Protection of Victims and Witnesses

There is no legislation to protect victims and witnesses in FGC cases. However, **Section 18 of the Child Act 2001** enables a child to be taken into temporary custody if there are reasonable grounds for believing s/he is in need of care and protection and that it is in the child's best interests to be taken into custody to avoid an action being undertaken against the child by another person.³⁴

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.³⁵*

Penalties

The Penal Code

The **Penal Code** sets out penalties, as follows, for voluntarily causing 'hurt' and 'grievous hurt', which can be applied if FGC is prosecuted under these definitions.

- **Section 323:** Whoever voluntarily causes hurt can be punished with *imprisonment for up to a year and/or a fine of up to two thousand ringgit*.
- **Section 325:** Whoever voluntarily causes grievous hurt can be punished with *imprisonment for up to seven years and/or a fine*.³⁶
- **Section 326A(1)** goes on to say,

Whoever causes hurt to his spouse or former spouse, a child, an incapacitated adult or other member of the family and commits an offence under sections 323, 324, 325, 326, 334 or 335 shall be punished with imprisonment for up to twice the length of time he would have received for that offence under the earlier Sections, together with any fine that might also have been applied.³⁷
- Under **Section 109**, punishment for procuring, aiding or abetting FGC may be *the same as that for the perpetrator*, even if the person abetting has a different intention from that of the perpetrator (**Section 110**). Further, even if the abetment contributes to an imprisonable offence that does not end with the expected outcome, the abettor may be sentenced for up to a *half of the period of imprisonment* for perpetrating the offence (**Section 116**).³⁸
- There is no direct reference to penalties for failing to report an offence, but under **Section 120**, if a person conceals knowledge of an intention to commit an offence that is punishable with imprisonment, or gives false information that leads to concealment of an imprisonable offence, they may be *imprisoned for up to a quarter of the time applied for perpetration of the offence, together with the fine for that offence*.³⁹

Child Act 2001

Under **Section 31 of the Child Act**, the offence of ill-treatment, neglect, abandonment or exposure of children is punishable with *a fine not exceeding 50,000 ringgit and/or imprisonment for up to 20 years*.

In addition, the Court can order the person convicted of such an offence to execute a bond in surety of good behaviour and any other conditions decided by the Court, for as long as the Court thinks fit. If the convicted person fails to comply with any of the conditions, he may be *fined a further sum up to 10,000 ringgit or imprisoned for a further five years*.

Implementation of the Law

Court Cases

To date, there do not appear to have been any prosecutions for the offence of FGC (for example, as 'hurt' or 'grievous hurt' under the Penal Code); nor have any cases of FGC been invoked under the Child Act.

Role of the State

See also Appendix III.

Under **the Federal Constitution**,

- 'No person shall be deprived of his life or personal liberty save in accordance with law' (**Article 5[1]**);
- 'All persons are equal before the law and entitled to the equal protection of the law' (**Article 8[1]**); and
- '[T]here shall be no discrimination against citizens on grounds of religion, race, descent, place of birth or gender in any law' (**Article 8[2]**).⁴⁰

The absence of FGC cases being brought before the courts suggests that women and girls in affected communities are not being given the equal protection of the law as guaranteed by **the Constitution**.

While gender-based discrimination is forbidden under **Article 8(2)**, FGC is not associated with gender-based discrimination in the minds of most Malaysians, and interpretations of this Article have thus far been limited to acts committed by public authorities.⁴¹

The State is not specifically required to budget for programmes aimed at reducing FGC, but **the Ministry of Women, Family and Community Development** is tasked with preserving the rights of women, families and communities fairly and impartially, without discrimination.⁴²

Additionally, the State is not obliged to provide telephone helplines or safe spaces. However, **the Ministry of Women, Family and Community Development** has established a helpline, **Talian Kasih**.⁴³ **The Department of Social Welfare** also provides an avenue to report cases of child abuse.

The State is not specifically required to record and monitor all FGC cases, but **the Child Act** does have record-keeping requirements.

Child Act 2001

Sections 118 and **119** require the Registrar to keep and maintain a 'Register of Children', into which the following details shall be recorded:

- (a) details of every case or suspected case of a child in need of protection;
- (aa) details of persons convicted of any offence in which a child is a victim; and
- (b) such other matters in relation to such case or suspected case as the Director General may from time to time determine.

International Obligations

In its *Sixth periodic report* to the Committee on the Elimination of Discrimination against Women (CEDAW) in May 2022, the Government of Malaysia stated:

Malaysia reiterates that the practice of female circumcision also known as *khitan* does not cause any maternal or perinatal morbidity or mortality. The Government has actively conducted various researches and engagements on female circumcision among government agencies, religious authorities, civil society organisations, medical experts and professionals as well as academicians. To demonstrate the Government's commitment in addressing the matter, series of roundtable discussions are continuously conducted with the Department of Islamic Development (JAKIM) and the relevant stakeholders, in line with the Federal Constitution, to bridge the gap and understanding on this matter.⁴⁴

Responding in June 2024 to the *Sixth periodic report*, the CEDAW concluded:

24. The Committee reiterates its concern about the persistence of female genital mutilation among Muslim communities reinforced by a non-binding fatwa on female circumcision issued by the Malaysian National Council of Islamic Religious Affairs in 2009, as well as among some Indigenous communities. In that regard, the Committee notes with concern reports that female genital mutilation is practised on more than 95 per cent of Muslim girls and that it has serious effects on the health of many of them.

25. The Committee stresses that female genital mutilation cannot be justified on religious grounds and constitutes a harmful practice to exert control over the bodies and sexuality of women and girls is in violation of the Convention, irrespective of whether or not these practices are performed within or outside a medical institution. Recalling its previous recommendation (CEDAW/C/MYS/CO/3-5, para. 22), the Committee recommends that the State party:

(a) Criminalize all forms of female genital mutilation, ensuring that such criminalization cannot be overruled by fatwas or other rulings issued by religious or clerical authorities, in accordance with 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 and target 5.3 of the Sustainable Development Goals;

(b) Conduct awareness-raising and educational campaigns aimed at promoting understanding of the criminal nature of and the need to eliminate female genital mutilation, in particular among medical staff, parents, community leaders, religious scholars, men and boys, allocate sufficient resources and adopt a systematic monitoring and evaluation framework of such activities.⁴⁵

Conclusions

*In Malaysia, FGC is not explicitly prohibited by law, but it could arguably be subject to various legal and policy frameworks that regulate health, religion, child protection and human rights. Specifically, prosecution could take place under **Sections 319–322 of the Penal Code**, which relate to ‘hurt’ and ‘grievous hurt’.*

The main sources of law in Malaysia are the Federal Constitution, federal and state legislation, common law, Sharia law and customary law, which apply differently to different ethnic and religious groups.

- The **Federal Constitution** sets out laws pertaining to the equality of all persons and the protection of fundamental liberties, including the rights to life and personal liberty, freedom of religion, freedom of expression and freedom from discrimination. It also grants states the power to enact laws on Islamic matters, including personal and family law, which may affect the practice and regulation of FGC among Muslims, who constitute 63.5% of the population.

*NB: If any state law is inconsistent with a federal law, **Article 75 of the Federal Constitution** provides that the federal law shall prevail and the state law shall, to the extent of the inconsistency, be void.*

- Laws that apply to all citizens, regardless of religion, include **the Penal Code** and the **Child Act 2001**, both of which may be relevant to FGC in that they criminalise acts that harm, injure, abuse or neglect children. However, neither of these pieces of legislation specifically mention or address FGC as a distinct offence or a form of violence against women and girls.
- **Sharia law**, which applies only to Muslims, regulates various aspects of personal and family law. It also influences the practice and perception of FGC among Muslims, as some Islamic scholars and authorities consider it to be a religious obligation, a *sunna* (‘recommended’) practice, or a permissible custom, while others regard it a harmful innovation, a *makruh* (‘disliked’) practice, or a prohibited mutilation.
- The National Fatwa Council issued a **2009 fatwa** (‘edict’), which states that the practice of ‘female circumcision’ is a part of Islamic teachings that must be implemented by Muslims. However, for a fatwa to have legal force, it must be gazetted by a state and thereby adopted as part of that state’s law. In the event that the 2009 fatwa is gazetted in any state, it could potentially be challenged under **Article 75 of the Federal Constitution** for being inconsistent with federal law – specifically, the sections of the **Penal Code** and **Child Act** cited above.

- **Customary law**, which applies to indigenous and minority groups such as the Orang Asli, the Kadazan-Dusun, the Iban and the Bidayuh, is based on the traditions, customs and beliefs of these communities, which may vary from one group to another. Customary law may also affect the practice and regulation of FGC in these groups, as some of them may have their own forms, rituals and reasons for performing FGC, such as 'enhancing fertility', 'preserving virginity', 'preventing promiscuity', or appeasing the spirits.

In summary, there are no laws expressly prohibiting FGC, nor are there any state laws (being a matter within the precepts of Islam) expressly allowing FGC. The relevant provisions cited under **the Penal Code** and **the Child Act 2001** address criminal offences, which are matters for federal legislation, and any attempts by a state to enact state law that is inconsistent with federal law would be void under **Article 75 of the Federal Constitution**.

As such, FGC would be unlawful if it violates any provision of the Penal Code or the Child Act 2001, regardless of state or Sharia laws.

Recommendations

Orchid Project recommends that:

1. as a first step, **a national survey be** conducted to confirm the extent of FGC in Malaysia 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 Government of Malaysia task the Department for Islamic Development and the Ministry of Women, Family and Community Development to **set up a national working group** to develop and implement programmes of education and awareness-raising about the health problems and other harms FGC causes in communities in which it is practised;
3. the Malaysia Ministry of Health, in conjunction with the Malaysian Medical Council, **issue a warning to all licensed medical practitioners** (including general practitioners, midwives and nurses) that FGC must not be carried out in any healthcare premises, and those who perform FGC may lose their licences to practice; and circulate to all medical professionals the leaflet *Empowering Health Professionals: Unveiling the Harms of Female Circumcision in Malaysia* available at https://arrow.org.my/wp-content/uploads/2023/12/Empowering-Healthcare-Professionals_Unveiling-the-Harms-of-Female-Circumcision-in-Malaysia-1.pdf; and
4. the Government **consider introducing legislation that criminalises FGC**, includes a clear definition of FGC that corresponds to the one given by the World Health Organization; 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

Malaysia	Signed?	Ratified/ Acceded?	Reservations on Reporting? Yes/No
International			
Convention on the Elimination of All Forms of Discrimination against Women (1979)	Yes	Acceded 1995	<p>Yes: Malaysia acceded to the CEDAW in 1995. The Government has declared that Malaysia's accession is subject to the understanding that the provisions of the CEDAW do not conflict with the provisions of Islamic Sharia law and the Federal Constitution of Malaysia.</p> <p>Article 5(a) of the CEDAW aims to stop cultural practices that aid in discrimination, and this includes FGM/C, even though it is not explicitly mentioned. By retracting its reservation to Article 5(a) in 2018, Malaysia committed itself to implementing the abovementioned measures.</p> <p>Reservations: Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f), and 16(1)(g).</p> <p>In its latest replies to its , the Government of Malaysia stated that it maintains its reservations to Articles 16(1)(a), 16(1)(c), 16(1)(f), and 16(1)(g) on matters relating to marriage and family relations in line with the Federal Constitution and Islamic Sharia law, and that further efforts are being taken in the review of the reservation to Article 9(2) (on the granting of women equal rights with men with respect to the nationality of their children).</p> <p>However, please note that these reservations are unrelated to FGM/C.</p>

Convention on the Rights of the Child (1989)	Yes	Acceded 1995	<p>Yes: Article 24(3) of the CRC sets out the requirements for state parties to take appropriate measures to abolish 'traditional practices' that are prejudicial to the health of a child.</p> <p>Reservations: Malaysia reserves Articles 2, 7, 14, 28(1)(a) and 37 of the CRC, and declares that these provisions shall be applicable if they are in conformity with the Federal Constitution and national policies of the Government of Malaysia.</p> <p>However, please note that these reservations are unrelated to FGM/C.</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.⁴⁶

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.⁴⁷

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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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