

# LEGAL TRAINING MANUAL FOR PROFESSIONALS ON THE LAW AGAINST FEMALE GENITAL MUTILATION IN NIGERIA



NIGERIA



Legal Training Manual for Professionals on the Law  
against Female Genital Mutilation in Nigeria

# **Legal Training Manual for Professionals on the Law against Female Genital Mutilation in Nigeria**

**June 2022**

**The World Bank Group**

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**Cover Photo**

Portrait of Children, Nigeria © Arne Hoel / World Bank

## **ACKNOWLEDGEMENTS**

The idea of developing country specific Legal Training Manuals for Professionals on the Law against Female Genital Mutilation (FGM) came from a pilot initiative in Guinea-Bissau financed by the Nordic Trust Fund and the World Bank in 2018. This idea was rooted in the conviction that the law can be an extremely effective empowerment tool and can help change harmful social norms: it condemns practices that are no longer tolerated in society and protects the rights of those who, in the absence of the law, would otherwise be victims of intersectional forms of discrimination. For justice and the rule of law to work, better knowledge of the law, better promotion of the law and better law enforcement are crucial.

In 2021, the Global Forum of Law, Justice, and Development (GFLJD) created the FGM Legal Working Group dedicated to promoting better knowledge of the law and better law enforcement to contribute to the achievement of the Sustainable Development Goal 5.3 to eradicate all harmful practices such as child marriage and FGM by 2030. This Working Group decided to build upon the experience of Guinea Bissau and develop in collaboration with the Empowering Women by Balancing the Law (EWBL) initiative of the Legal Vice Presidency of the World Bank, country-specific training manuals for professionals to promote better knowledge and enforcement of the international, regional, and national legal frameworks on FGM.

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### **Authors**

Lou M.C. Granier, Gender Specialist Consultant, World Bank

Marie-Louise Aren, Legal Consultant, World Bank

### **Coordination and Supervision**

Isabella Micali Drossos, Senior Counsel, World Bank

### **Very Special thanks for their guidance and support**

J. Clifford Frazier, Interim Senior Vice President and Group General Counsel, World Bank

Francesca Daverio, Head of Office, Legal Vice Presidency, World Bank

Laurence Cecile Coste, Counsel, World Bank

Artaban Micali Drossos, Illustrations

Eva Caly, Illustrations

As well as all members of the FGM Legal Working Group of the Global Forum on Law, Justice and Development – Legal Vice Presidency, World Bank

## **DISCLAIMERS AND LIMITATIONS**

This work can be publicly disclosed and should be cited as “World Bank. Legal Training Manual for Professionals on the Law against FGM in Nigeria. June 2022”. This Manual is a working document and may be updated from time to time.

This Manual is based on information on international and regional agreements, domestic law, regulation, case law and policy available in English online, offline, or both, and based on information collected from research conducted and updated up to June 2022. Because this Manual is carried out primarily based on information publicly available online, it has several references and links to publicly available published documents. All references were checked at the time when they were inserted. There is no guarantee as to their future accessibility. There is no guarantee as to the continued accuracy of this information after the last date on which it was verified. The findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of The World Bank.

The Manual does not include any national case law as our secondary research has not been able to find any case law known to date. The Manual is also limited to a number of international case law selected to serve for comparative analysis purposes.

# Legal Training Manual for Professionals on the Law against Female Genital Mutilation in Nigeria

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1. Introduction: What we need to know about female genital mutilation (FGM).

### **Objectives of this module**

By the end of this module, participants should be able to:

1. Describe the international and national context of FGM;
2. Describe what FGM is;
3. Explain the causes and consequences of FGM;
4. Characterize FGM as a form of Violence Against Women (VAW) and a violation of human rights.

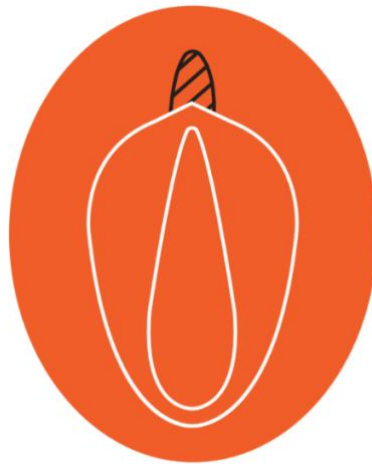


## 1.1. Concepts

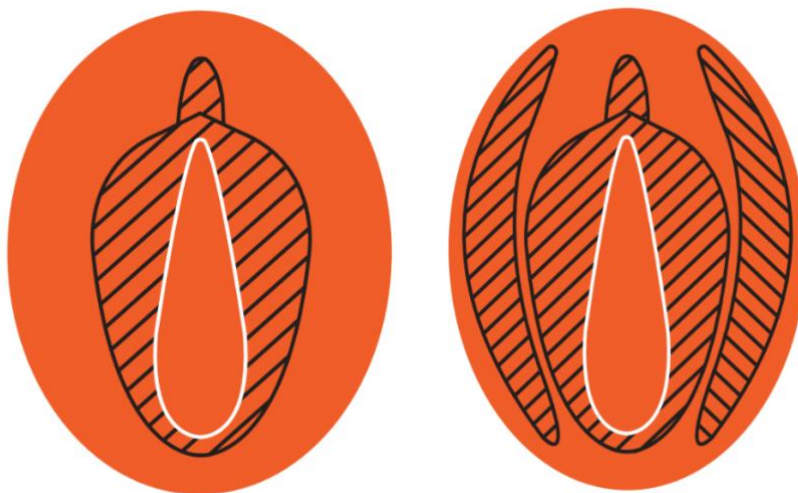
Female Genital Mutilation (FGM) is defined by the World Health Organization (WHO) as "all procedures involving the partial or total removal of the external female genitalia or other damage to the female genitalia for non-medical reasons." (2022).

The most common types of FGM are:

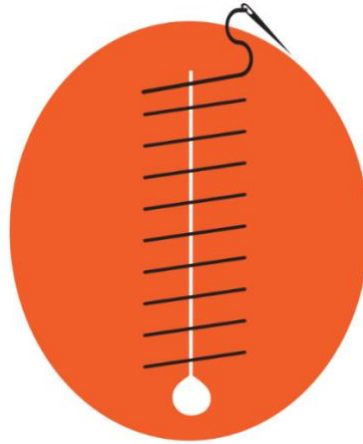
**Type I:** partial or total removal of the clitoris and / or foreskin (clitoridectomy).



**Type II:** partial or total removal of the clitoris glans and the labia minora, with or without removal of the labia majora (excision).



**Type III:** narrowing of the vaginal opening through the creation of a covering seal by cutting and repositioning the labia minora, and/or the labia majora, with or without removal of the clitoral hood and glans (infibulation).



**Type IV:** all other procedures harmful to the female genitalia for non-medical purposes, for example: pricking, piercing, incision, scraping and cauterization. (WHO, 2022).

The origin of FGM is obscure but it is believed that it appeared in ancient Egypt before the great monotheistic religions (Judaism, Christianity and Islam) :

*"[...] its origin dates to a time before the emergence of Islam. However, it is not clear when or where the practice began. Some authors suggest that it was in ancient Egypt. Others say that FGM is an ancient African ritual that came to Egypt by diffusion. There are even some who hypothesize that the practice was applied to black women at the time of the ancient Arab slave market or that it was introduced when the Nile Valley was invaded by nomadic tribes around 3,100 B.C. There are several beliefs that maintain the practice of FGM. It is said that men wanted it for the following reasons: to ensure their powers; belief that their wives would not seek other partners or that men from other tribes would not rape them; belief that women would lose their sexual desire. In some tribes, it is believed that the clitoris is evil, and if it touches the child's head during childbirth, the child will be doomed to unimaginable misfortunes. Others believe that this misrepresentation of a small penis would harm male virility"* (Piacentini 2007, 120).

Some Nigerian scholars also share same views on FGM's unclear multi-background origins :

*"The practise of FMG has endured for many centuries especially in Africa, parts of Asia and the Middle East; and also, as an obligation in certain religious sects. Its origin is quite unclear, but traced by some scholars, to Ancient Egypt (where Sudan and Egypt are presently located)*

*as many circumcised mummies were found in these locations beginning as early as the 5th century BC. However, another research traces the origin of FGM to West African regions from the Middle East through Arab traders during the Trans-Atlantic and Trans-Saharan slave trade. This practice was also, implemented on female slaves in Ancient Rome, deterring recipients from coitus and subsequent pregnancy. Unarguably, FGM is still practised even in today's modern societies, especially in Nigeria, for many reasons” (Nzeribe & Ibeabuchi 2021, 44).*

However, other scholars provide a slightly clearer interpretation of its origins.

*“The circumcision of women is first attested in Egypt in the Hellenistic period. The earliest evidence is a papyrus document from 163 BCE, a petition written in Greek by an Egyptian monk at the temple of Serapis in Memphis. In it an Egyptian woman claims that her daughter “is of the age to be circumcised” since she is about to be married; the monk in turn explains to the Greek governor that such circumcision “is the custom among the Egyptians.” The verb used is **peritemnein**, the standard Greek verb for the circumcision of men, here applied to the circumcision of a woman. This document shows that the circumcision of women just before marriage was an established custom, at least in Memphis (middle Egypt), not later than the middle of the second century BCE. The absence of any reference to female circumcision in any Egyptian document of the preceding two thousand years suggests that this practice was a relatively recent importation into Egypt, even if we cannot be sure when it was imported, why, or whence (Ethiopia? Arabia?).” (Cohen 2005, 66)*

The age of the girl or woman subjected to FGM and the type of FGM practiced, depends on several cultural factors. FGM is typically done to girls aged 4 to 12 years, although in some cultures it occurs earlier, shortly after birth, or at the latest before marriage or childbirth (UEFGM, 2019).

The age of the girl or woman subjected to FGM and the type of FGM practiced depend on several cultural factors. FGM is typically done to girls aged 4 to 12 years, although in some cultures it occurs earlier, shortly after birth, or at the latest before marriage or childbirth (UEFGM, 2019).

## 1.2. International Context

Presently, it is estimated that about 200 million women and girls in 30 different countries have been victims of FGM (WHO 2022). In addition, 8,000 girls are at risk every day – 3 million girls and women each year (UNICEF 2016; UEFGM 2019b). This situation is aggravated by the COVID-19 crisis, which could expose an additional 2 million girls to the practice (UNFPA-UNICEF).

FGM is a deep-rooted social norm in many of the countries where it is practiced and regarded as socially acceptable, even though it is embedded in gender inequality and violence

against girls and women. There are different reasons explaining why FGM is practiced. Some communities regard it as a rite of passage into womanhood, while others use it as a tool to control female sexuality. Several others believe FGM guarantees a girl's future marriage and family honour. FGM in several communities is promoted under cultural ideals of femininity and modesty. Some communities also provide religious reasons for its practice with no scriptural backing. (WHO, 2022; UNICEF, 2019).

FGM procedures are often conducted by women in the community, specially designated for this purpose. Sometimes traditional midwives or people with magical and healing powers or even village barbers perform these functions. FGM is also performed in hospitals and clinics by health professionals who use anaesthetics and antiseptics. The medicalised form of FGM is done in the belief that there will be less risks and complications compared to non-medicalized FGM. This is further compounded by financial incentive to perform the practice. (WHO,2022).

The WHO expresses its unequivocal opposition to the medicalization of FGM, warning that under no circumstances should it be performed by health professionals, or institutions. **The practice of female circumcision by health personnel constitutes a serious violation of their professional ethics and could subject them to disciplinary sanctions (reprimand, suspension, disbarment).** In addition, the medicalization of FGM does not avoid all the long term mental and physical health complications associated with the practice.

FGM provides no health benefits, instead it seriously harms girls and women in many ways. FGM interferes with the natural functions of girls' and women's bodies. Its short and long-term consequences include severe bleeding and pain, fever, urination problems, wound healing problems, menstrual problems, infections, tetanus, infertility, kidney failure, fistula, HIV/AIDS, anxiety, memory loss, post-traumatic stress disorder, sexual complications, complications at birth, increased risk of new-born death, premature births, etc.

Although some African regions face a high prevalence of FGM (see figure 1), the practice occurs worldwide, on all continents (see figure 2).

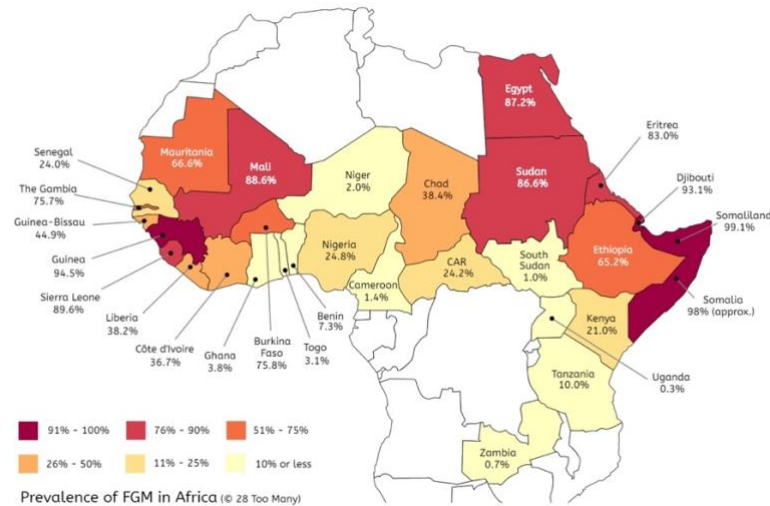


Figure 1. Percentage of girls and women aged 15-49 who have undergone FGM, by country, on the African continent. Source: 28 Too Many, n.d.

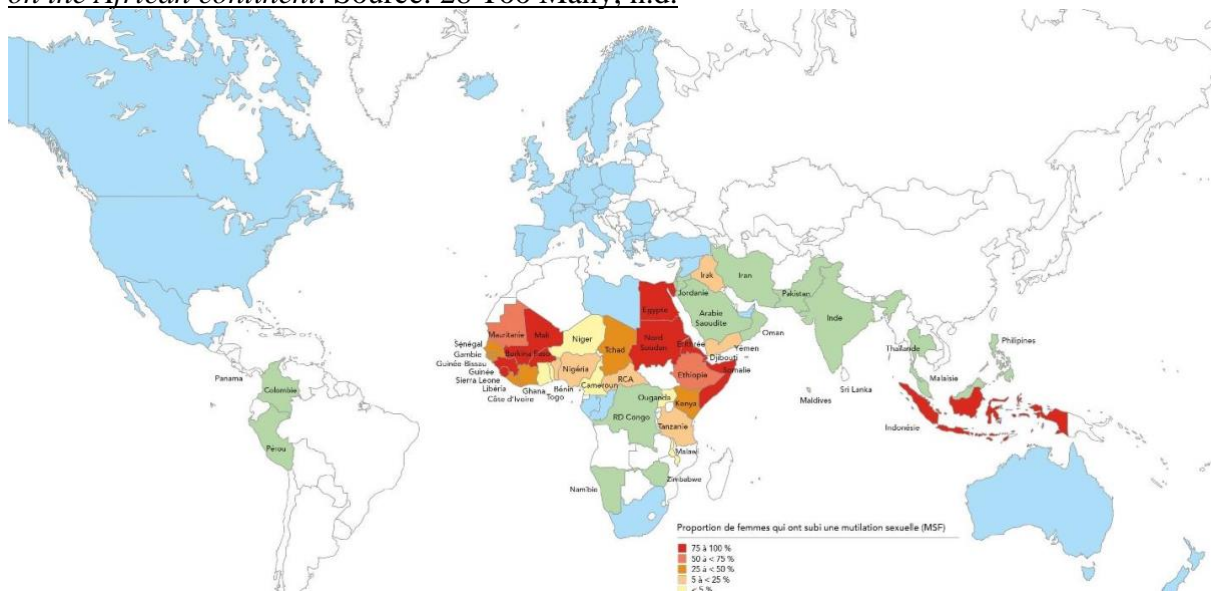


Figure 2. FGM prevalence rate in the World. Source: Global Responsibility Report, 2020.

In Africa, countries with the highest prevalence rates (> 85%) include Djibouti, Egypt, Eritrea, Guinea, Mali, Sierra Leone, and Somalia.

However, FGM is also practiced in communities in Asia (see figure 3) (e.g. India, Malaysia, and Indonesia) and the Middle East (see figure 4) (Iran, Iraq, Kurdish communities, Pakistan, Saudi Arabia, and Yemen), among certain ethnic groups in Central, South and North America, Russia, and Australia. FGM is also practiced in Europe (see figure 5) and the United States, particularly among migrant communities from FGM-affected countries as well as by local radical Christian communities (see figure 6).

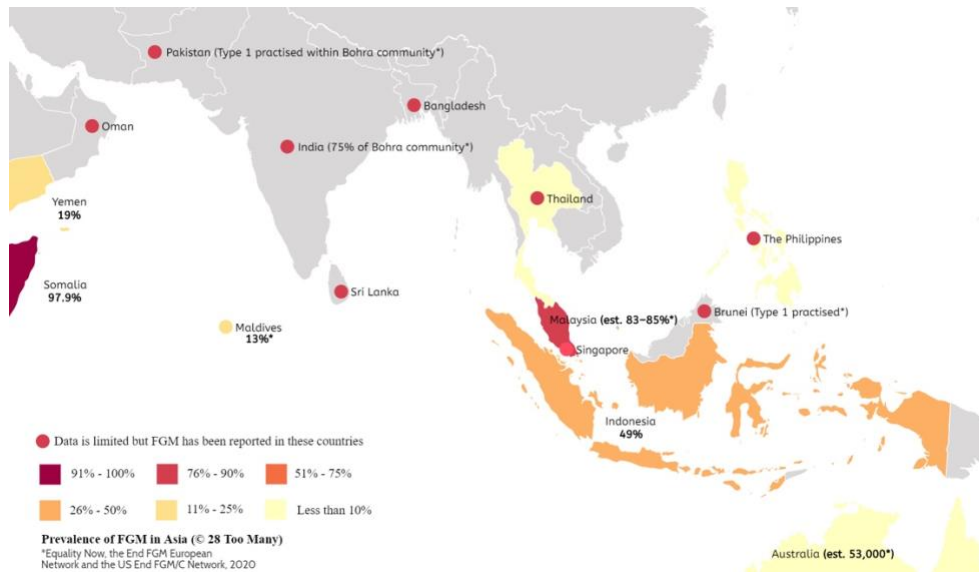


Figure 3. *FGM Prevalence in Asia*. Source: 28 Too Many, n.d.

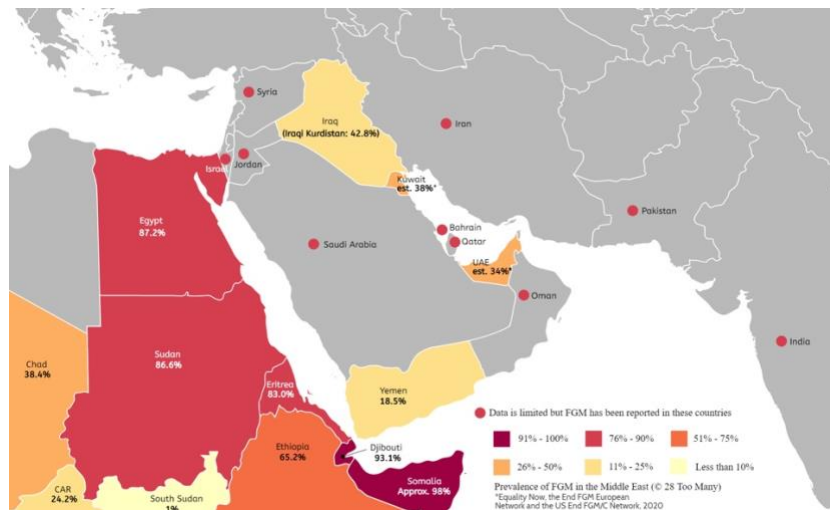


Figure 4. *FGM Prevalence in the Middle East and North Africa Region*. Source: 28 Too Many, n.d.



Figure 5. *FGM Prevalence in Europe*. Source: 28 Too Many, n.d.



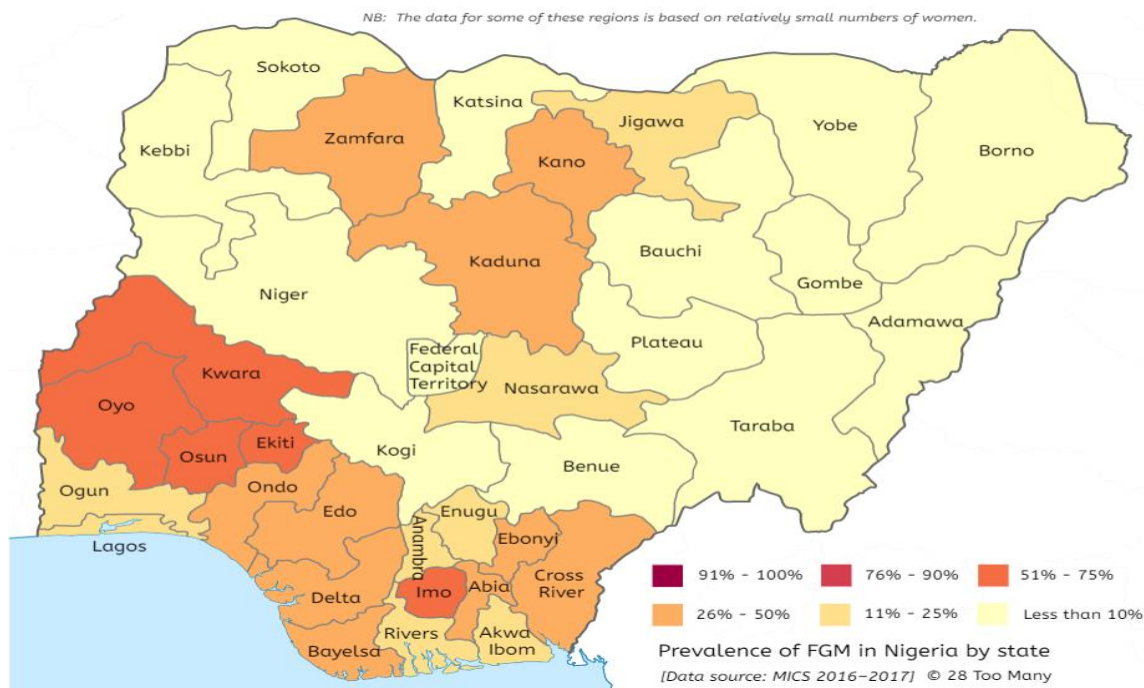


Figure 3. *Prevalence of FGM by state in Nigeria.* Source: 28 Too Many, n.d.

#### FGM in Nigeria: Country Profile Update Executive Summary. 28 Too Many, 2018 (p.2-8)

**“FGM Practitioners:** FGM in Nigeria continues to be carried out mostly by traditional practitioners ‘Cut, flesh removed’ is the most common type of FGM practised in Nigeria. Many are opting for more medicalised forms of FGM (NPC and ICF, 2014) 11.9% of girls aged 0–14 and 12.7% of women aged 15–49 who have had FGM in Nigeria were cut by a medical professional. (NDHS, 2013) Nigeria has federal and health sector-specific laws/policies that provide legal prevention and response to FGM.

**State/Ethnic Groups:** FGM varies across Nigeria’s 36 states. Ebonyi State in South- East and Osun State in South -West has the highest incidence of FGM at 74.2% and 76.6%. Katsina State, in the North- West has the lowest prevalence of FGM at 0.1%. Among Nigeria’s ethnic groups, the Hausa-Fulani, predominantly based in North- East and North-West have an average prevalence of 16.3%. The Yoruba predominantly based in the South-West, have the highest national prevalence rate of 54.5%. This is followed closely by the Igbo, mainly based in the South-East, have a prevalence of 45.2%.

**Community Strategies and Alternative Rites of Passage:** Social media has been effectively utilised to hold FGM campaigns across Nigeria, resulting in drawing the attention of Federal and State Governments to violence against women and girls through FGM. The Guardian’s End FGM Global Media Campaign (GGMC) coupled with social influencers ran a Media Training Academy for activists, journalists, and religious broadcasters, training them on effective ways to use the media in activism against FGM. This influenced FGM eradication projects by graduates’ projects were begun by graduates. Nongovernmental organisations (NGOs) like the Safehaven Development initiative, Action Health Incorporated, GGMC, and a host of others, continue to play a vital role in FGM eradication in Nigeria by including community-dialogue in their

*repertoire of strategies. Community-dialogues are aimed at bringing traditional and religious leaders into FGM discussions, tackling the health risks of FGM, raising knowledge in educational institutions, using social media to disseminate FGM awareness, and training traditional practitioners with new skills for alternate sources of income. At the National Level, Girl Effect have supported the inclusion of education on Harmful Traditional Practices in the educational curricula and teacher training. There are also several NGO collaborations for the eradication of FGM.*

**Religion:** *FGM prevalence spreads differently among various groups. The FGM prevalence among Muslim women is 20.1%. The prevalence rate among Christians in Nigeria's (present in the South and Middle-Belt) is 31.4% and 29.3% respectively. The highest prevalence rate is found among traditionalist women, mostly present in the South at 34.8%. Nigerian women who have undergone FGM have likely to provide religious reasons for undergoing FGM."*

There has been organized efforts taken by the Nigerian Government to eradicate FGM over the years. This includes the collection of reliable and accurate data, national policy and plans of action for FGM eradication, Anti-FGM legislations, mainstreaming FGM programmes in relevant sectors, and collaboration with various national and international actors. These have help create reasonable awareness of FGM practice in Nigeria. However, the results from these efforts remain modest. (FMOH NPPOA 2013, p 12). Consistent domestic funding through national and state budget lines, private sector, and domestic institution funding contributions is necessary in sustaining FGM eradication.

It has been reported that:

*"Nigeria is one of the five countries with the highest rates of FGM medicalization in the world. Parents turning to trained health workers to avert the health concerns of FGM has become more common, especially in more developed countries. The increase in medicalization among Nigerian girls in younger cohorts suggests the trend is not improving. Moreover, a study of 250 health workers in south-western Nigeria found that almost half had been asked to perform FGM... To counteract these tendencies, service providers have been given relevant information, education and communication materials. But clearly this is an area where more progress is needed. Part of the planned strategy to address medicalization in the third phase of the Joint Programme is to engage more with medical associations and regulatory bodies at national, state and community levels. In addition, the Joint Programme will scale up the use of community and health surveillance systems to monitor health workers circumstances, such as under significant pressure from a girl's or woman's family, for significant financial benefits or to prevent patients from going to traditional practitioners" (UNICEF-UNFPA 2018, p 14).*

Most recently, the COVID-19 pandemic and its attendant national lockdown restrictions became a huge setback to the progress and campaign to eradicate FGM. FGM practitioners were reported to advertise FGM services at a reduced fee, to cope with the poverty caused by the lockdown. Some parents used the lockdown as an opportunity to form

compliance from their resistant children. Calls for help to NGOs from FGM opposed communities for assistance were stiffly resisted. (IWPR 2022).

#### 1.4. Causes and consequences

FGM is a strong social norm with historical and cultural roots. They tend to be defended by the communities that practice them with arguments based on religion. Yet there is no religious commandment that recommends the practice, in any of the three monotheistic religions.

- *The different causes that make the practice continue in the world.*

It seems important to note that FGM is a form of gender-based violence (GBV) and is deeply rooted in discriminatory social norms towards women and girls and unequal gender power. This gave rise to a number of misbeliefs and arguments that contribute to the continuation of the practice.

**1. Hygienic and aesthetic considerations:** « The genitals of the uncircumcised woman are ugly and smell bad. It is therefore necessary to cut the clitoris at the risk of seeing it grow disproportionately ».

→ The female genitals are composed of several elements and have a complex chemical and bacteriological system. They do not smell bad unless there is an infection. These organs also have a natural protection system that is also self-cleaning. FGM interferes with the proper functioning of these organs, removes their natural protections, and can therefore promote infections. The clitoris does not grow and measures between 2mm and 1cm.

**2. Considerations related to controlling sexuality:** « An uncircumcised woman is of light manners and above all insatiable. When she is cut, she will develop virtues such as: fidelity, self-control, respect for the spouse ».

→ Although the clitoris is the bearer of sexual pleasure for the woman during sexual intercourse, virtues such as fidelity, self-control or respect for the husband are moral values that are therefore not linked to physical aspects but rather to psychological aspects. Uncircumcised women do not have different behaviors and have the same moral values as women who have undergone FGM.

**3. Considerations related to the evil effects of the clitoris:** Some believe that the man could become helpless if his sex touched the clitoris of the uncircumcised woman during sexual intercourse. Others believe that the unborn baby could die or become mentally disabled if his/her head touched the clitoris.

→ The clitoris has no other "power" than to participate in the proper functioning of the woman's reproductive system and to promote pleasure during sexual intercourse. The sex of the man

does not become powerless in contact with the clitoris. FGM, on the other hand, can make sexual intercourse painful and unpleasant and therefore harm the harmony of the couple. The presence of the clitoris does not play a role in the health of the baby but FGM, on the other hand can harm his/her health following complications during childbirth.

**4. Considerations related to fertility and the preservation of virginity:** « FGM makes the woman fertile and facilitates childbirth ».

→ FGM does not make the woman fertile. On the contrary, the medical consequences of FGM include infertility and difficulties in childbirth (often longer and dangerous deliveries); fistulas in case of unsupervised delivery; painful periods and stomach aches; pain during sexual intercourse due to scarring; vaginismus making penetration impossible; very painful cysts preventing sexual intercourse; hematocolpos or accumulation of menstrual blood following infibulation; recurrent infections that can cause infertility; the increased risk of death of babies due to loss of elasticity of the vulva due to scarring and keloids.

**5. Myth Considerations:** According to some myths, every human being, at birth, is endowed with 2 sexes: feminine and masculine. « The foreskin is the feminine principle in men and the clitoris is the masculine principle in women. They must be cut to restore order in the primordial disorder ».

→ According to medicine, the clitoris is the anatomical equivalent of the glans in men and not the equivalent of the foreskin. At birth, the human being is endowed with only one sex (female or male). There is no primordial disorder on this aspect because nature is well made and the sex of the baby develops at the 14th week of pregnancy.

**6. Initiatory and symbolic considerations:** The age of excision / The educational value of pain / The leap of fire or destruction of the past of childhood / The sense of the group / The transmission of knowledge

→ Although FGM is considered a rite of passage, it is possible to transmit so many initiatory values and symbols without using violent, dangerous, harmful, and extremely painful methods. Permanent pain has no educational value and has extremely negative effects on mental health: anxieties, loss of confidence, various traumas, vaginismus, depression and even suicides. A human group can exist without pain and suffering. FGM undermines the values of happiness and harmony that are the foundations of every human being's life.

**7. Religious considerations :** « Female circumcision is a religious practice ».

→ The practice historically precedes the appearance of monotheistic religions and is not encouraged in the religious texts of these religions.

**Female circumcision does not exist in the Qur'an:**

*« Unfortunately, to this day, there are those who use people's ignorance and their non-mastery of the Arabic language to prove that Female Genital Mutilation originates legally in the Qur'an. However, the Qur'an does not speak of female circumcision neither directly nor indirectly. Some have endeavored to explain Abraham's tradition of male circumcision and associate it with Female Genital Mutilation to justify it. This is a wrong explanation.*

*The teachings of Abraham go beyond the question of his circumcision and that of his male children. To summarize the teachings on circumcision and to make Female Genital Mutilation equivalent to Masculine Circumcision is undoubtedly a lie about the Quran.*

*If we go back to the pre-Islam religions, as an example and not as legal proof, we will note that male circumcision among Jews is not a ritual, but a belief, circumcision is considered a religious necessity. Every Jew must and cannot be exempted from circumcision.*

*In the Muslim religion, circumcision is not a condition of being Muslim, and yet among Jews and Christians there is no indication about female circumcision.*

*In all cases, Abraham's tradition of circumcision is masculine. We respect the teachings of Abraham who called us Muslims. If it were otherwise, there would be indications to the Jews in the Torah or other books, confirming the obligation of female circumcision. We can say that Abraham is innocent of this matter and the History of religions proves the same ». (Baldé, n.d.)*

**Female circumcision does not exist in the Bible:**

*FGM is not mentioned, let alone recommended in the Bible. They are in fundamental contradiction with the Christian principle of respect due to the human body, which is thought to be sacred. (El-Damanhoury I, 2013)*

*Proponents of FGM sometimes use Genesis 17:10-14 to justify the practice, according to which God ordered Abraham to circumcise every child in his household in his home. Except that he never mentioned women (Christianize). Some Christians explain that circumcision is biblical because it is present in the Bible. A theology professor refuted this: the Bible does not require that women be circumcised (Offiong AV, 2018).*

**Female circumcision does not exist in the Torah:**

*“Ancient Hebrewism was a sacramental association of men, characterized by the circumcision of the male member.... there is no comparable sacrament for newborn girls, which points to the fundamentally patriarchal character of Judaism”. (Schalom Ben-Chorin)*

*“Were Jewish women ever circumcised? The answer is no. Female circumcision was unknown in the ancient Near East in general and Jewish Circumcision and Christian Polemics known to ancient Israel in particular. In Genesis 17 God enjoins circumcision upon Abraham and his male descendants, but neither the writer nor the earliest readers of the text seem to have been aware of the possibility that women too could be circumcised”. (Cohen 2005, 59)*



### Recommended exercise: Harmful Practices

Work with participants to identify beneficial, neutral and harmful social practices: in a board write down the three possibilities (beneficial / neutral / harmful) and under each classification list examples of practices. Promote discussion about the reasons that make them beneficial, harmful or neutral.

- *FGM consequences on women's health.*

FGM creates immediate and long-term complication on a woman's body and health throughout her lifetime. Immediate complications from FGM include severe haemorrhage which may result in shock, excruciating pain of the procedure, urinary retention, infection of the excretory organs, and fistulae formation. Long-term complications include dysmenorrhea, vaginal stenosis, cryptomenorrhea, dyspareunia, urinary tract infection, pelvic inflammatory disease, and occasional infertility and sexual frigidity. Urinary tract infection, pelvic inflammatory disease and occasional infertility are not uncommon. FGM also leaves extremely negative effect on women's mental health. (Mandara 2004, 291-292).

The United Nations (2006) found that among women who have undergone the most extreme form of mutilation (FGM type III), the death rate of babies during and immediately after childbirth is much higher than in cases where the mother has not undergone mutilation. The excess mortality is 15% in the case of type I mutilation, 32% in the case of type II mutilation, and 55% in the case of type III mutilation. The study also showed that FGM poses a significant risk to babies. Babies whose mothers underwent mutilation need resuscitation more often. The rate is 66% higher among cases where women who have undergone type III mutilation. Likewise, the risk of hemorrhage after birth is 70% higher. Similarly, cesarean section is 30% higher than for those who have not undergone any mutilation.

Table 1: Summary of immediate and long-term FGM consequences on physical health (WHO, 2018).

Immediate Complications	Long-term Complications
<b>Haemorrhage</b>  <b>Severe pain:</b> injuries to cut tissues and nerves, swelling and pressure, no anesthesia;  <b>Shock:</b> haemorrhagic (blood loss), neurogenic (severe pain and trauma) or septic, which can be fatal;	<b>Vaginal discharge and vaginal itching</b> <b>Painful urination:</b> damage to the urethral opening or scarring of the meatus;  <b>Menstrual problems:</b> due to partial occlusion of the vaginal opening;

<p><b>Genital tissue swelling:</b> due to inflammatory response or local infection;</p> <p><b>Fever:</b> inflammation, trauma, infection;</p> <p><b>Infections:</b> acute local infections, abscess formation, septicaemia, genital and reproductive tract infections, urinary tract infections, skin destruction, tetanus, hepatitis, HIV/AIDS;</p> <p><b>Urination problems:</b> acute urine retention, pain passing urine, swelling, injury to the urethra;</p> <p><b>Wound healing problems:</b> failure of wound to heal due to infection or other conditions;</p> <p><b>Death:</b> severe bleeding, pain, and trauma, or severe and overwhelming infection;</p>	<p><b>Chronic genito-urinary infections:</b> urinary tract infections, which may lead to kidney failure and death;</p> <p><b>Reproductive tract infections:</b> occlusion of the vagina and urethra causing stasis and climbing of the infections</p> <p><b>Genital infections:</b> trauma, entry of infectious organisms, reaction due to discharge;</p> <p><b>Urinary tract infections:</b> occlusion of the urethra;</p> <p><b>Bacterial vaginosis, Sexually Transmitted Diseases and HIV/AIDS;</b></p> <p><b>Scar tissue and keloid;</b></p> <p><b>Infertility:</b> pelvic infections, damage to reproductive organs, painful intercourse;</p> <p><b>Psychological syndromes:</b> depression, anxiety and post-traumatic stress disorders (PTSD);</p> <p><b>Sexual complications:</b> painful intercourse, no sexual desire, less sexual satisfaction and less experience of orgasm.</p>
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For some girls and women, the experience of FGM and its psychological effects are comparable to the experience of undergoing rape.

These psychological consequences of FGM are more difficult to understand than the physical consequences. Anxiety, panic, terror, humiliation and feelings of betrayal are some of the possible and lasting effects. According to Amnesty International, experts suggest that the shock and trauma of the procedure may contribute to "calmer" and "docile" behaviours considered positive traits in FGM societies, with huge costs to the psychological health of women and girls as these behaviours are actually symptoms of deep depression.

Table 2: Summary of immediate and long-term FGM consequences on mental health (WHO,2018).

Examples of FGM consequences on mental health
<b>Depression:</b> Low energy, fatigue, sleep issues, persistent sadness, anxiety, loss of interest or pleasure in activities that were normally enjoyable;

**Anxiety:** Excessive feelings of fear, worry, irritability, frustration and anxiety with no apparent cause, limitations in daily activities because of these feelings, avoidance of particular places because of these feelings;

**Post-traumatic stress disorders (PTSD):** Frightening dreams, flashbacks or intrusive memories of a traumatic event, deliberate avoidance of thoughts, memories, activities, or situations that remind the patient of the traumatic event, hyper-alert feelings to any threat and/or reacting strongly to sudden, unexpected movements.

**Sexual complications:** painful intercourse, no sexual desire, less sexual satisfaction and less experience of orgasm.

- *FGM consequences on society and development.*

The WHO created a tool in 2021 that combines data on the health risks associated with FGM to analyse the impact on national health services. FGM accounts for an average of 9-30% of per capita health expenditure in the 27 countries included in this research. It estimated that it would cost \$1.4 billion a year to treat obstetric medical needs resulting from FGM. In Nigeria, in 2020 this cost was estimated at \$49 million for the year; without any type of prevention and considering prevalence and demographic trends this number could rise to \$90 million a year by 2048 (WHO, 2021).

The prolonged effects of FGM on the body and mind of women and girls who are survivors of FGM affect the entire life and autonomy of these women and girls, which also has negative consequences on society and development.

FGM is therefore directly targeted by the UN Sustainable Development Goals (SDGs) to be achieved by 2030. SDG target 5.3 aims to eliminate all harmful practices such as child, early and forced marriage and female genital mutilation. It is monitored by indicator 41, which is the percentage of girls and women aged 15 to 49 who have undergone FGM. But FGM also has a direct impact on achieving the following SDGs:

SDG 1: No poverty

SDG 3: Good health and well-being

SDG 4: Quality education

SDG 8: Decent work and economic growth and

SDG 10: Reducing inequalities.

FGM can hinder and even end a girl's education due to the complications endured by survivors of FGM. After the ceremony girls need to heal and are thus missing school and in the longer run, FGM related health issues, pain, and distress, can cause girls to be less focused in school or even absent and, consequently, perform poorly and/or drop out of school due to consequences of FGM. FGM health consequences negatively affect their productivity and type of employment opportunity.

So far, About 6.34 million out of the country's 10.19 million out-of-school children in the Nigeria are girls. Systemic social gender biases, violence including FGM, forced child-marriage, inadequate infrastructure, unsafe environments, and limitations in teacher training impeded girls' participation and learning in formal schooling throughout Nigeria. Correlative statistics indicate that FGM adversely affect school performance, leading to higher rates of absence and dropouts among girls. Thus, FGM does affect the attendance of girls at school and, may subsequently, stall their future economic participation and performance in the Nigerian economy. (Willis 2022, 15-16).

### 1.5. FGM as a form of violence against women and girls

FGM is an extreme form of Gender-Based Violence (GBV). GBV encompasses several forms of violence targeting individuals and groups based on traditional gender-based expectations and roles. Violence against women and girls (VAWG) is any act of GBV or threats of such act directed at women.

GBV includes, but is not limited to, any act in public or private life perpetrated by individuals (most often within the family) and/or tolerated by the state that results in (or is likely to result in) physical, sexual, psychological, emotional, psychosocial or economic harm or suffering, based on gender discrimination, gender expectations and gender stereotypes.

Acts of GBV may include, but are not limited to:

- Domestic violence;
- Sexual abuse and/or rape, including marital rape;
- Gender-specific traditional and cultural practices that cause harm, including FGM;
- Sexual exploitation and forced prostitution;
- Sexual harassment in or out of work;
- Bullying and harassment at or outside of work;
- Violence at school and psychological harassment, both between pupils and between teachers, school staff and pupils;
- Human trafficking;
- Other forms of economic violence and any type of violence against a person because of gender or in relation to gender or because of the alleged gender role or stereotype.

FGM is part of a wide range of patriarchal practices rooted in gender inequality, aimed at controlling the bodies, sexuality and reproductive rights of women and girls. It is internationally recognized as a violation of the human rights of women and girls and as an extreme form of discrimination and violence directed exclusively against girls and women on the basis of gender.

Even when practiced by women, this type of violence is considered GBV (and VAWG), since women are used as agents to perpetuate a culture of inequality that subjugates and violates

their physical and moral integrity, leaving irreparable damage to the rest of their lives. FGM challenges fundamental human rights such as equality, dignity and physical integrity, and the free development of personality, as well as the right of girls and women to control their own lives, the guarantee of a life free from violence, the right to happiness and personal fulfilment.



### **Recommended exercise: Actors of Change**

Work with participants to identify potential policy response/action to prevent FGM and protect women and girls at risk of FGM as well as to provide services to survivors of FGM in Nigeria.



## 2. International and regional legal framework

### Objectives of this module:

By the end of this module, participants should be able to:

1. Describe the international legal framework on FGM;
2. Describe the regional legal framework on FGM.

### 2.1. International legal framework

International human rights instruments increasingly recognize the practice of FGM as a form of gender-based violence and as a violation of the rights of women and girls, namely their sexual and reproductive rights. Over the past fifteen years, many key international treaties have highlighted the need to combat FGM as part of a comprehensive effort to promote gender equality and sustainable development.

NIGERIA				
Name	Content	Signed	Ratified	Acceded
Universal Declaration of Human Rights (1948)	It proclaims the right of all human beings to a standard of living that enables them to enjoy good health and good quality medical care. Art. 3: Everyone has the right to life, liberty and security of person. Art. 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.			
Constitution of the World Health Organization (1946)	It delineates the functions of WHO and states that health is a complete state of physical, mental, and social well-being and not simply the absence of disease or infirmity. It also states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction.			✓ 1960
International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights (1966)	It condemns discrimination based on sex, recognizing the universal right of everyone to the enjoyment of the highest attainable standard of physical and mental health.			✓ 1993

Convention on the Elimination of All Forms of Discrimination against Women (1979)	<p>It urges Member States to change social and cultural patterns of conduct with a view to eliminating customary and other practices based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.</p> <p>Art. 2 (f): Take all appropriate measures, including legislation, to amend or abolish existing laws, regulations, customs, and practices that constitute discrimination against women.</p> <p>Art. 5 (a): To modify the patterns of social and cultural behavior of men and women, with a view to achieving the elimination of prejudices and customary and all other practices based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women.</p>	✓ 1984	✓ 1985	
Convention on the Rights of the Child (1989)	<p>It establishes the need for State Parties to respect and guarantee the rights of every child without discrimination of any kind, regardless of the sex of the child or his or her parents or legal guardians (art. 2). It also establishes the right to be free from all forms of physical or mental violence and ill-treatment (art. 19.1).</p> <p>In addition, it establishes that Member States must take all effective and appropriate measures to abolish traditional practices harmful to the health of children (art. 24.3).</p>	✓ 1990	✓ 1991	
Convention on the Rights of Persons with Disabilities (2006)	<p>Agrees with the following definition: "Persons with disabilities include those with long-term physical, mental, intellectual or sensory disabilities that, in interaction with various barriers, may impede their full and effective participation in society on an equal basis with others". The Convention shall promote, protect, and guarantee the full and equal enjoyment of human rights and freedoms by all persons meeting this definition.</p>			✓ 2010

Statements and Recommendations	Content
Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and general comment No. 18 of the Committee on the Rights of the Child on harmful practices	It refers to harmful practices: “6. Harmful practices are therefore grounded in discrimination based on, inter alia, sex, gender, and age, and have often been justified by invoking socio-cultural and religious customs and values as well as misconceptions related to disadvantaged groups of women and children. Overall, harmful practices are often associated with serious forms of violence or are themselves a form of violence against women and children. The nature and prevalence of these practices vary across regions and cultures; however, the most prevalent and well documented are female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honor, and dowry-related violence.” It defines the concept of FGM. It urges Member States to take measures to prevent and combat it.
Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights (1993)	It expands the scope of human rights to include gender-based violations, including female genital mutilation.
United Nations General Assembly resolution 48/104 (1993) (Declaration on the Elimination of Violence against Women)	It stipulates that violence against women should be understood as encompassing physical and psychological violence that occurs in the family, including female genital mutilation and other traditional practices harmful to women.
CEDAW General Recommendation No. 14 on female circumcision (1990)	The Committee recommends that States Parties take appropriate and effective measures to eradicate the practice of female circumcision. Such measures could include, among others, the dissemination of basic data on the practice, support to women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women.
United Nations General Assembly Resolution A/RES/67/146 (2012)  United Nations General Assembly Resolution A/RES/69/150 (2014)  United Nations General Assembly Resolution A/RES/73/149 (2018)	The specific objective of these resolutions is to convince Member States "to intensify global efforts for the elimination of female genital mutilation".  They urge UN Member States to create mechanisms that explicitly prohibit the practice of FGM and call on States to develop, support and implement comprehensive and integrated strategies for the prevention of female genital mutilation, including the training of social workers, medical personnel, community and religious leaders and relevant professionals, and to ensure that they provide support and care services to women and girls who are at risk or who have undergone female genital mutilation and

	encourage them to report to the appropriate authorities cases in which they believe that women or girls are at risk.
United Nations General Assembly Human Rights Council A / HRC / 44 / L.20 (2020)	It promotes the elimination of female genital mutilation. It urges Un Member States to implement the commitments made at recent global and regional conferences on the elimination of female genital mutilation and to report on progress made in meeting those commitments. It urges States to take measures to develop and strengthen accountability systems in the context of comprehensive and multisectoral strategies, policies, plans and budgets to prevent and eliminate female genital mutilation.



### Recommended exercise: Consensus

Ask the group to draft their own Declaration of Human Rights in Nigeria. Display the resulting statements, promote their reading and personal signature as part of their commitment to the eradication of FGM.

## 2.2. African regional legal framework

The African Charter on Human and Peoples' Rights (Banjul Charter) and its Protocol on the Rights of Women in Africa (Maputo Protocol), ratified by Nigeria, explicitly condemn FGM as a violation of human rights. The African Charter on the Rights and Welfare of the Child specifically determines the protection of children from all forms of torture, inhuman or degrading treatment and in particular physical or mental injury or abuse, neglect or ill-treatment.

Nigeria has therefore made a regional commitment to combat FGM on its territory.

NIGERIA				
Name	Content	Signed	Ratified	Acceded
African Charter on Human and Peoples' Rights (1981)	Article 5: Everyone has the right to respect for the dignity inherent in a human being and to the recognition of his or her legal status. All forms of exploitation and degradation of man, in particular slavery, the slave trade, torture, cruel, inhuman, or degrading treatment and punishment are prohibited.	✓ 1982	✓ 1983	
African Charter on the Rights and Welfare of the Child (1990)	Article 16: Protection against Child Abuse and Torture	✓ 1999	✓ 2001	

	It urges Member States to take specific legislative, administrative, social, and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and in particular physical or mental injury or abuse, neglect, or ill-treatment, including sexual abuse, while in the custody of a parent, a legal guardian or school authority or any other person who has custody of the child.			
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)	<p>Article 5: Elimination of harmful practices.</p> <p>States prohibit and condemn all forms of harmful practices that negatively affect women's human rights and are contrary to international standards. States shall take all legislative and other measures to eradicate such practices, including:</p> <p>(a) raising awareness of harmful practices in all sectors of society through information, formal and informal education, and communication campaigns and programs;</p> <p>(b) prohibit, through sanctioned legislative measures, all forms of female genital mutilation, the scarification, medicalization, and para-medicalization of female genital mutilation and all other harmful practices;</p> <p>(c) provide the necessary support to victims of harmful practices by providing them with basic services, such as health services, legal and judicial assistance, counselling, adequate supervision, and vocational training to enable them to take charge of themselves;</p> <p>and (d) protect women who are at risk of being subjected to harmful practices or other forms of violence, abuse, and intolerance.</p>	✓ 2003	✓ 2004	

### 3. National legal framework

#### Objectives of this module:

By the end of this module, participants should be able to:

1. Describe the national legal framework on FGM;
2. Describe the content of the laws that aim to prevent, combat, and eradicate FGM in Nigeria;
3. Perform a critical analysis of the laws that aim to prevent, combat, and eradicate FGM in Nigeria.

#### 3.1. Overview of the National Laws relating to FGM

The FGM eradication effort in Nigeria by the Federal Government began in 1998 with the National Baseline on the Beneficial and Harmful Traditional Practice. This culminated in the National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria 2002. This was closely followed by the Best Practices on the Elimination of Female Genital Mutilation: The Nigerian Experience 2004. These policies and best practices laid the foundation for further legislative steps, designed to criminalize FGM and ensure the protection of the rights of young girls and women in Nigeria.

The Constitution of Nigeria, 1999
Violence Against Persons (Prohibition) Act 2015
Criminal Code Act, 1916
The Child's Rights Act, 2003
Penal Code Act, 1960

Code of Medical Ethics, 1990
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#### 3.2. Definition of FGM under the Law in Nigeria

Nigerian legislation does not specifically define FGM. However, FGM is listed under the harmful Traditional Practices definition. Harmful Traditional Practices is defined under the law as :

*“...all traditional behaviour, attitude, or practices, which negatively affect the fundamental rights of women, girls, or any person and includes harmful widowhood practices, denial of inheritance or succession rights, **female genital mutilation, or female circumcision**, forced marriage and forced isolation from family and friends;”* (VAPP Act 2015, s.46)

FGM is regarded as sexual abuse and violence against women and girls who fall under vulnerable groups with special protection status under the Law.

### 3.3. The Constitution of Nigeria (1999)

The Constitution of the Federal Republic of Nigeria 1999 is the *grundnorm* (supreme law) that prevails over all other legislations. In the event of inconsistencies with the provisions of other laws, the Constitution prevails. The Constitution does not specifically refer to FGM, its Fundamental Objectives and Directive Principles of State Policy prohibits all discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties. The State Policy recognises the sanctity and dignity of the human person.

Provisions with bearings on FGM is provided for under Chapter IV dealing with fundamental human rights. The following Articles form an important foundation and are essential in safeguarding the rights of young girls and women in Nigeria:

#### ***Article 34: Right to Human Dignity***

34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly –  
(a) no person shall be subject to torture or to inhuman or degrading treatment;

[...]

#### ***Article 35: Right to Personal Liberty***

35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

#### ***Article 42: Freedom from Discrimination***

42. (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person: -

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

[...]

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

### 3.4. Violence Against Persons (Prohibition) Act (2015)

The Violence Against Persons (Prohibition) Act 2015 is the first federal enactment specifically outlawing and punishing the crime of FGM in Nigeria.

#### **Definition**

##### ***Section 46: Interpretation***

“...means:

harmful traditional practices" means all traditional behaviour, attitudes, or practices, which negatively affect the fundamental rights of women, girls, or any person and includes harmful widowhood practices, denial of inheritance or succession rights, female genital mutilation, or female circumcision, forced marriage and forced isolation from family and friends:

Sexual abuse "means any conduct which violates, humiliates or degrades the sexual integrity of any person."

#### **Offences and Punishment**

##### ***Section 6: Offence of female genital mutilation***

Section 6 of the VAPP, which relates to FGM, states in full:

- (1) The circumcision or genital mutilation of the girl or woman is hereby prohibited.
- (2) A person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both.
- (3) A person who attempts to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.
- (4) A person who incites, aids, abets, or counsels another person to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.

**Note:** The Violence Against Persons (Prohibition) Act 2015 though a Federal Act, is only applicable and enforceable in the Federal Capital Territory. (See VAPP 2015, s.47).

States outside the FCT wishing to have Anti- FGM Laws are required to enact State Anti-FGM Laws. States like Ebonyi, Oyo, Imo, Ondo, and some others have enacted State VAPP Laws.

### 3.5. The Criminal Code Act (Revised, 2004)

#### **Definition**

##### ***Section 1: Interpretation***

“grievous harm” means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;

"harm" means any bodily hurt, disease, or disorder, whether permanent or temporary;”

#### **Offences and Punishment**

##### ***Section 222: Indecent treatment of girls under sixteen***

“Any person who unlawfully and indecently deals with a girl under the age of sixteen years is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without caning.[20 of 1960.]

If the girl is under the age of thirteen years, he is guilty of a felony and is liable to imprisonment for three years, with or without caning.

\*It is a defence to a charge of the offence defined in this section to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.

The term "deal with" includes doing any act which, if done without consent, would constitute an assault as hereinafter defined.

##### ***Section 252: Definition of assault***

“A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

The term "applies force" includes the case of applying heat, light, electrical force, gas, odour, or any other substance of thing whatever, if applied in such a degree as to cause injury or personal discomfort”.

### ***Section 253: Assaults unlawful***

“An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person”.

### ***Section 316: Murder***

“Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say-

(1) if the offender intends to cause the death of the person killed, or that of some other person;

(2) **if the offender intends to do to the person killed or to some other person some grievous harm;**

(3) **if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;**

(4) if the **offender intends to do grievous harm to some person** for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence; ...

**In the second case it is immaterial that the offender did not intend to hurt the particular person** who is killed. In the third case it is immaterial that the offender did not intend to hurt any person. **In the three last cases it is immaterial that the offender did not intend to cause death** or did not know that death was likely to result.”

### ***Section 335: Grievous harm***

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years.”

### ***Section 338: Wounding and similar acts***

“Any person who--

(1) unlawfully wounds another; or

(2) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person,  
is guilty of a felony and is liable to imprisonment for three years.”

### ***Section 351: Punishment of assault***

“Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided, to imprisonment for one year.”

### ***Section 355: Assaults occasioning harm***

“Any person who unlawfully assaults another and thereby does him harm, is guilty of a felony and is liable to imprisonment for three years”.

### ***Section 360: Indecent assaults on females***

“Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour, and is liable to imprisonment for two years ”

## **3.6. The Children’s Rights Act (2003)**

### **Obligations**

#### ***Section 10: Right to Freedom from Discrimination***

“(1) A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion, or political opinion,

(2) No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth: No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development.”

#### ***Section 11: Right to dignity of the Child***

“Every child is entitled to respect for the dignity of his person, and accordingly no child shall be-

- (a) subjected to physical, mental, emotional injury, or abuse, neglect, or maltreatment, including sexual abuse;
- (b) subjected to torture, inhuman or degrading treatment or punishment;
- (c) subjected to attacks upon his honor or reputation; or
- (d) held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child”

### **Offences and Punishment**

### ***Section 32: Other Forms of Sexual Abuse and Exploitation***

(1) “A person who sexually abuses or sexually exploits a child in any manner not already mentioned under this Part of this Act commits an offence”.

(2) “A person who commits an offence under subsection (1) of this section is liable on conviction to imprisonment for a term of fourteen years”.

### ***Section 33: Other Forms of Exploitation***

(1) “A person who exploits a child in any other form or way not already mentioned in this Part of this Act which is prejudicial to the welfare of the child commits an offence”.

(2) “A person who commits an offence under subsection (1) of this section is liable on conviction to a fine of five hundred thousand naira or imprisonment to a term of five years, or to both such fine and imprisonment”.

## **3.7. Penal Code Act (1960)**

### **Offenses and Punishment**

#### ***Section 229: Culpable Homicide***

(1) Whoever does an act not resulting in death with such intention or knowledge and in such circumstances that if he by that act caused death, he would be guilty of culpable homicide punishable with death shall be punished with imprisonment for life or for any less term or with fine or with both.

(2) When a person being under sentence of imprisonment for life commits an offence under this section, he shall, if hurt is caused, be punished with death.

#### ***Section 240: Hurt***

“Whoever causes bodily pain, disease or infirmity to a person is said to cause hurt”.

#### ***Section 241: Grievous Hurt***

“The following kinds of hurt only are designated as grievous-

- (a) emasculation;
- (b) permanent deprivation of the sight of an eye, of the hearing of an ear or the power of speech;
- (c) deprivation of any member or joint;

- (d) destruction or permanent impairing of the powers of any member or joint;
- (e) permanent disfiguration of the head or face;
- (f) fracture or dislocation of a bone or tooth;
- (g) any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits”.

***Section 242: Intention to cause hurt***

“Whoever does an act with the intention of thereby causing hurt to a person or with the knowledge that he is likely thereby to cause hurt to a person and does thereby cause hurt to a person is said voluntarily to cause hurt”.

***Section 243: Voluntary Hurt***

“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”.

***Section 248: Voluntary Hurt with intention to murder***

(1) Whoever, except in the case provided for by section 244 of this Penal Code, voluntarily causes hurt by means of an instrument for shooting, stabbing or cutting or any instrument, which used as a weapon of offence is likely to cause death, or by means of fire or any heated substance or by means of electricity or by means of a corrosive or explosive substance or by the administration of a poisonous or deleterious substance or by means of an animal, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

(2) Whoever, except in the case provided for by section 245 of this Penal Code, voluntarily causes grievous hurt by any of the means mentioned in sub- section (1) of this section shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

***Section 253: Hurt from Negligence***

(1) Whoever causes hurt to a person by doing an act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

(2) Whoever in like manner causes grievous hurt to a person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

### 3.8. Code of Medical Ethics in Nigeria (1990)

#### **67. TORTURE**

It is obligatory that practitioners are not drawn into the application of torture on any citizen. They shall not countenance, condone or participate in the practice of torture or any form of cruel, inhuman or degrading procedures whatever the offence of which the victim of such a procedure is suspected, accused or guilty of and whatever the victim's beliefs or motives and in all situations including armed conflict and civil strife.

Where it becomes obvious or proven that a practitioner had been involved in an act of torture of any person by physical, biological, chemical, pharmacological, psychological or other cruel, inhuman or degrading treatment or punishment, he is considered to be in breach of this code.

For clarity, torture shall be defined as a deliberate systematic or wanton infliction of physical or mental injury or both, occasioning harm by one or more persons acting alone or with others or on orders of any authority to force or intimidate the victims to yield information, make a confession or for any other reason which is an outrage on personal dignity.

For the purpose of clarity, some examples of torture will include:

##### **(A) Physical Torture**

[...]

Mutilation of sexual parts

[...]

##### **(B) Psychological Torture .**

Threats to self and loved ones

Sexual violation

Deprivation of healthcare comfort to either the victim or his family

Forced witnessing of the torture of others

Changing attitude of the interrogator - 'the Goodman technique'

[...]

**(D)** Others not stated here but considered to constitute forms of torture or are contrary to the promotion of good health and maintenance of life.

#### **70. ENFORCEMENT OF SANCTIONS**

After due process of investigation and trial of a registered practitioner as appropriate, where such trial results in a pronouncement of guilt in respect of the registered practitioner, the Registrar of the Medical and Dental Council of Nigeria shall take the following steps:

- (A) In every such case where the guilt of the practitioner is pronounced by the Medical and Dental Practitioners Disciplinary Tribunal, the sentence that is pronounced shall be published in the Gazette of the Federal Republic of Nigeria and also as a paid advertisement in each of four national newspapers. Notification of the publication shall be duly deposited with the permanent secretaries of the Federal and all the State Ministries of Health, and the National President of the Nigerian Medical Association (if a medical practitioner) or the Nigerian Dental Association (if a dental surgeon).
- (B) Where the name of registered practitioner is suspended from the Register for a period of time the Registrar will in addition to (a) above direct the practitioner to complete on a monthly basis, an approved proforma to the effect that he maintains compliance with the sentence until the period of suspension expires.



#### **Recommended exercise: Consensus**

Participants should critically analyze existing laws in Nigeria to condemn FGM in order to identify their strengths and limitations and produce a set of practical recommendations to improve these laws.



## 4. National and International Jurisprudence

### Objectives of this module:

By the end of this module, participants should be able to:

1. Critically analyse the absence of national jurisprudence on FGM;
2. Compare how the law is being applied in Nigeria to how it is applied elsewhere;
3. Explain how the law should be applied in Nigeria.

### 4.1. National Jurisprudence

There are no known FGM Prosecutions or Judicial Decisions in Nigeria.

It remains unknown as to why exactly there has not yet been any prosecution of this crime. We hope that this manual contributes to dismantling the false belief that in the absence of a State VAPP Law, FGM is legal. FGM is nowhere and never legal in Nigeria whether it is via the application of specific State VAPP Law or general laws of the Penal Code, Criminal Code, the Children's Rights Protection Act and of The Constitution. We also hope that this manual contributes to a better knowledge and better enactment of the Law.



#### Recommended exercise: Pledge

Ask participants why they believe that there has not yet been any known national prosecution on FGM. Participants are invited to take the pledge to contribute to the better knowledge and better enactment of the legal frameworks against FGM in Nigeria. They could for example draft and sign a letter of commitment to each organize a training session similar to this one and train a group of individuals of their choice (colleagues, neighbors, friends, local schools etc.).

### 4.2. International Jurisprudence

FGM has been criminalized in many countries where the practice exists, either by a general law (e.g. in France) or by a special law (e.g. Uganda).

All countries have legislation on mutilation or bodily harm, so in principle all countries have a legal framework against FGM.

- *Australia*

The law: All 6 states and 2 territories have criminal laws against FGM

Jurisprudence: In November 2015, a mother and a nurse were convicted of cutting the genitals of two sisters aged 6 and 7. A religious leader was also convicted of being an accomplice for ordering members of his community to lie about "khatna".

In August 2018, the New South Wales Court of Criminal Appeal overturned the convictions after new evidence showed the victims were intact.

This decision is highly open to criticism because it is based on dubious medical expertise. Indeed, "khatna" is FGM, all those concerned recognized that "khatna" had been practiced and it is therefore impossible to consider that these girls are "intact".

- *Burkina Faso*

The Law: Law No. 043/96 / ADP of November 13, 1996

Jurisprudence: Burkina Faso has the highest number of judicial cases related to FGM in the world.

Since 1997, approximately 1,200 persons have been prosecuted and convicted, including relatives, family members and female circumcisers.

The judges have been very active in this area and have shown that prosecutions are indeed an important measure in the fight against FGM.

- *Colombia*

The Law: Articles 111 to 116 of the Criminal Code

Jurisprudence:: In 2008, the Court of Pueblo Rico Risaralda ruled that since the practice of FGM among Embera-Chami indigenous people is considered a "cultural practice", domestic/domestic violence could not be concluded in an FGM case involving the death (in hospital) of three indigenous (newborn) girls. The judge concluded that there was no intention to harm the children and that no sanctions could be adopted against the parents and cutters in accordance with article 33 of the Penal Code.

- *Ivory Coast*

The Law: Law No. 98/757 of 23 December 1998.

Jurisprudence: In July 2012, 9 female circumcisers were tried before the Katiola Court, which found them all guilty of performing FGM on 30 girls circumcised during a ritual ceremony in 2012 and subsequently sentenced them to a one-year suspended sentence.

In 2013, the Danone court heard a case involving 2 men and 2 women accused of circumcising a girl. They were all convicted and sentenced to 6 months' imprisonment and a fine.

- *Egypt*

The law: Law No. 78 of 2016 amending Art. 242-bis of the Penal Code and introduction of a new Art. 242-bis a).

Jurisprudence: In 2015, a doctor was prosecuted after a 13-year-old girl died of FGM. The judge sentenced him to two years for manslaughter and three months' imprisonment for FGM, while the father was given a three-month suspended sentence.

In 2016, two doctors, a nurse and a mother were convicted of FGM after a 17-year-old girl died of FGM and were given one-year suspended prison sentences and fines.

- *France*

The law: Article 222-9 of the Criminal Code on mutilation

France has no special law criminalizing FGM and has been actively pursuing FGM cases since 1978. It is the country with the highest number of cases of FGM in Europe(**about 30 cases**).

Jurisprudence: It all started with three little girls who died of FGM in hospitals between 1978 and 1982. The cases were later characterized as manslaughter, violence against minors or failure to assist a person in danger, all of which were considered minor criminal offences.

From 1983 onwards, a change in case law occurred and the courts began to apply heavier criminal classifications to FGM.

In August 1983, the French Supreme Court characterized FGM as violence leading to mutilation and convicted a French mother for cutting her daughter's clitoris and labia minora.

In December 1989, the same Supreme Court confirmed that acts of FGM must be classified as mutilation and two Malian parents were sentenced to 3 years in prison (2 of which were suspended) for having circumcised their six daughters.

In the 90s, the sanctions became a little more severe, although suspended sanctions continue to be the rule rather than the exception, except for cutters who are sentenced to longer and non-suspended prison sentences (firm prison).

FGM is considered in France as a serious violation of public order affecting the fundamental values of French society even if the sanctions seem relatively lenient.

FGM can justify refugee status but only for children (not for parents) and has been used to justify the loss of French nationality.

- *Guinea-Bissau*

The Law: Law No. 14/2011 of July 6, 2011

Jurisprudence: Since the adoption of the law criminalizing FGM, there have been about forty trials in Guinea-Bissau with about 16 convictions (including reduced sentences) for parents and female circumcisers.

In January 2012, the Bafatá Regional Court found 3 female circumcisers, a mother, and a grandmother guilty of committing FGM in September 2011 on four little girls. The women claimed not to know the law and were sentenced to a symbolic fine and three years in prison (suspended) while their ceremonial knives were confiscated.

- *India*

The Law: Articles 319 to 326 of the Penal Code.

Jurisprudence: In May 2017, a public interest dispute was initiated before the Supreme Court of India (ISC) by a lawyer seeking to criminalize FGM, despite the existence of relevant provisions in the Penal Code.

The Court received the petition and solicited responses from four states and four central government ministries.

In November 2019, the Court referred the case to a seven-judge constitutional bench to examine whether FGM is essential to religious rights.

- *United Kingdom*

The Law: Female Genital Mutilation Act (2003)

Jurisprudence: The UK has only one recent case concerning FGM (R.v. N. - 2019). A mother was prosecuted for cutting off her 3-year-old daughter. The child was taken to hospital and had to undergo emergency surgery. The doctors concluded that she had undergone FGM type II (partial or total removal of the clitoris and labia minora). The mother was convicted of FGM and sentenced to 13 years' imprisonment.

- *Russia*

The Law: There are no specific laws but general criminal laws on serious bodily harm.

Jurisprudence: In December 2019, a doctor who performed FGM on a 9-year-old girl was tried in a court in Magas, North Caucasus (Ingushetia) for bodily harm (no prison sentence possible, only fines).

The trial has been suspended due to COVID and activists are currently trying to label the practice as serious bodily harm punishable by jail time. The doctor's clinic has not been closed but "FGM services" are no longer available. The child's father and mother-in-law were not prosecuted.

The court has not yet made its final decision.

- *Senegal*

The Law: Law No. 99/05 of 29 January 1999.

Jurisprudence: In 2017, the Kolda court heard FGM charges against 3 mothers who had allowed the practice of FGM on their daughters aged 6 months to 2 years. The girls died and the court found the mothers guilty. They were sentenced to 2 years' imprisonment. However, the court suspended the sentence.

- *Switzerland*

The Law: Article 124 of the Penal Code on FGM.

Jurisprudence: In a 2019 Swiss federal judgment, the court handed down a suspended sentence against a Somali mother for circumcising her 2 daughters in Somalia before coming to Switzerland. The judge confirmed that the perpetrators of FGM can be prosecuted in Switzerland, even if they had no connection with Switzerland at the time of the offence, as the legislator did not intend to limit the criminalization of FGM to acts committed on Swiss jurisdiction/territory.

- *USA*

The Law: Federal Law: Stop FGM Act (2021) replacing the previous Female Genital Mutilation Act (1996) (currently declared unconstitutional) + 38 state laws

Jurisprudence: Two cases of FGM (federal law and state law)

The federal case (2018) involved lawsuits against Michigan doctors who had performed FGM in a private clinic. The District Court dismissed the FGM charges based on the fact that the 1996 federal law escaped the power of Congress under the "trade clause," since FGM is not an economic activity, but rather a form of physical aggression with no connection or effect on interstate trade. This decision is highly questionable because on the one hand, these FGM were paid activities and on the other hand, some girls crossed several states to come and be cut in this clinic. So FGM is not only an economic activity but it has an effect on interstate trade.

The state case (2006) concerned an Ethiopian father who was prosecuted for circumcising his 2-year-old daughter in 2001. The crime was discovered in 2003. The jury convicted the father of aggravated assault and cruelty to a child, as Georgia did not have specific laws criminalizing FGM at the time. He was sentenced to 10 years in prison and 5 years on probation. After serving 10 years in a Georgia prison, Khalid Adem was deported to Ethiopia in March 2017.

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