

LEGAL TRAINING MANUAL FOR PROFESSIONALS ON THE LAW AGAINST FEMALE GENITAL MUTILATION/CUTTING IN GUINEA- BISSAU



GUINEA BISSAU




Legal Training Manual for Professionals on the Law against Female Genital Mutilation/Cut in Guinea-Bissau



March 2019





Some communities, such as practicing communities in Guinea-Bissau, believe that FGM/C is essential for the young girl to become a woman and a full member of her own community; only in this way can she acquire the right to associate herself with other women of her age group, participate in all ancestral rituals and even constitute a family. Today we have the notion and knowledge of the harmful consequences of FGM/C on the health of women and girls and that it is a crime in our country. We must therefore join forces to ensure that the girls of Guinea-Bissau and the Diaspora are born, grow up and develop in a favorable environment, protected from any harmful practice and that guarantees the promotion of their full rights.

Those who love protect others, so let us join efforts in the abandonment of harmful practices, in every country, guaranteeing the promotion of the human rights of women and young girls.

Fatumata Djau Baldé President of CNAPN – *Comité Nacional para o Abandono de Práticas Tradicionais Nefastas à Saúde da Mulher e da Criança*

Technical information:

Legal Training Manual for Professionals on the Law against Female Genital Mutilation/Cut in Guinea-Bissau

Authors:

Sara Guerreiro and Hélder Pires

Coordination and technical supervision:

Isabella Micali Drossos (World Bank)

Fatumata Djau Baldé (*Comité Nacional para o Abandono de Práticas Tradicionais Nefastas à Saúde da Mulher e da Criança*) and Ansumane Sanhá (*Gabinete de Informação e Consulta Jurídica*)

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Acronyms and abbreviations

AMIC	Friends of Children (NGO)
CAJ	Centers of Access to Justice
CC	Criminal Code
CDC	Convention on the Rights of the Child
CDC	Center for Disease Control and Prevention
CEDAW	Committee on the Elimination of Discrimination Against Women
CNAPN	National Committee for the Abandonment of Harmful Practices (Public Institute)
CPC	Criminal Procedure Code
CPLC	Community of Portuguese Language Countries
ECOWAS (CEDEAO)	Economic Community of West African States
EU	European Union
FCSH-UNL	College of Social and Human Sciences of Lisbon University
FGM or FGM/C	Female Genital Mutilation/Cutting (Kriol: fanado)
GBV	Gender-Based Violence
HIV/AIDS	Acquired Immunodeficiency Syndrome
IMC	Institute for Women and Children (Public Institute)
INE	National Institute of Statistics
INEP	Institute of Research and Studies
LGDH	Guinean League of Human Rights (NGO)
MICS	Multiple Indicator Cluster Survey
NGO	Non-Governmental Organization
UEFGM	United to END FGM
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
WBG	World Bank Group
WHO	World Health Organization

Acknowledgements

In Guinea-Bissau, about half of the women are affected by Female Genital Mutilation (FGM).

In November 2018, a World Bank team visited Guinea-Bissau to join national counterparts and colleagues to carry out activities under the Trust Fund #TF0A8091 “Nordic Trust Fund: Guinea-Bissau: Safety Nets and Basic Services Project” (FGM and Human Rights) (P163901), with the aim of promoting advocacy and training for the abandonment of FGM.

The Legal Training Manual for Professionals on the Law against Female Genital Mutilation/Cut in Guinea-Bissau was developed as one part of the activities carried and finalized between July and November 2018. The team carried out a field mission in Bafatá, which has a FGM prevalence of 87% of women and girls and developed the following activities:

(a) legal literacy campaigns in seven (7) communities for duty-bearers and rights-holders in order to promote the knowledge of the Law against FGM by community leaders, survivors of FGM, mothers of girls at risk of FGM and community agents of change. Legal literacy is a central element of a human right-based approach against this harmful practice, as FGM is not viewed usually as a criminal offense but rather as a “necessary” traditional practice. This activity therefore included legal literacy training on the criminalization of FGM for teachers, religious leaders, traditional justice leaders, religious leaders, community leaders, women’s groups and “Fanatecas” – women who continue to practice FGM as a traditional and remunerated activity, notwithstanding the existence of the law. These legal literacy campaigns combined the traditional media campaign (radio, pamphlets, popular songs, information manuals, posters, T-shirts) together with outreach community campaigns (in collaboration with other entities, such as the National Committee against Harmful Practices - CNAPN, Office for Legal Information and Assistance of the Ministry of Justice – CAJ and the Association of Women Jurists).

(b) training of judges, lawyers, prosecutors, clerks, civil registry officials, police officers, social workers, health professionals, civil society leaders, municipality workers, international organizations’ representatives and World Bank Project coordinators on the content and application of the 2011 Law against FGM, including a training on the special handling needed to respond adequately to these sensitive cases. The judiciary system in Guinea Bissau has been responsive to the 2011 Law against FGM: 12 persons have been found guilty since 2011 while 8 of them have been sentenced to serve time in prison. These are very encouraging elements. The knowledge of the law by legal and health professionals is key in the promotion of a human right-based approach to decrease FGM in Guinea-Bissau and increase compliance with the law and effective and efficient prosecution. **This Manual was presented and validated during the legal training and subsequently revised accordingly.**

(c) creation and operationalization of a hotline dedicated to legal issues related to FGM to give general information and advice with a view to protect victims and/or prevent FGM.

Our team included **Luiza Bogado**, **Sara Guerreiro**, legal consultants, **Fanis Labropoulos**, film maker, and myself, **Isabella Micali Drossos**, senior counsel. In Guinea-Bissau, we were supported by **Sonia Sanchez**, operations officer, **Rama Barbosa**, program assistant, and **Djacumbá Cassamá**, team assistant. Our counterparts and colleagues in Bissau included **Fatumata Baldé**, president of the National Committee against Harmful Practices; **Hélder Pires** and **Maimuna Sila**, legal consultants, **Ansumane Sanhá** from the Office of Legal Information and Assistance of the Ministry of Justice, and Professor **Malan Djassi**, theologian.

The activities were summarized by a video produced by Fanis Labropoulos (one image is worth a thousand words). The link to this video is here:
<https://www.youtube.com/watch?v=VqonkiUuLSw&t=84s>



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Isabella Micali Drossos



Recommended readings

Concept, causes and consequences of FGM:

- *Guia de Formação Académica Multissetorial Sobre Corte/Mutilação Genital Feminina*, Dir. Adriana Kaplan e Laura Nuño Gómez, in: <https://mapfgm.eu/wp-content/uploads/2017/04/Guia-Portugues.pdf>
- *Eliminating Female Genital Mutilation: An Interagency Statement* OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO. Geneva: WHO, 2008. In <https://www.who.int/reproductivehealth/publications/fgm/9789241596442/en/>
- *II Programa de Acção para a Eliminação da Mutilação Genital Feminina no âmbito do IV Plano Nacional para a Igualdade – Género, Cidadania e Não Discriminação (2011-2013)*, Grupo de Trabalho Inter-sectorial sobre a Mutilação Genital Feminina. In: https://www.cig.gov.pt/wp-content/uploads/2013/12/II_Programa_Accao_Mutilacao_Genital_Feminina.pdf

FGM in Guinea-Bissau:

- *Estratégia Nacional para o abandono da MGF/E, 2018-2022*, Guiné-Bissau, Coordenação: Fatumata Djau Baldé, 2018.

- *Estudo sobre a situação das práticas nefastas e violência doméstica nas Regiões Bafatá, Oio, Cacheu e Bissau*, Cleunismar Silva, LGDH - Setembro 2017. In: https://drive.google.com/file/d/1JUTY0MMDaX_IZEEhQCZuVJsvCfh_tX1N/view
- *Corte/ Mutilação Genital Feminina: Respostas Institucionais Integradas, Lisboa, 28 e 29 de setembro de 2017*, Atas do III Seminário Internacional do Programa Académico Multissetorial para o Combate e Prevenção do Corte / Mutilação Genital Feminina (MAP-FGM), Organizado por: Clara Carvalho Ricardo Falcão Marta Patrício. In: http://www.mgf.uab.es/eng/scientific_publications/ProceedingsIII_MAPFGM.pdf?iframe=true&width=100%&height=100%
- *Relatório Nacional sobre a Aplicação/Implementação da Declaração e do Plano de Ação de Beijing (1995)*, Fatumata Djau Baldé e Paulina Mendes. In: https://www.uneca.org/sites/default/files/uploaded-documents/Beijing20/NationalReviews/guinea_bissau_beijing_report_0.pdf

International background and comparative legislation on FGM:

- World Bank. Compendium of International and National Legal Frameworks on Female Genital Mutilation, February 2018, World Bank. In: <http://documents.worldbank.org/curated/en/828661517490252879/Compendium-of-international-and-national-legal-frameworks-on-female-genital-mutilation>



Recommended videos

- **Mutilação genital feminina: O crime do qual muito poucos falam**/Euronews/2016/ Youtube: <https://www.youtube.com/watch?v=pfmJ64QjxiE> (in portuguese)
- Documentary "**Este é o meu corpo**"/Município da Amadora/2017/Youtube: <https://www.youtube.com/watch?v=aFwxgRkmXgY> (in portuguese)
- **The Cruel Cut - Engaging Young Men**/Leyla Hussein: <https://vimeo.com/108707482> (in english)

1. Background – what do you need to know about Female Genital Mutilation?

Objectives of this module:

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

1. Describe the international and national background on FGM
2. Describe what FGM is
3. Explain the causes and consequences of FGM
4. Characterize FGM as a form of violence against women

1.1. Concepts

FGM/cutting¹ (FGM) is defined by the WHO as “*all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons*”. (World Health Organization, UNICEF, and United Nations Population Fund 1997; WHO 2008).

The most common types of FGM are the following:



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

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

Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without the excision of the clitoris (infibulation).

Source of the images: OMS/(Krupa 2017)

Type IV: All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.”(WHO 2008)²

“[...] its origin goes back to times before the emergence of the Muslim religion. It is not clear, however, when or where practice began. Some authors suggest that it was in Ancient Egypt. Others say that FGM is an old African ritual that came to Egypt by diffusion. There are even those who raise the hypothesis that the practice was applied to black women at the time of

¹ Although the expression “female genital mutilation” is preferable, as it clearly expresses the seriousness of the practice and to correspond to the expression used by international organizations reporting the practice, the expression used by the Bissau-guinean legislation is “female cutting”. Thus, in this manual, the term MGF or female excision will be used indistinctly.

² According to the WHO, type IV also includes practices such as stretching of the vagina and the introduction of harmful substances into the vagina. It should be noted that type IV is already documented in Mozambique, in the province of Tete. In fact, in this region, it is common for girls to begin, from the age of 8-9, to lengthen the labia minora (locally called puxa-puxa or kukhuna or kupfuna). In this province, it is also common for girls / women to introduce products into the vagina in order to tighten it, dry it or treat diseases. (Bagnol and Mariano 2012)
Source: (LISBOA et al. 2015).

the old Arab market of slaves or that it was introduced when the Nile Valley was invaded by nomadic tribes around 3,100 bC [...] There are several beliefs that maintain the practice of FGM. It is said that men wanted it for the following reasons: to secure their powers; to believe that their wives would not seek out other partners or that men from other tribes would not rape them; believe that women would lose their sexual desire. In some tribes, it is believed that the clitoris is diabolical and that if it touches the child's head during childbirth, the child will be doomed to unimaginable misfortunes. Others think that this false representation of a tiny penis would shade masculine virility" (Piacentini 2007, 120)

The age of the girl or woman subject to FGM and the type of FGM practiced depend on several cultural factors which determine the existence of this practice. FGM is usually practiced in girls between the ages of 4 and 12, although in some cultures it takes place sooner, soon after birth or at the latest before marriage or childbirth (UEFGM 2019b).

1.2. International Context

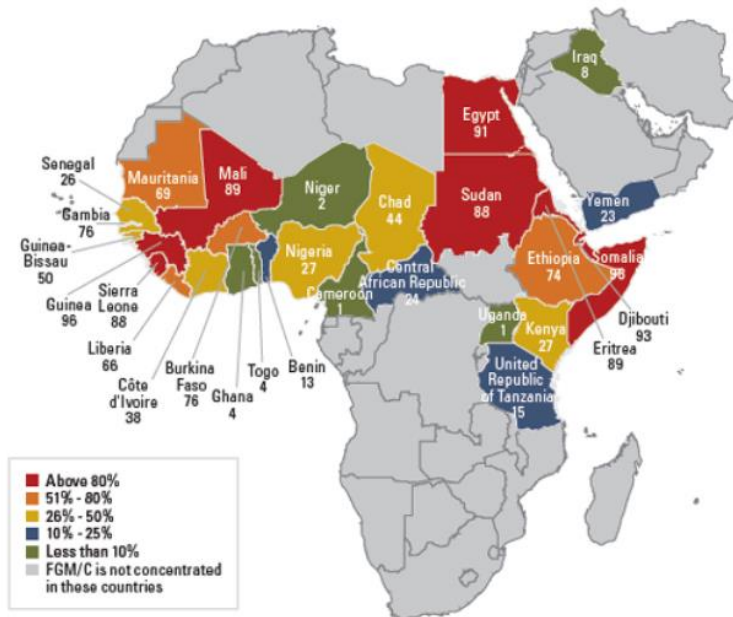
It is estimated that around 200 million women and girls in 30 different countries have been subjected to FGM. Also, 8,000 girls are at risk everyday – 3 million girls and women every year (UNICEF 2016; UEFGM 2019b).

FGM procedures are often conducted by women in the community, especially designated for this purpose. Sometimes traditional midwives or people with magic and healing powers or even village barbers perform these functions. FGM is also practiced in hospitals and clinics by health professionals who use anesthetics and antiseptics. The WHO expresses its unequivocal opposition to the medicalization of female genital mutilation, warning that under no circumstances should it be practiced by professionals or health institutions.

FGM has very serious impacts on the health and well-being of women. For example, some of these consequences include severe bleeding, severe 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 death of newborns, premature births, etc.

Although the African continent is indicated as an example of a region with high levels of prevalence (see picture 1), FGM is practiced worldwide (see pictures 2, 3 and 4).

Therefore, in Africa, countries with high prevalence rate (>85%) include Guinea-Conakry, Sierra Leone, Somalia, Egypt, Eritrea and Mali.



However, FGM is also practiced in communities in Asia (e.g. India, Malaysia and Indonesia) and the Middle East (Iran, Iraq, Kurdish communities, Pakistan, Saudi Arabia and Yemen), among certain ethnic groups in Central, South and North America, and Australia, as well as in Europe, and in the US, especially among migrant communities from countries affected by FGM.

Image 1 – Percentage of girls and women aged 15 and 49 years who have undergone FGM, by country, on the African continent. Source: (UNICEF 2013a)

Source : UNICEF, 2013

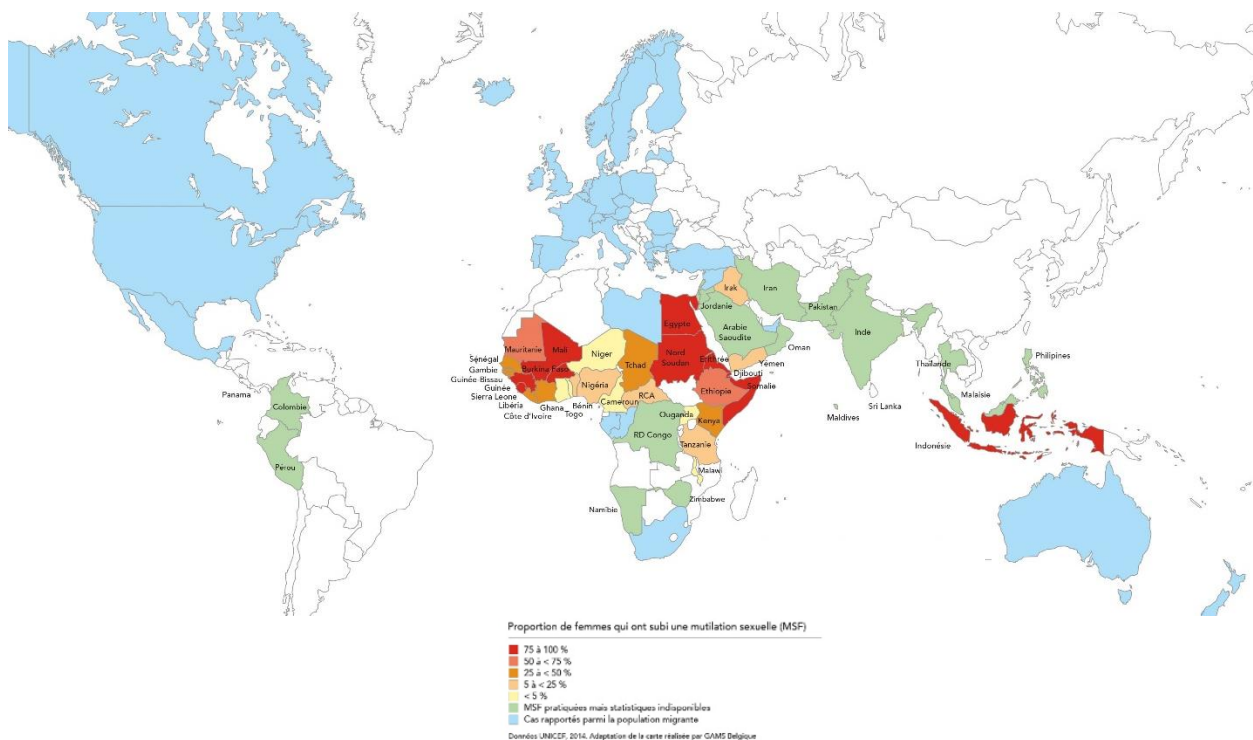


Image 2 – Prevalence of FGM in the world. Source: (The European Post 2018)(Based on GAMS Belgium map, data from UNICEF, 2013)

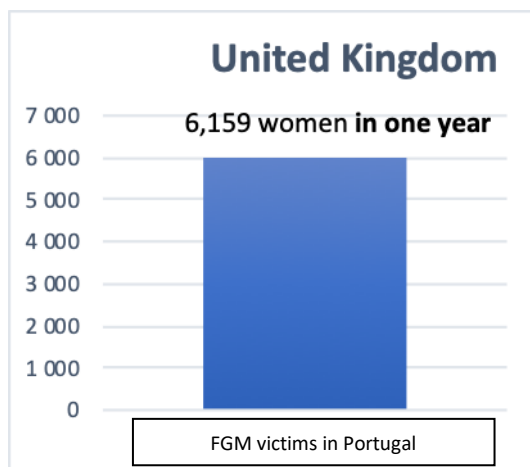


Image 3 – FGM Prevalence/UK (1 year)

Source: (Clinical Audit and Registries Management Service 2018)

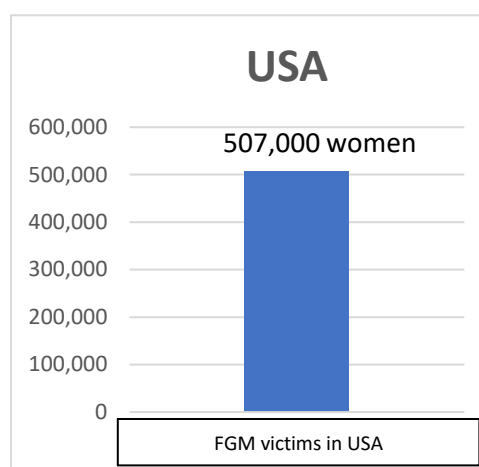


Image 4 – FGM Prevalence/USA

Source: CDC (2013)³

(...) in Portugal, number of women of childbearing age who may have undergone FGM/C practice is around 5,246. If taken into account all women over 15 years old, this number rises up to 6.576 (...) numbers show that the country that mostly contributes to the total number of women subjected to FGM is Guinea-Bissau (...) this country represents around 90% of the women who are estimated to have been subjected to FGM.

(LISBOA et al. 2015)

FGM constitutes a serious human rights violation, a type of torture, and a severe form of violence against women and girls. FGM represents a violation of the basic human rights of women, including the right to freedom from violence, right to physical integrity, right to non-discrimination and freedom from cruel, inhuman and degrading treatment.

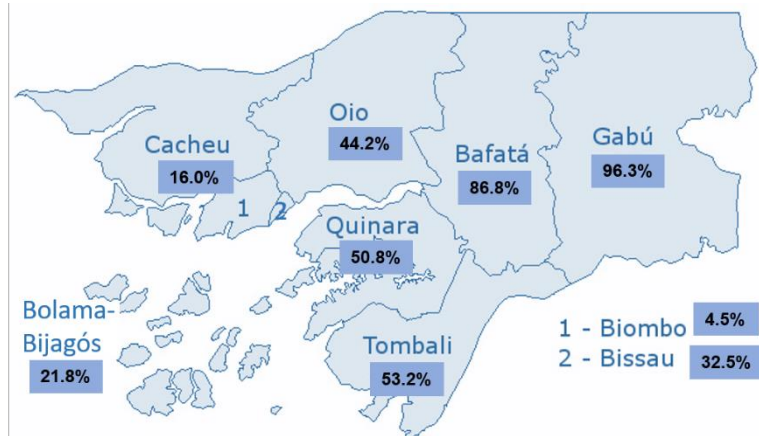
1.3. National Background

The MICS survey (2014) shows that 44,9% of women and 30% of girls in Guinea-Bissau have undergone FGM, and 500,000 are under risk. More than 80% of women and girls are cut before age 14, with more than 40% of cutting episodes happening before age 4 (UNICEF 2016). FGM is more common among illiterate women (61,8%) than among those with primary (41,2%) and secondary (24,2%) education (MICS 2014).

³ Centers for Disease Control and Prevention, Refugee Health Guidelines, Female Genital Cutting (also known as female circumcision, female genital mutilation, and female genital excision).

In: <https://www.cdc.gov/immigrantrefugeehealth/guidelines/domestic/general/discussion/female-genital-cutting.html>

In Guinea-Bissau, around half of the women are affected by FGM. FGM in Guinea-Bissau is present in all regions: Tombali, Quinara, Oio, Biombo, Bolama/ Bijagós, Bafatá, Gabú, Cacheu and Bissau, and



prevalence and type of procedure varies widely among and within regions and ethnic groups. (See Figure 5). Practice is highly concentrated in the East (91.5%), and significantly lower in the West (32.5%). Higher levels of FGM are as well observed in rural areas (50.1%) rather than in urban regions (39.8%)

(Ministério da Economia e Finanças, Direcção Geral do Plano, and INE 2017)

Image 5 – FGM Prevalence in the regions of

Guinea-Bissau. Source: (Bogado 2018)

FGM in Guinea-Bissau is practiced mainly by Islamic groups, as it is considered as a koranic recommendation. However, women of non-Islamic groups who marry men of Islamic groups eventually are submitted to the practice. Since FGM is accompanied by other rituals and festivities, the interaction between practicing and non-practicing communities has resulted, in the past, in the submission of children of non-practicing communities being subjected to the practice (Baldé 2018) ⁴.

In Guinea-Bissau, only 13% of women inquired by UNICEF in 2014 refer that FGM should remain. Na overwhelming majority of women considers that the practice should be discontinued: 90% of women living in urban areas and 73% of women living in rural communities.

(Ministério da Economia e Finanças, Direcção Geral do Plano, and INE 2017)

In Guinea-Bissau, the practice is noted a little bit everywhere in the country, due to the interaction between different groups which inhabit in the territory. However, it is mainly noted in areas where Islamic groups of the country live:

- The East, specifically regions of Bafatá and Gabu, that are inhabited mainly by the groups Fulas and Mandingas,
- the North, namely the Oio region inhabited also by the Oincas and Mansoncas and the Cacheu region, a little to the north of the region the cassangas groups, are groups which practice FGM/C
- The South, specifically the regions of (Quinara e Tombali) with the groups Beafadas, Fulas, Tandas and Nalus as practicing groups, and
- The Autonomous Sector of Bissau with a large mix of ethnic groups, but where the FGM/C groups are considerable

⁴ See recommended Reading: Corte/ Mutilação Genital Feminina: Respostas Institucionais Integradas, Lisboa, 28 e 29 de setembro de 2017.

The type of practice most prevalent in the country is type II, although it is also possible to find few instances of type III, especially among Fula groups and in the areas bordering Guinea- Conakry.

(Manual de formação de facilitadores, Comité para o Abandono de Práticas Tradicionais Nefastas à Saúde da Mulher e da Criança – CNAPN - da Guiné Bissau, n.d.)

- Most prevalent type of practice: type II, but type III may also be found (mostly in Fula groups and border areas with Guinea-Conakry);
- Age when it is practiced: age varies, according to ethnic groups:
 - Fula: younger children, aged between 3 and 5 years;
 - Other practicing groups: the age varies between the execution of the cut and the ritual of passage to adulthood;
 - Mandinga and Beafada: the practice occurs in two moments: the first moment is the cut and the second moment is the transition to the adult phase, with the ritual of learning and education for the young woman (*fanado garandi*). In this second phase, young girls who have not yet been subjected to the cut can also participate, as they will be excised at this time. (Baldé 2018)
 - Medicalized FGM does not appear to be prominent in Guinea-Bissau. According to the available data, only 0.1% of women between the ages of 15 and 49 who suffered female genital mutilation were cut by a health professional. (UNICEF 2013b)

From 2008 to the present date, according to the available data, about 389 communities have publicly declared total abandonment of the practice in their communities. In 2018, a second National Strategy for the abandonment of FGM was adopted, which aims to consolidate and reinforce these results (see below).

A recent Institute of Studies and Research (INEP) study questioned communities who declared the abandonment of FGM on whether they continued to believe that such abandonment was good practice: of 538 respondents, most answered yes (88.1%), against 8.2% who answered no. (INEP 2017)

"I have 5 daughters and 4 of them have been cut and I did not let them practice it in the youngest one. When I traveled with her to Canchungo I told them she had been cut in Bafatá and when we went to Bafatá I said she had been cut in Canchungo and that i show she escaped" (EM16, 38 years old)

(LISBOA et al. 2015)

In 2011, Law No. 14/2011, of July 6, was approved in Guinea-Bissau to prevent, combat and suppress female excision. The justice system in Guinea Bissau has responded to the 2011 Law against FGM: several people have been found guilty since 2011 and some of them have been sentenced to prison. Knowledge of the law by legal professionals is essential in promoting a human rights-based approach to reducing FGM in Guinea-Bissau and increasing law enforcement as well as ensuring effective and efficient criminal action.

The above-mentioned INEP study questioned the communities about the knowledge of Law n. 14/2011, of July 6. Most respondents answered yes (80%).

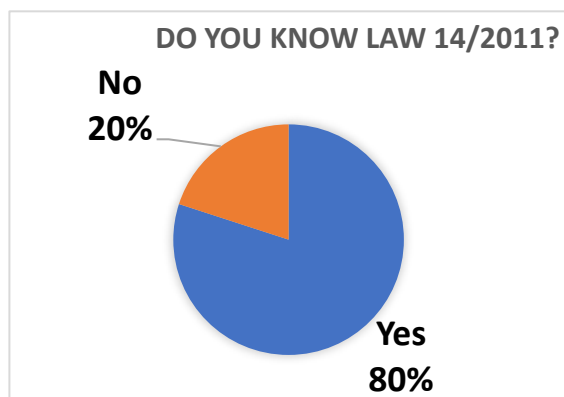


Image 6 – Chart on knowledge of the Law. Source: Chart 13 (INEP 2017)

However, when respondents were asked whether they knew that FGM is a crime, the answers indicated overwhelmingly that they did: 96.5% indicated that FGC practice is a crime, whereas respondents who did not know corresponded to 3.2 %.

Respondents were also asked whether they had knowledge of cases of violation of Law 14/2011, of July 6, or cases of clandestine practice. Most answered no (84%). Of those who answered that yes (16%), when

asked about their attitude to any of these cases, 34.7% answered that they approached the judicial authorities; 33.3% answered that they kept it a secret; 17.3% said they wanted to address the authorities, but they were afraid; 9.3% said they had told a neighbor and 5.3% said that they took it, in secret, a tabanka / community authority.

It is interesting to note the reasons for not reacting when confronted with the practice of FGM, even though it is a crime (see table 1 below), as well as the ways in which people have learned about the FGM law (see table 2 below).

Reasons for reacting when confronted with the practice of FGM, despite knowing it is a crime	Percentage
Fear of the supernatural	33%
Fear of retaliation by those who practice FGM	30%
Fear because thinks he/she can die suddenly	23%
Fear because it is a secret of the ancestors	13%

Table 1 - Reasons for not reacting when confronted with the practice of FGM. Source: (INEP 2017)

How did you become aware of the FGM law?	Percentage
Community radio	22,7%
National radio	20,9%
Meetings with NGOs	15,9%
Private radio	15,3%
TV	12,5%
Meetings with grassroot associations	12,7%

Table 2 – Ways by which people became aware of the law. Source: (INEP 2017)

1.4. Causes and consequences

FGM is a deeply rooted social norm, with historical roots. FGM tends to be defended by practicing communities with arguments based on religion. But there is no religious command to recommend it.

Causes

Common reasons given for FGM include:

“A MGF é parte de uma complexa prática simbólica e cultural, relacionada com a matrimonialidade das mulheres e o papel destas nas suas comunidades, incluindo o acesso à propriedade e estatuto social”

(Bogado, 2018)

- Social acceptance/ rite of passage
- Religion
- Hygiene
- Purity/preservation of virginity
- Increased possibility of getting married
- Increased sexual male pleasure
- Condition for the girl to be considered as a woman

FGM is considered a rite of initiation for girls, usually in a ceremony or ritual (in Guinea-Bissau called "fanado"), which marks the transition of girls to the adult world.

Reasons for FGM in Guinea-Bissau:

Although none of these reasons justifies the practice of FGM, it is important to understand the motivations for the practice of FGM in Guinea-Bissau in order to prevent and combat it.

Religion

Animism represents 40% of population's stated religion. The other two major religions in the country are Islam (around 50%) and Christianity (10%, primarily Catholic).

FGM supporters in Guinea-Bissau defend that the practice is a requirement of Islam. In Bafatá and Gabú, for instance, which are predominantly Muslim regions, 96,3% and 86,8% of girls have undergone FGM.

Religion is often used by men and women to justify the inferior societal status of women and the acceptance of FGM.

The National Islamic Council, however, issued a "fatwa" against the practice affirming that there is no provision in the Koran that supports FGM. According to CNAPN there is a collaborative effort between Christians and Muslims to spread information in rural areas that FGM is not a religious requirement.

Social practice

Reasons for the practice of FGM in Guinea-Bissau include a mix of sociocultural factors that vary within families and communities. If FGM is a social and cultural norm, families are influenced by others in their communities when deciding whether to cut or not their own daughters.

FGM in Guinea-Bissau is deeply-rooted in the custom of "fanado". "Fanado" is the initiation ritual that prepares boys and girls to the adult life and to the ability of perpetuating the community tradition. This involves circumcision of boys and female genital mutilation of girls.

Purity

According to CNAPN, men justify FGM as an act of hygiene and cleanness, associated with ideals of purity and fidelity. For women, the support for the practice is justified by tradition and by the need to preserve virginity before marriage and fidelity after marriage, to provide more sexual satisfaction to the male partner, and ensure hygiene and religious requirements. FGM/C is usually mandatory for a woman to get married in her community and to be considered “clean”.

Source: (Bogado 2018)

The fanado ceremony is performed through a chain that surrounds the entire community, as shown by the following flowchart:

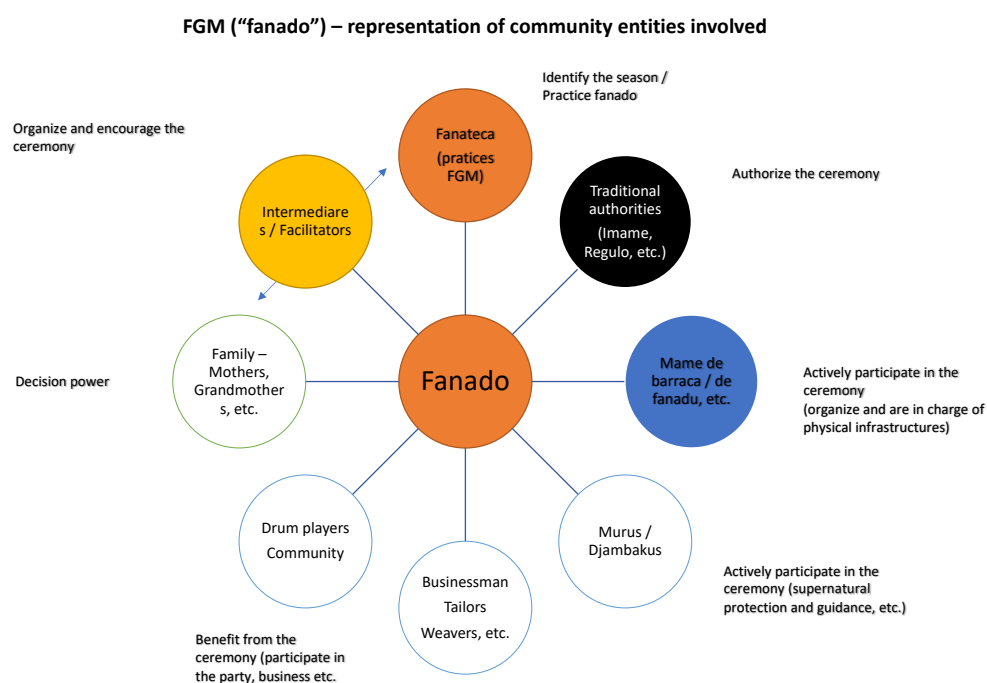


Image 7 – Representation of community entities involved in fanado. Source (INEP 2017) (with adaptations)

According to the previously mentioned recent INEP study (INEP 2017), when questioned about what the fanado means to them, most respondents (66%) said that it is linked to culture / tradition; 17.8% answered that it is something related to the religion and 16.2% answered that it is the source of income of some people, as represented in the chart below.

What does fanado mean (FMG)? Reported reasons	Percentage
Linked to culture/tradition	66%
Linked to religion	17,8%
Source of income for some people	16,2%

Table 3- Meaning of fanado. Source: (INEP 2017)



Recommended exercise

Exercise on 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 motives that make them beneficial, harmful or neutral.

Female circumcision does not exist in the Qur'na

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.)

National context

Prevalence of FGM

Illiterate women - 61,8%

Primary education - 41,2%

Secondary education- 24,2%



More than 80% girls – cut before 14 yo

More than 40% girls – cut before 4 yo



Only 13% of women in GB thinks that FGM should exist



Practically no medical FGM

Consequences



FGM is responsible for complications (physical, psychological and social) that can result in death. In addition to the immediate and long-term individual damage, FGM may place women at increased risk for problems during pregnancy and childbirth (WHO 2008), risks that are more common with wider FGM procedures.

Source of images: WHO/(Krupa 2017)

Neonatal mortality increases if mothers have been subject to the practice. According to WHO, the death rate among babies is 15% higher among women that have undergone FGM type I, 32% higher in those who have undergone FGM type II, and in those who have undergone FGM type III is 55 % higher (the infibulation, which consists of closing the vaginal opening). WHO estimates that in the African continent an additional 10 to 20 babies die per 1000 deliveries as a result of the practice (WHO 2006)⁵.

“Those who love, protect others”
Fatumata Baldé

Summary of the consequences to women’s health:

Immediate Complications	Long-term complications
Haemorrhage Severe pain: injuries to cut tissues and nerves, swelling and pressure, no anesthesia; Shock: haemorrhagic (blood loss), neurogenic (severe pain and trauma) or septic, which can be fatal; Genital tissue swelling: due to inflammatory response or local infection; Fever: inflammation, trauma, infection; Infections: acute local infections, abscess formation, septicaemia, genital and reproductive tract infections, urinary tract infections, skin destruction, tetanus, hepatitis, HIV/AIDS; Urination problems: acute urine retention, pain passing urine, swelling, injury to the urethra; Wound healing problems: failure of wound to heal due to infection or other conditions;	Vaginal discharge and vaginal itching Painful urination: damage to the urethral opening or scarring of the meatus; Menstrual problems: due to partial occlusion of the vaginal opening; Chronic genito-urinary infections: urinary tract infections, which may lead to kidney failure and death; Reproductive tract infections: occlusion of the vagina and urethra causing stasis and climbing of the infections Genital infections: trauma, entry of infectious organisms, reaction due to discharge; Urinary tract infections: occlusion of the urethra; Bacterial vaginosis, Sexually Transmitted Diseases and HIV/AIDS; Scar tissue and keloid;

⁵ The estimate was based on a study conducted with 28.393 women assisted in 28 obstetric centers in Burkina Faso, Ghana, Kenya, Nigeria, Senegal and Sudan.

Death: severe bleeding, pain, and trauma, or severe and overwhelming infection;	Infertility: pelvic infections, damage to reproductive organs, painful intercourse;
	Psychological syndromes: depression, anxiety and post-traumatic stress disorders (PTSD);
	Sexual complications: painful intercourse, no sexual desire, less sexual satisfaction and less experience of orgasm.

Table 4 - Summary of the consequences to women's health. Source: (Bogado 2018) with references to (WHO 2016), (WHO 2017) and (Kimani, Muteshi, and Njue 2016)

For some girls, girls and women, the experience of FGM and its psychological effects are comparable with the experience of rape.

"Yes, I was cut. I remember that my maternal grandmother went to my parents' house to pick me up early in the morning without notifying my parents and took me to her house to be circumcised when I got to her house I saw other girls, some were crying and I was soon with fear and I started to cry I also wanted to escape but there was no time, however when my mother woke up she did not see me she asked for me and that's when they told her that my grandmother took me to her house, my mother went there as the house is close by. When she arrived, she saw that there were a lot of girls at her mother's house and that's when she realized that my grandmother cut me. So she went to tell my father and he was very angry even scolded my grandmother for not having warned him. I was told that on that day I cried from 8:00 am in the morning until 8:00 p.m. without eating or drinking, everything I was given to eat I threw to the floor (EM3, 47 years old)

(LISBOA et al. 2015)

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, long lasting effects. According to Amnesty International, experts suggest that the shock and trauma of the procedure may contribute to the "calmer" and "docile" behaviors considered positive traits in FGM societies, with enormous costs to the psychological health of women.

According to the recent INEP study, respondents were asked whether they are aware of the consequences or risks of FGM practice. The majority (76.3%) answered that yes, they are aware of the consequences and risks of FGM, while 23.7% answered that they are not aware (INEP 2017).

As for the measures to be taken to prevent the practice, the majority of respondents (73.5%) replied that there should be some form of prevention that would prevent the practice of FGM, some measure of control, while a minority (26, 5%) replied that there should be no control measure. Of those who answered yes, 42.5% it indicated that a good measure of control involves awareness-raising among fanatas, parents, schools, associations and the community; 10% replied that the application of the law is sufficient because it punishes; 8.6% replied that monitoring and surveillance should be strengthened; 7.4% replied that there should be a control but also community involvement.

Prevention and control measures of FGM	Percentage
Awareness-raising among fanatecas, parents, schools, associations and the community	42,5%
The application of the law is sufficient because it punishes	10%
Monitoring and surveillance should be strengthened	8,6%
There should be a control but also community involvement	7,4%

Table 5 – FGM prevention and control measures. Source: (INEP 2017)



Recommended exercise

Exercise with participants as agents of change

Work with participants to validate feelings and emotions because of greater familiarity with the consequences of FGM on women and their babies. Almost every participant in Guinea-Bissau knows someone who has been subjected to this practice: themselves, their sisters, daughters, women, neighbors or acquaintances. Having greater contact with the consequences of the practice can raise feelings of frustration, despair, worry or even guilt between the participants. It is important to talk them through during this module and remind participants that the focus is on changing the reality in the present and in the future.

1.5. FGM as a form of violence against women

Gender-based violence (GBV) encompasses several forms of violence targeting individuals and groups based on expectations and roles traditionally performed on the basis of gender⁶.

Gender-based violence includes, but is not limited to, any act in public or private life perpetrated or tolerated by the State that results (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.

“Mutilation is not a tradition, it is violence”

GBV acts 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 outside work;
- Intimidation and harassment in or outside work;
- Violence in schools and moral harassment, both between students and the teacher or school staff against students, or students against teachers or school staff;
- Human trafficking;

⁶ Gender-based violence (GBV) is the general term used to capture “violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between the two genders, within the context of a specific society.” (Bloom 2008, 14)

- Other forms of economic violence and any kind of violence against a person because of gender or in relation to gender or because of the alleged gender role or gender stereotype.

FGM is part of a wide range of patriarchal practices anchored in gender inequality, whose aim is to control the bodies, sexuality and reproductive rights of women and girls.

FGM 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 at girls and women based on sex.

In Guinea-Bissau, gender-based violence is a reflection of the patriarchal model, which legitimizes traditional cultural practices, under which various ethnic groups that constitute the country govern their behavior and attitudes. These practices include female genital mutilation, forced and / or early marriage, levirate, gerontophilia, polygamy and domestic violence.

(Baldé and Mendes, n.d.)

Even when practiced by women, this kind of violence is considered GBV, since women are used as a vehicle for perpetuating a culture of inequality that subjugates and violates their physical and moral integrity, leaving irreparable damage. FGM calls into question fundamental human rights such as equality, dignity and physical integrity, and the free development of the personality, as well as the right of girls and women to have control over their own lives. This violation has a prolonged effect on the body and therefore affects the whole life and autonomy of women.

Female excision is also considered a serious human rights violation, as it is a sociocultural tradition that causes irreversible physical and psychological damage and is responsible for the death of girls (...)"

Court of Bissau –
Criminal Section
(Proc. n.º 98/2014)

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;
3. Describe the national 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 women's and girls' rights—namely of their sexual and reproductive rights. In the last decade, many core international treaties have highlighted the need to combat FGM as part of a wider effort to promote gender equality and sustainable development.

International instruments	Content summary
Universal Declaration of Human Rights (1948)	It proclaims the right of all human beings to a standard of living that allows 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.
International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights (1966)	It condemns gender-based discrimination, recognizing the universal right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	It urges states parties to take legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction.
Convention on the Elimination of All Forms of Discrimination against Women (1979)⁷	It urges states parties to modify social and cultural patterns of conduct with a view to eliminating customary and all 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. Art. 2(f): To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Art. 5(a): To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.
Convention on the Rights of the Child (1989)	It establishes the need for states parties to respect and ensure the rights of each child without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's sex (Art. 2). It also establishes the right to be free from all forms of physical or mental violence and maltreatment (Art. 19.1). Furthermore, it establishes that states parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (Art. 24.3).
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women⁸	It establishes mechanisms for receiving and considering claims about violations of the Convention on the Elimination of All Forms of Discrimination against Women. The states parties to the protocol recognize the competence of the Committee on the Elimination of Discrimination against Women to receive claims by individuals or investigate grave or systematic violations of the convention, which has already resulted in a number of decisions against states parties.
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	It refers to harmful practices: "7. Harmful practices are therefore grounded in discrimination based on sex, gender and age, among other things, and have often been justified by invoking sociocultural and religious customs and values, in addition to misconceptions relating to some 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. While the nature and prevalence of the practices vary by region and culture, the most prevalent and well documented are female genital mutilation, child and/or forced

⁷ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was ratified by Guinea-Bissau in 1985.

⁸ Guinea-Bissau ratified, on February 28, 2008, the Optional Protocol to the CEDAW and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol, through National People's Assembly resolution no. 25/2007.

the Child on harmful practices	marriage, polygamy, crimes committed in the name of so-called honor and dowry-related violence.” It defines the concept of FGM. It urges states parties to take measures with a view to preventing and combating it.
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International declarations	Content summary
Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights (1993)	It broadens the scope of human rights to encompass 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 shall be understood to encompass physical and psychological violence occurring in the family, including female genital mutilation and other traditional practices harmful to women.
General recommendation no. 14 of the CEDAW on female circumcision (1990)	It recommends to states parties that they take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include the dissemination of basic data about this practice, 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, among others.
United Nations General Assembly Resolution A/RES/67/146 (2012) United Nations General Assembly Resolution A/RES/69/150 (2014)	The specific purpose of these resolutions is to persuade Member States to “intensify global efforts for the elimination of female genital mutilations.” They urge United Nations member states to create mechanisms that explicitly ban the practice of FGM and call upon states to develop, support and implement comprehensive and integrated strategies for the prevention of female genital mutilations, including the training of social workers, medical personnel, community and religious leaders and relevant professionals, and to ensure that they provide competent, supportive services and care to women and girls who are at risk of or who have undergone female genital mutilations and encourage them to report to the appropriate authorities cases in which they believe women or girls are at risk.

Plans of action	Content summary
Program of Action of the International Conference on Population and Development (1994)	It includes recommendations to governments and communities about FGM with a view to eliminating it and protecting women and girls against unnecessary and dangerous practices.
Platform for Action of the Fourth World Conference on Women, Beijing (1995)	It urges governments, international institutions and non-governmental organizations to develop policies and programs with a view to eliminating all forms of discrimination against women and girls, including FGM.



Recommended exercise

Ask the group to organize themselves to draft and present their own declaration of human rights in Guinea-Bissau. Display the resulting declarations and promote their reading and personal signature as part of their commitment to the eradication of FGM.

2.2. 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 Guinea-Bissau, 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 against all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment.

Regional instruments	Content summary
African Charter on Human and Peoples' Rights (1981)	Article 5: Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)⁹	<p>Article 5: Elimination of harmful practices</p> <p>States parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States parties shall take all necessary legislative and other measures to eliminate such practices, including:</p> <ul style="list-style-type: none"> a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programs; b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and paramedicalization of female genital mutilation and all other practices in order to eradicate them; c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling, as well as vocational training to make them self-supporting; d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.
African Charter on the Rights and Welfare of the Child (1990)	<p>Article 16: Protection against child abuse and torture</p> <p>1. States parties to the present charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.</p>

2.3. Community of Portuguese-Speaking Countries – CPLP

The Community of Portuguese-Speaking Countries – CPLP, established in 1996, is a political project founded on the Portuguese language, a historical bond and common heritage of ten countries—Angola, Brazil, Cape Verde, Equatorial Guinea, Guinea-Bissau, Mozambique, Portugal, São Tomé and Príncipe and Timor-Leste—spread across four continents. The general objectives of the CPLP are political coordination and cooperation in social, cultural and economic areas. More than half of the population of these ten countries is made up of women. Knowing that the *“affirmation of the defense of human rights in the CPLP must unequivocally include the promotion of equality between men and women, without which it is not*

⁹ Guinea-Bissau ratified, on February 28, 2008, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol, through National People's Assembly resolution no. 25/2007.

possible to build fairer and more developed societies,” the Lisbon Resolution (May 2010) established a standing Meeting of Ministers Responsible for Gender Equality of the CPLP. These meetings have debated specific issues related to women’s empowerment, including FGM and the promotion of equality between men and women. (Plataforma Portuguesa para os Direitos das Mulheres (PpDM) 2018)

Plans of action	Content summary
Lisbon Resolution, Second Meeting of Ministers Responsible for Gender Equality of the CPLP	It recognizes that all forms of violence against women, including FGM, represent a grave violation of the human rights and fundamental freedoms of women and an obstacle to the materialization of gender equality and women’s empowerment.
Luanda Declaration, Extraordinary Meeting of Ministers Responsible for Gender Equality of the CPLP (2011)	It establishes that all forms of violence against women, including traditional practices harmful to the health of women and girls, namely FGM, represent a grave violation of human rights and a public health problem.
Plan of Action for Gender Equality and Women’s Empowerment, Meeting of Ministers Responsible for Gender Equality of the CPLP – 2017-2020	Axis 13 of this plan aims to prevent and combat all forms of violence against women and girls. One of the measures envisaged is the training of the judiciary, security forces and services and professionals in the health, media and education sectors to assist victims of violence and combat female genital mutilation.
Brasilia Declaration Fifth Meeting of Ministers Responsible for Gender Equality of the CPLP (2017)	It recognizes that gender equality and the empowerment of all women and girls are crosscutting priorities that must be part of the strategies, programs, plans of action, activities and budget forecasts of the CPLP member states as an essential condition for the achievement of sustainable development, in the full realization of the inherent dignity of the human person.

3. National legal framework and Female Excision Law in Guinea-Bissau: annotation

Objectives of this module:

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

1. Describe the national legal framework on FGM/female excision;
2. Describe the content of Law no. 14/2011, of July 6, which aims to prevent, combat and suppress female excision;
3. Conduct a critical analysis of Law no. 14/2011, of July 6, which aims to prevent, combat and suppress female excision.

In 2011, Law no. 14/2011, of July 6, which aims to prevent, combat and suppress female excision (hereinafter the Female Excision Law), was approved in Guinea-Bissau. The justice system in Guinea-Bissau has responded to the 2011 anti-FGM law: several individuals have been found guilty since 2011 and some were sentenced to time in prison.

3.1. FGM and the fundamental rights at stake

“Religious freedom does not protect harmful practices and, in particular, religious freedom never, ever protects harming children. Never.”

Kristina Arriaga, commissioner at the U.S. Commission on International Religious Freedom¹⁰

Law no. 14/2011, of July 6

Preamble

Guinea-Bissau, as a sovereign State, has embraced democracy as its form of government and exercise of political power. Therefore, it undertakes to respect democracy’s underlying values and principles, namely respect for the fundamental rights, as an axiological vector of the democratic rule of law and crystallization of the principle of the inherent dignity of the human person, upon which the modern State is ultimately built.

The freedom of cultural and religious expression is one of the fundamental rights, from which the State’s duty to protect and safeguard them arises. However, as they are not autonomous rights, they seek their completion within the legal and constitutional system where they are enshrined, since the Constitution represents a compromise structure inasmuch as it provides many prima facie opposed fundamental rights whose practical coherence is the responsibility of the legislator to establish the optimal point of equilibrium between one fundamental right in relation to all others.

In pursuing its mission to uphold justice, ensure security and promote the social welfare of the citizens, it is up to the State to adopt the necessary legislative measures with a view to sanctioning and repressing behaviors contrary to the standards of conduct of life in society, capable of endangering the physical and moral integrity and the inherent dignity of the human person.

Therefore, under the Constitution of the Republic, the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights, the International Covenant on Civil and Political Rights and its Optional Protocol and, above all, the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Maputo Protocol, the National People’s Assembly, concerned by the growing social dimension of female excision, orders the following to be valid in accordance with Article 86(g) of the Constitution of the Republic:

The preamble of the Female Excision Law frames the issue of FGM within a broader context of the fundamental rights protected by the Constitution of the Republic of Guinea-Bissau (Constitution).

Title II of the Constitution, in accordance with its heading (Fundamental rights, freedoms, guarantees and duties), provides the regulatory regime of the fundamental rights. Nevertheless, it is possible to find in the Constitution, even prior to this title, references to values of interest to the issue of fundamental rights and FGM, such as:

¹⁰ In: <https://www.catholicnewsagency.com/news/religious-freedom-advocate-female-genital-mutilation-is-unjustifiable-35815>

- Freedom and justice—article 3;
- Material equality and, implicitly, dignity—article 11;
- Religious freedom (institutional guarantee)—article 6 (2);
- Right to health—article 15.

The most relevant articles, included in Title II, to the issue of FGM are the following:

Equality:

Article 24: All citizens shall be equal before the law, enjoy the same rights and be subject to the same duties, irrespective of race, gender, social status, intellectual or cultural level, religious belief or philosophical conviction.

Article 25: Men and women shall be equal before the law in all areas of political, economic, social and cultural life.

Protection of all citizens:

Article 27: 1. All national citizens who reside in or are visiting a foreign country, shall have the same rights and be subject to the same duties as other citizens, with the exception of rights or duties which are incompatible with their absence from the country.

2. Citizens who reside in a foreign country shall enjoy the care and protection of the State. (...)

Relation with international law:

Article 29: 1. The fundamental rights enshrined in the Constitution shall not negate other rights provided by the laws of the Republic and applicable rules of international law.

2. The constitutional and legal norms regarding fundamental rights shall be interpreted in harmony with the Universal Declaration of Human Rights.

Direct applicability¹¹ of fundamental rights:

Article 30: 1. The constitutional norms regarding rights, freedoms and guarantees shall be directly applicable and bind all public and private entities.

2. The exercise of fundamental rights, liberties and guarantees may only be suspended or limited in the case of martial law or state of emergency declared in accordance with the Constitution and the law.

Access to justice:

Article 32: All citizens shall have the right to appeal to the competent courts against acts that violate their rights recognized under the Constitution and the law. Justice shall not be denied for reasons of insufficient financial means.

Article 34: Everyone shall have the right to information and legal protection, in accordance with the law.

Moral and physical integrity:

Article 37: 1. The moral and physical integrity of citizens is unfringeable.

2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (...)

Other personal rights:

¹¹ Possibility of immediate assertion of the rights by direct effect of the Constitution, even in case of lack or insufficiency of the law.

Article 44: 1. *Everyone shall have the right to personal identity, civil status, citizenship, good name and reputation, image, speech, and privacy. (...)*

FGM and conflict of rights

An interesting consideration of the preamble is the one that refers to the “*freedom of cultural and religious expression*” as “*one of the fundamental rights, from which the State’s duty to protect and safeguard them arises.*” Even more interesting is the following consideration: “*However, as they are not autonomous rights, they seek their completion within the legal and constitutional system where they are enshrined, since the Constitution represents a compromise structure.*” **The preamble seems therefore to suggest that FGM is understood to be a practice included within the scope of religious freedom and cultural identity in Guinea-Bissau. Furthermore, it appears that the suppression of FGM is justified by the need to protect the “physical and moral integrity and the inherent dignity of the human person” which outweigh religious freedom, implicitly resorting to “conflict of rights” theories.**

Under the theory of conflict of rights, it is understood that the legal framework simultaneously protects two rights in objective contradiction. How to settle this contradiction? Assuming that no hierarchy between the values in question has been defined within the legal framework, the issue cannot be settled by upholding one of the values at the expense of the other, less important one. We must, therefore, seek a solution within the legal framework, finding the best possible way to harmonize the diverging precepts (Vieira de Andrade 1983). As Robert Alexy points out, if two principles are found to compete (Alexy 1997)—for example, if one principle prohibits something and another permits it—then one of the principles must be outweighed (through a “practical concordance technique”). **This means neither that the outweighed principle is invalid nor that it has to have an exception built into it. What happens is that, in certain circumstances, one of the principles has precedence over the other. In different circumstances, the question of precedence may be decided differently.**

Freedom of religion is enshrined in Article 52: 1. *Freedom of conscience and of religion is unfringeable.* 2. *Everyone shall have freedom of belief, which shall in no case infringe upon the fundamental principles enshrined in the Constitution.*

The conflict of rights and the practical concordance technique are frequently used in the field of fundamental rights. What is questionable, in the case of FGM, is the starting point for this law, stated in the preamble, i.e., the understanding of FGM as an expression of religious freedom. It is important to note the **growing consensus among international organizations and religious entities on the fact that FGM has no solid basis on sacred scripture or on the teachings of the prophets and cannot have any justification based on religion.**

Preamble of the Law



Conflict of rights?

Image 9 – Summary of the conflict of rights according to the preamble of the Female Excision Law in Guinea-Bissau

“(...) respect for traditions and cultures has an unassailable limit: the respect for human rights that represent the lowest common denominator admissible in all cultures, traditions and religions (...) the removal of the clitoris is not culture; it is mutilation and discrimination against women.”

Spanish Supreme Court, 2012¹²

3.2. Scope and definition of FGM in the law

CHAPTER I GENERAL PROVISIONS

ARTICLE 1 (Scope)

The present law aims to prevent, combat and suppress female excision in the Republic of Guinea-Bissau.

Article 1 of the Female Excision Law refers to the scope of the law, enshrining two fundamental aspects:

1) the prevention of the practice, which includes all efforts to protect girls or women at risk through the dissemination of information, mechanisms to provide assistance to girls at risk, etc.; articles 12 and 13 substantiate this first aspect of the law, i.e., the prevention;

¹² Sentence no. 835/2012, of October 31: the Spanish Supreme Court issued a ruling, for the first time, regarding an appeal against Sentence no. 197/2011, of November 15, 2011, by *Audiencia Provincial de Teruel*, which convicted the parents (citizens of the Gambia and residing in Teruel, Spain) of a minor (born in the Gambia and residing with her parents) for the crime of injury and genital mutilation and sentenced the father to six years in prison and the mother to two years. The Supreme Court rejected the appeal.

2) the combat against and/or suppression of the practice, which means, among other actions, punishing the perpetrators of FGM; articles 4 to 11 substantiate the second aspect of the legislative provision, i.e., the suppression.

ARTICLE 2
(Concept of excision)

For the purposes of this law, the term "excision" means any form of amputation, incision or partial or total ablation of female external genitalia, as well as any physical offenses practiced towards the female external genital organ for social, cultural, religious, hygienic or any other reasons invoked.

Article 2 of the Female Excision Law refers to the concept of excision. The concept of FGM was already mentioned above, when referencing the definition from the WHO: *"all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons."* Although the term used in Guinea-Bissau legislation is "female excision", it would have been preferable to adopt the term "female genital mutilation", because it more clearly expresses the gravity of the practice, as well as corresponding to the more consensual definition adopted by leading international organizations (UNICEF, FNUAP, etc.). Regardless of its designation, the concept of the law is in line with the WHO definition and seems sufficiently broad to include those procedures.

It should also be noted that this concept is sufficiently broad to include the prohibition of medicalized female genital mutilation, defended by the WHO and considered inadmissible; i.e., there are no circumstances under which the practice of FGM by health providers or practitioners is allowed.



Compared Law

Analysis of the concept of FGM in the law of some of the Portuguese-speaking countries

Portugal

Article 144-A (Female genital mutilation) of the Portuguese Penal Code¹³ (amended in 2015¹⁴)

- 1. Anyone who engages in total or partial genital mutilation of a female person by means of clitoridectomy, infibulation, excision, or any other practice harmful to the female genital organ for non-medical reasons shall be punished by imprisonment for 2 to 10 years.*
- 2. Any preparatory acts for the crime provided for in the previous paragraph shall be punished by imprisonment for up to 3 years.*

¹³ Prior to September 15, 2015, Article 144 of the Portuguese legislative framework established the crime of serious offense to physical integrity. Although the term "female genital mutilation" isn't explicitly mentioned in the text of the law, the preparatory documents mentioned that FGM can be considered a form of "hindering or affecting the capacity to procreate or sexual fruition of an individual." The principle of extraterritoriality was applicable, implying that FGM could be punished even if it were committed outside the country. Following Portugal's ratification of the Istanbul Convention in August 2015, FGM is a specified crime under Law no. 83/2015 of the Portuguese Penal Code. With this law, namely the new text of Article 144-A, FGM practices became a crime punishable by law, carrying a prison sentence of 2 to 10 years. All preparatory acts related to FGM, namely sending or arranging the travel of a woman or girl abroad to be submitted to FGM, or helping, incentivizing or supporting the practice of FGM abroad or in national territory (e.g. by collecting money to pay for the procedure) are also considered a crime, punishable by up to 3 years in prison (UEFGM 2019a)

¹⁴ Law no. 83/2015, of August 5: Thirty-eighth amendment to the Penal Code approved by Decree-Law no. 400/82 of September 23, specifying the crime of female genital mutilation, creating the crimes of stalking and forced marriage and amending the crimes of rape, sexual coercion and sexual harassment, in compliance with the provisions of the Istanbul Convention. In: https://www.cig.gov.pt/wp-content/uploads/2016/03/Lei-n.%C2%BA-83_2015_05-agosto.pdf

Mozambique

Article 178 of the Penal Code (amended in 2014¹⁵) (Castration and genital mutilation)

1. *Anyone who commits the crime of castration of another, amputating an organ needed for procreation, shall be punished by imprisonment for 12 to 16 years.*
2. *Anyone who voluntarily mutilates the genital organs shall incur on the penalty established in the previous paragraph.*
3. *In case of death of the victim within forty days of the crime, as a result of the injuries sustained, the penalty shall be imprisonment for 16 to 20 years.*

Brazil

Brazil **does not have** an explicit law or regulation on FGM, but there is a draft bill in the lower chamber of Congress that specifically aims to introduce paragraphs 2-A and 13 of Article 129 of the Penal Code, to explicitly define and criminalize FGM under Brazilian law¹⁶. Draft Article 129.

§ 2-A. The same penalty [2 to 8 years] shall be applicable to anyone who commits female genital mutilation. (...)

§ 13. For the purposes of § 2-A, female genital mutilation consists in cutting, sewing, altering the anatomy or otherwise totally or partially mutilating the female genital organ.

ARTICLE 3 (Prohibition of excision)

1. The practice of female excision is strictly prohibited in the territory of Guinea-Bissau.
2. Medical intervention on the female genital organ, made within the appropriate sanitary facilities, by a qualified person to correct any anomalies resulting from excision or any others, shall not be considered female excision, for the purposes of this law, provided that the medical act has been approved by the group of doctors assigned to the service, based on a diagnosis indicating the need for this surgery.

Article 3 of the Female Excision Law clarifies and reinforces the explicit and absolute prohibition of excision in the territory of Guinea-Bissau. Article 9 adds the component of extraterritorial applicability of the law (see below).

Article 3(2) contains a negative delimitation to the concept of FGM, clarifying that a medical intervention on the female genital organ, made in suitable sanitary facilities by a qualified person for the purpose of correcting any anomalies resulting from excision or otherwise is not considered FGM. This includes so-called “restorative surgeries,” such as clitoral reconstructive surgery, which preferably should be integrated in wider reconstruction processes involving multiple aspects (biological, emotional, moral, psychological, sexual), to which women who are victims of FGM can have access¹⁷. The efficacy of these procedures is not consensual—in both physical and psychological terms—and, in any case, they do not

¹⁵ Law no. 35/2014: Penal Code Amendment Law. In: <https://www.scribd.com/document/356854172/Lei-35-2014Codigo-Penal-docx>

¹⁶ BILL no. 3,344, of 2015 (by Mrs. Iracema Portella), amends Decree-Law no. 2,848, of December 7, 1940 – Penal Code, to define female genital mutilation as crime of very serious bodily injury. In: http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=91D24BA1C9A0EC7AE011CFAFDDBCD733.proposicoesWeb2?codteor=1406748&filename=Avulso+-PL+3344/2015

¹⁷ For more information on restorative surgeries, see: (Villani 2018)

right the wrong or repair the trauma and stigma attached to FGM. This provision also includes other medical procedures to correct “anomalies” that do not result from excision. Note that any medical act must be “approved by the group of doctors assigned to the service, based on a diagnosis indicating the need for such surgery.” The report by “28 Too Many – FGM Let’s end it” argues that this article creates a “loophole” that would permit medicalized FGM, but that doesn't seem to correspond to what the law clearly states (28 Too Many 2018).



Recommended exercise

Exercise about of the law on FGM: *discussion about the purpose of a crime-specific law for FGM versus a general provision of crime of offense to physical integrity under the Criminal Code.*

3.3. FGM as a crime

CHAPTER II ON CRIMES AND PENALTIES

ARTICLE 4 (Penalty)

Any person who, for any reason, performs the female excision in one of its various forms (clitoridectomy, excision, incision, infibulation) with or without the consent of the victim, shall be punished with imprisonment for 2 to 6 years.

FGM is **clearly criminalized by law**, with the corresponding penal type established in Article 4. In the excision of minors art. 5 is applicable.

Consent: it should be noted that **consent of the victims is irrelevant in terms of FGM**. The victims are usually minors; but even in cases where they are of legal age, consent would not be relevant for purposes of exclusion of unlawfulness or fault of the perpetrators of the crime, under both the Guinea-Bissau Criminal Code and this law.



Compared Law

Penal frameworks in neighboring countries¹⁸

The Gambia

- Penalty for the practice of FGM: imprisonment for 3 years
- If the practice of FGM causes death: life imprisonment

Senegal

- Penalty for the practice of FGM: imprisonment for 6 months to 5 years
- If the practice of FGM causes death: life imprisonment with “hard labor”¹⁹

Mauritania

- Penalty for the practice of FGM: imprisonment for 1 to 3 years

¹⁸ For a comparative analysis the various FGM laws, see (The World Bank Group 2018).

¹⁹ See (The World Bank Group 2018; 28toomany 2015)

Proof: proving the practice of this crime is one of the challenges to the implementation of this law, but it does not substantially differ from other types of crime. In Guinea-Bissau law, “the evidence is considered according to the court’s free assessment, shaped by the rules of experience and the criteria of logic” (Article 117 of the Code of Criminal Procedure).



Issue of proof in the United Kingdom

Opinion: “The lack of convictions [in the UK] inevitably raises questions: is our current law adequate in protecting women and girls against FGM? Should the law change to make it easier to convict perpetrators? The answer is not simple. There are numerous factors which make both detecting and convicting FGM difficult. Obtaining enough proof is one issue preventing prosecution: both cases brought this year [2018] collapsed on inadmissible or lack of sufficient evidence. Girls are often scared to ‘tell on’ their parents or family. Perpetrators of FGM are increasingly aware of the risk of prosecution, and so take evasive action. Such action includes the rise of Type 4 FGM, which can be a smaller incision, prick or lesion.” (Mellor 2018)

Additional penalties: especially in cases where FGM is practiced by health care professionals, additional penalties may be imposed. Some laws that criminalize FGM specifically provide for these sanctions (see Italian law below). Under Article 39(c) of the CC, additional penalties include temporary suspension and termination of employment. Preconditions for the applicability of these additional penalties must be met (see articles 51 and 52 of the CC), so **it would have been preferable to specifically provide for an additional penalty integrated into this law.**



Compared Law

Additional penalties for health care professionals Italian law

Art. 583-ter:²⁰ Any sentence against a professional working in the health care sector for one of the crimes under Art. 583-bis, shall carry secondary/ancillary disqualification from the profession for 3 to 10 years. The sentence shall be communicated to the national medical association.

3.4. FGM and child protection

ARTICLE 5

(Excision on a minor)

1. The excision practiced on a minor shall be punished by imprisonment of 3 to 9 years.
2. The parents, guardian, or any person who has the child’s custody have the duty to prevent the practice of excision.
3. Failure to comply with the provisions of the previous paragraph shall be punished by imprisonment of 1 to 5 years.
4. For the purposes of this law, both the terms “minor” and “child” shall refer to a person below the age of majority.

²⁰ Legge 9 gennaio 2006, n. 7, "Disposizioni concernenti la prevenzione e il divieto delle pratiche di mutilazione genitale femminile" pubblicata nella Gazzetta Ufficiale n. 14 del 18 gennaio 2006. In: <http://www.camera.it/parlam/leggi/060071.htm>

The law provides for an **aggravated penal framework (3–9 years)** when the excision is practiced on **minors**, which is the most common case. It further establishes a **duty to prevent the practice for those who have the duty to protect the child**, the breach of which carries a prison sentence of 1 to 5 years. The age of majority in Guinea-Bissau is 18 years.

In known judicial cases in Guinea-Bissau, the maximum sentence passed was 3 years. All cases involved practices of FGM on children. The age of the minors is only mentioned in one case: under 1 (one)

Child protection mechanisms in Guinea-Bissau:

Child protection legislation in Guinea-Bissau is obsolete²¹ and does not specifically protect (potential or actual) victims of FGM. It is urgent to develop and approve appropriate legislation. There have been discussions on adopting a National Child Protection Policy and a Child Protection Code harmonized with the Convention on the Rights of the Child and in line with the National Agenda for Children (UNICEF 2015), but no legislative proposals have been announced so far. **The child protection system is fragile and insufficient to meet the needs.**

The Ministry of Women, Family and Social Cohesion coordinates social care services in Guinea-Bissau. As it effectively has no presence at the regional or local level, the Ministry is also a direct service provider, albeit with very limited capacity. The IMC and various specialized agencies, such as the Committee for the Abandonment of Harmful Practices (CNAPN) have some implementing capacity below central level.

While plans have been made for family and juvenile justice courts in the regions, these are not operational, though the Regional Court of Bissau includes a civil court with a family and juvenile section.

(UNICEF 2015)



Compared Law Protection orders

In other legal systems, there are provisions that ensure the use of “protection orders” or precautionary measures, which aim to immediately and urgently remove the threat of FGM. These injunctions are particularly important in the case of FGM practiced on minors.

Uganda²²

Prohibition of Female Genital Mutilation Act, 2010

Section 14: Special powers of the court

(1) A magistrate’s court may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order.

(2) Where the protection order is issued with respect to a child, the Family and Children Court may issue appropriate orders for the child as it deems necessary.

²¹ Main legal framework on this matter is dated 1971: The Minors Jurisdictional Assistance of Ultramar Decree 417/71.

²² See (The World Bank Group 2018)

United Kingdom²³

Section 73 of the Serious Crime Act of 2015 amended the Female Genital Mutilation Act to provide for the making of female genital mutilation protection orders.

A female genital mutilation protection order (FGMPO) is a civil injunction that can be applied for at a family court. An FGMPO offers a legal means to protect and safeguard victims and potential victims of FGM. This could include, for example, surrendering a passport to prevent the person at risk from being taken abroad for FGM or requirements that no one arranges for FGM to be performed on the person being protected. There is no court fee for applying for or associated with an FGMPO.

The breach of an FGMPO is a criminal offense, which carries a maximum penalty of five years imprisonment. As an alternative to the criminal procedure, the breach of an FGMPO can be dealt with in the family court as a contempt of court matter, with a maximum penalty of two years imprisonment.

Applications for an FGMPO can be made by:

- the person to be protected by the FGMPO;
- a relevant third party (such as a local authority); or
- any other person with the permission of the court (for example, the police, a teacher, a charity or a family member).

After an FGMPO has been granted, the police station for where the person being protected by the order resides must also receive a copy of the order, together with a statement showing that all parties have been informed.

Child protection law in Portugal:

Specific protection of children is provided for in Law no. 147/99²⁴ — Law on the Protection of Children and Young Persons at Risk — and its provisions are applicable to cases of FGM. This law assigns the Children and Young Persons' Protection Committees (CPCJ) a preventive and protective role against situations that endanger the safety, health, formation, education, well-being and full development of children and young persons.

Article 91 (Urgent procedures in the absence of consent)

1. Where there is present or imminent danger to the life or to the physical or mental integrity of the child or young person, and in the absence of consent by the holders of parental responsibilities or de facto guardians, any of the entities referred to in Article 7 or the protection committees shall take appropriate measures for his or her immediate protection and seek the intervention of the court or of police authorities.

2. The entity taking action under the provisions of the previous paragraph shall immediately inform the public prosecutor of the situations alluded therein or, where that is not possible, as soon as the cause for that impossibility ceases.

3. Until such a time as the court can intervene, police authorities shall remove the child or young person from the danger to which he or she is exposed and ensure his or her emergency protection

²³ See also: (GOV.UK 2016)

²⁴ With amendments introduced by Law no 31/2003, of August 22; Law no. 142/2015, of September 8; Law no. 23/2017, of May 23; and Law no. 26/2018, of July 5.

in a foster home, the facilities of the entities referred to in Article 7 or any other appropriate location.

4. The public prosecutor, upon being informed by any of the entities referred to in the previous paragraphs, shall immediately petition the competent court for urgent judicial procedure pursuant to the following article.

3.5. FGM and relevant criminal provisions

ARTICLE 6 (Aggravation)

1. Anyone who, acting with the intention to practice excision on another person, causes the effects provided for in Article 115(c), (d) and (e) of the Criminal Code, shall be punished with 2 to 8 years in prison.
2. If, instead of the effects provided for in Article 115 referred to in paragraph 1 above, the act causes the death of the victim, the penalty shall be 4 to 10 years in prison.

Article 6 refers to **aggravation on account of consequences**, if the practice of FGM causes any of the following effects, pursuant to Article 115(1) of the Criminal Code (serious offense to physical integrity):
“(…)

- c) affects the victim’s capacity to work, intellectual capacity or capacity to procreate in a severe, lasting or definitive manner;*
 - d) causes permanent disease or psychological problems; or*
 - e) endangers the victim’s life;*
- shall be punished by imprisonment for two to eight years. (…)”*

The effects mentioned in the Criminal Code are very common in the case of FGM, as was seen above with regard to the consequences of FGM.

Note that **this article only aggravates the penal framework in the case of FGM on adult women, since the penalty for FGM on minors already exceeds the aggravated framework: 3 to 9 years. Note also that if the FGM causes the death of a child, the maximum penalty is aggravated by only one year.**

ARTICLE 7 (Co-participation)

Whoever facilitates, incites, encourages or in any way contributes to the practice of female excision shall be treated, for the purposes of this law, as the principal perpetrator of the crime and punished in that capacity.

Article 14 of the Criminal Code (perpetrators of the crime), says that “*participation in the commission of a crime can take the form of perpetration, co-perpetration or complicity.*” Subsequent articles of the CC explain the meaning of each of these concepts:

- Perpetration: a person who, in person or through a third party, commits or intentionally instigates another to commit a crime, shall be punishable as *perpetrator* of the crime (Article 15 of the CC);
- Co-perpetration: if multiple perpetrators, by express or tacit agreement, take direct part in the commission or work together in a united effort to commit the same crime, they shall be punishable as *co-perpetrators* of the crime (Article 16 of the CC);
- Complicity: a person who, intentionally and in cases other than perpetration, helps another to commit a crime, shall be punishable as an *accomplice* to the crime. Paragraph 2 refers that the accomplice can be subject to the penalty corresponding to the type of offense, especially reduced (Article 17 of the CC).

Other relevant provisions include:

- Guilt in co-participation: each co-participant shall be punished in accordance with his or her guilt, regardless of the punishment or degree of guilt of the other co-participants (Article 18 of the CC);
- Unlawfulness in co-participation: the unlawfulness or degree of unlawfulness of the act, where dependent on certain qualities or special relations of the perpetrator, is reflected on the criminal liability of the remaining perpetrators who are aware that those qualities or special relations are true for one of the co-participants (Article 19 of the CC).

It may be concluded that the FGM law in Guinea-Bissau deals with co-participation in the crime of FGM in a slightly different manner from the provisions of the Criminal Code, treating situations of complicity as perpetration. Therefore, the perpetrators include:

- **the material perpetrators of the crime**, who are generally traditional excision practitioners or *fanatecas*: according to known court cases, several *fanatecas* have been sentenced to three years in prison — some with suspended sentences and some with imprisonment;
- **the children's parents or guardians**, who make the decision to subject the children to FGM and, therefore, are in direct breach of Article 5(2): according to known court cases, several mothers have been convicted as perpetrators of the breach of duty to prevent the practice of FGM under the provisions of that article (sentenced to three years in prison—some with suspended sentences and some with imprisonment);
- **other persons who facilitate, incite, encourage or in any way contribute to the practice of female excision, who are treated as principal perpetrators** in accordance with Article 7. In these cases, it is understood that the above-mentioned articles 18 and 19 of the CC are used to assess the degree of guilt and unlawfulness of the co-participation.

As for those who know that the practice of FGM is going to take place and do nothing to stop it, the law appears to address them in the next article (Article 8). Nevertheless, according to known court cases, other relatives of the children who were aware of the practice and failed to stop it were sentenced under Article 7 (to a penalty of 12 months in prison converted into a daily fine of 500 XOF).

ARTICLE 8 (Omission of aid and complaint)

1. Anyone who, in any way, learns about any preparatory act leading to the practice of excision and fails to take measures to prevent the practice, despite being able to do so without risk to his or her own physical integrity, shall be punished under Article 144 of the Criminal Code for omission of aid.
2. Anyone who, by reason of his or her duties, is aware of the practice of excision, shall have a duty to report it to the Judiciary Police, the Public Prosecutor's Office or the Public Order Police.
3. Any breach of the provisions of the previous paragraph shall be punished by a fine of 500,000 XOF to 2,500,000 XOF.

Article 8 of the law refers to Article 144 of the Criminal Code in cases where someone learns about preparatory acts leading to the practice of FGM and fails to take measures to prevent it, being able to do so without risk to his or her own physical integrity. The forms of participation in the crime of FGM were covered above (see note to Article 7). Article 144 (omission of aid) says that:

- 1. Anyone who, in case of desperate need of another who is in a life-threatening situation, fails to provide aid, either personally or through a third party, being able to do so without any serious personal risk, shall be punished by imprisonment for up to one year or a fine.*
- 2. If the perpetrator is a doctor or health care professional, he or she shall be punished by imprisonment for up to three years or a fine.*
- 3. In the case provided for in the previous paragraph, the perpetrator may be subject to the ancillary penalty of suspension of professional activity for a period of up to one year.*
- 4. The criminal procedure depends on complaint.*

The issue that might be raised is whether Article 8 of the law, by referring to Article 144 of the Criminal Code, also refers to the semi-public nature of the crime of omission of aid. In this case, the omission of aid can only be prosecuted if the situation has been reported to the authorities by someone who has the right of complaint. **Nevertheless, Article 10 of this law clearly states that the criminal procedure for the crimes provided for in this law does not depend on complaint, denunciation or participation of the victims or their legal representatives, so the most appropriate interpretation is that Article 8 refers to Article 144 of the Criminal Code only inasmuch as it concerns the penal type and quantum of punishment (and not to the nature of the crime).**

On the other hand, paragraph 2 says that **anyone who, by reason of his or her duties, is aware of the practice of excision, shall have a duty to report it to the Judiciary Police, the Public Prosecutor's Office or the Public Order Police.** Any breach of this duty of denunciation carries the consequences established in paragraph 3: a penalty fine of 500,000 XOF to 2,500,000 XOF. This article should be read in conjunction with Article 12 (see below).

The image below (image 10) summarizes the content of the law and respective penal consequences for various possible participants in cases of FGM.

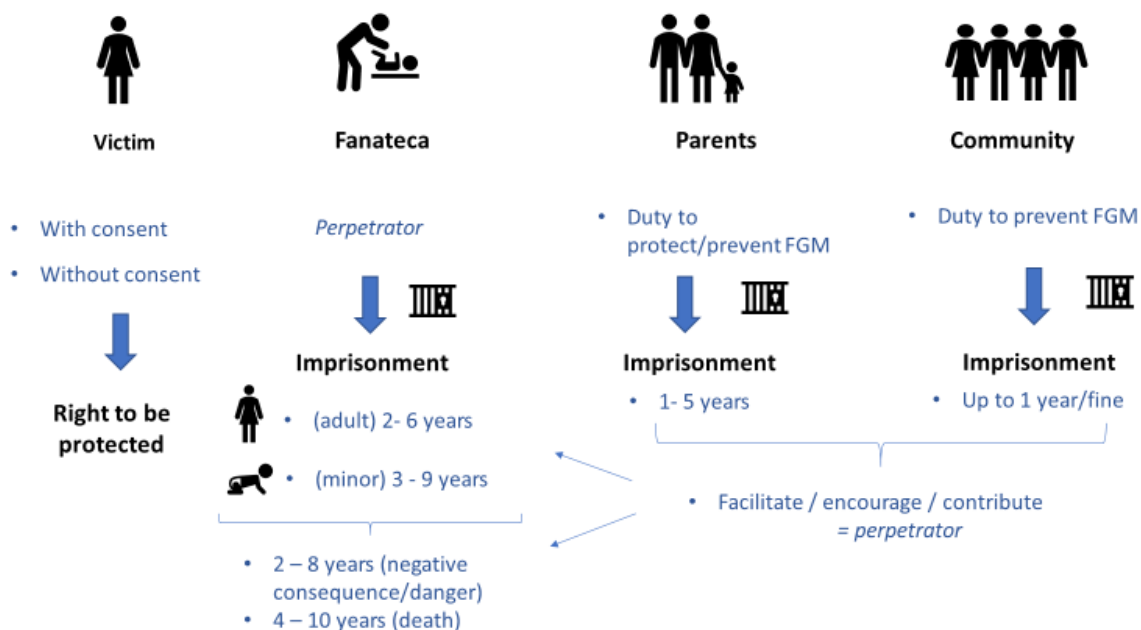


Image 10 – Summary of the content of the law and respective penal consequences for possible participants in cases of FGM

ARTICLE 9 (Fraud of the law)

The provisions of Articles 4 to 8 of the present law shall apply to cases in which the national or foreign citizen residing in Guinea-Bissau is displaced and excised in a foreign country.

As a rule, Guinea-Bissau law follows the principle of *territorial applicability of criminal law*, which says that “Guinea-Bissau criminal law shall be applicable to acts committed in Guinea-Bissau territory, regardless of the nationality of the perpetrator” (Article 5 of the CC). Article 7 of the CC provides for the applicability of criminal law to acts committed abroad²⁵.

Extraterritorial applicability of criminal law to the crime of FGM: Article 9 of the law clearly establishes an element of extraterritoriality that allows prosecution for the crime of FGM when the acts are committed in another jurisdiction, even where the practice of FGM is not considered a crime. It would have been possible to argue the same prohibition based on existing provisions under the CC, but this article clarifies the inclusion of this element, which is important to prevent cases where, for example,

²⁵ Article 7 (Acts occurred abroad): 1. Except where it is contrary to international treaties or conventions, Guinea-Bissau criminal law shall be applicable to acts committed abroad:

a) when regarded as a crime under Title VII, Chapter III of Title III or articles 203, 204 and 205 of the Criminal Code;
b) when regarded as a crime under Title I or articles 124, 125, 195 and 196 of the Criminal Code, provided that the perpetrator is found in Guinea-Bissau and cannot be extradited;
c) by citizens of Guinea-Bissau or by foreigners against citizens of Guinea-Bissau, provided the perpetrators are found in Guinea-Bissau.
2. In the case of (c), if the perpetrator does not ordinarily reside in Guinea-Bissau at the time the acts occur, Guinea-Bissau criminal law shall only be applicable:
a) when they are punishable by the law of the place in which they have been perpetrated;
b) when they are considered a crime admitting extradition and it cannot be granted.

girls residing in Guinea-Bissau are taken abroad to be subjected to FGM in another country, under a different jurisdiction. Given this (real and actual) risk, the explicit inclusion of the element of extraterritoriality expands the fight against FGM to a number of contexts, contributing to its eradication, in addition to representing a preventive message and an encouragement for parents, who will have another weapon with which to resist familial and social pressure to submit their daughters to FGM.

Media reports suggest that cross-border FGM has been an issue for Guinea-Bissau in the past, as families were crossing from neighboring countries (such as Senegal) to be cut. As Guinea-Bissau has attempted to tighten the laws around FGM and improve enforcement, this in turn has led to families trying to take girls out of the country to areas where they can avoid prosecution.

(28 Too Many 2018)



Court case comparison **Spain**

Exercise of parental authority: Sentence no. 4815/2010, of May 11, by *Audiencia Provincial de Barcelona*: the court dismissed the action brought by a woman from the Republic of Guinea to preserve the exercise of parental authority over her youngest daughter, due to her “dismissal of the importance of the FGM of her daughter,” demonstrating the “obvious existence of a risk that the minor will be submitted to FGM if she travels to Guinea, as her mother intended (...) the government agency, taking on the guardianship of the minor, intends to prevent the minor from traveling to her country of origin, where regardless of her will or even her mother’s, she may be subjected to a practice that, in addition to injury to her physical integrity, can cause obvious psychological damage and affect the full fruition of her future sexual life.”

Breach of duty of care: Sentence no. 5/2014, of February 24, by *Sala de lo Penal de la Audiencia Nacional*: The parents of two girls (Spanish citizens of Gambian origin) were acquitted in a case that occurred in 2003. The mother traveled with their children to her country of origin, spending two months during the summer. The two girls were left for a couple of days under the care of the grandmother, who used the mother’s absence to perform FGM on them. When the mother came back, she had a big fight with the grandmother, as she was against the practice. The court stated that, although it is true that parents have a duty of care toward their children, that cannot imply that the family should not travel to the country of origin. The fact that the accused left her children with her mother for two days cannot be understood as neglect of the duty of care (...).(Johnsdotter and Mestre i Mestre 2015)

Issue of the strict prohibition of travel with potential victims to countries where FGM is practiced:

It remains to be seen whether the above-mentioned provision of extraterritoriality achieves the same level of safety as would be achieved by the strict prohibition of travel with girls or young women to countries where FGM is practiced, for the purpose of subjecting them to it.



Portugal

Opinion: Amnesty International, in an analysis of the criminal typification of FGM in Portugal, addresses the subject of the strict prohibition of travel with potential victims to countries where FGM is

practices, saying that “(...) our initial understanding is that such strict prohibition offers nothing new and may instead carry the risk, if poorly implemented, of meddling in the exercise of parental authority and in the private life of the family,” and that “(...) we could also frame the prohibition of travel with girls to countries where FGM is performed as a reason to establish standards and guidelines for a preliminary and informal inquiry at such a time when girls travel to countries where FGM is performed, as well as when a ‘fanateca’ (traditional excision practitioner) travels to Portugal. (...) With this in mind, we do not understand the need to create an outright ban instead of a set of regulatory standards with a view to an inquiry prior to that travel to a foreign country (by potential victims) or to Portugal (by excision practitioners), imperatively guided by an approach respectful of the human rights of the girls and the freedom of all members of the household, as well as any others subjected to that inquiry.”(Grupo de Juristas AI 2008)

ARTICLE 10

(Criminal procedure)

The criminal procedure for the crimes provided for in this law shall not depend on complaint, denunciation or participation of the victims or their legal representatives.

Article 10 of this law clearly states that the crimes provided for in this law are public, i.e., they do not depend on complaint, denunciation or participation of the victims or their legal representatives.

Public crime: a crime whose prosecution requires only that the judicial or police authorities learn about its existence or following optional denunciation by any person. Police authorities and government employees are obliged to denunciate any crimes they learn about in the performance of their duties. In public crimes, proceedings take place even against the will of the victim.

Semi-public crime: a crime whose prosecution requires a complaint by the person with legitimacy to submit it (as a rule, the victim or his or her legal representative or successor). Article 180 of the Code of Criminal Procedure lists the persons entitled to the right of complaint²⁶. Police authorities and government employees are obliged to denunciate those crimes, although the holders of the right of complaint must exercise that right in a timely manner (without which proceedings cannot be commenced). In semi-public crimes, a complaint can be withdrawn.

The following articles should also be taken into account:

- Article 177 of the Code of Criminal Procedure (Reporting):

1. Any police officer who learns about the commission of a crime shall be obliged to immediately draft a report.

²⁶ Article 180 of the Code of Criminal Procedure (persons entitled to the right of complaint)

1. When the criminal process depends on complaint, any of the following persons shall have legitimacy to make it, regardless of agreement with the measures: a) any person in the situation described in Article 66(a); b) if the victim dies without having made complaint or renounced the right to make it, the right of complaint shall belong to the surviving spouse or legally equivalent consort, to the descendants and, in their absence, to the ascendants, siblings and their descendants, unless any of them has participated in the crime; c) if the victim is unable to exercise the right due to diminished mental capacity or under 14 years of age, the right of complaint shall be held by his or her legal representative and by the persons referred to in the previous clause, under the terms mentioned therein. 2. A complaint made against one of the participants in the crime implies the commencement of proceedings against all of them.

2. *The provisions of the previous paragraph shall apply to any government employees, public officials or other public authorities who learn about the commission of a crime in the exercise and as a result of their duties.*

3. *If the crime is semi-public in nature, commencement of criminal proceedings shall depend on the exercise of the right of complaint; if this right is not exercised within eight days from the drafting of the report, it shall be closed without further action.*

- Article 85 of the Criminal Code (*Extinction of the right of complaint*)

When the criminal procedure depends on complaint, it shall be made within six months from the holder of the right learning about the act, under penalty of extinction of the right of complaint.

3.6. FGM, assistance and professional secrecy

CHAPTER III ASSISTANCE AND PREVENTIVE MEASURES

ARTICLE 11 (Judicial assistance)

Victims or any interested parties wishing to become a party assisting the public prosecutor pursuant to articles 66, 67 and 68 of the Code of Criminal Procedure, in proceedings related to crimes under this law shall be exempt from the payment of any fees or taxes.

A person who has been a victim of a crime can merely submit a complaint. If that person wishes to have the power to directly intervene in the proceedings, he or she must become a party assisting the public prosecutor. As a rule, only the victim of the crime is allowed to become a party assisting the public prosecutor. However, if the victim is a minor or legally incompetent, his or her legal representative can take that place. By becoming a party assisting the public prosecutor pursuant to Article 67 of the Code of Criminal Procedure²⁷, he or she takes on a role of collaboration with the public prosecutor, the entity responsible for investigating, bringing charges and effectively supporting them. Specifically, the party assisting the public prosecutor has a right to²⁸:

- intervene in the inquiry and in the preliminary judicial stage, providing evidence and requesting steps he or she deems necessary (but not personally conduct investigation);
- bring charges independent from those of the public prosecutor;

²⁷ Article 67 (Becoming a party assisting the public prosecutor): 1. Persons with legitimacy to become a party assisting the public prosecutor may apply to become one at any time during the process up to seven days prior to the court hearing.

2. During the investigation, the application shall be addressed to the public prosecutor; during the trial stage, it shall be addressed to the presiding judge. (...)

²⁸ Article 68 (Powers of the party assisting the public prosecutor): 1. The procedural role of the party assisting the public prosecutor shall be auxiliary and subordinate to the public prosecutor.

2. The following are exceptions to the provisions of the previous number: a) provide evidence and request pertinent discovery proceedings;

b) bring charges independent and for facts different from those of the public prosecutor at the end of the investigation stage;

c) lodge appeals against any decisions affecting him or her;

d) draft the claim for compensation for injuries and losses sustained as a result of the crime.

- lodge appeals against any decisions affecting him or her, even if the public prosecutor has not done so, having access to any indispensable procedural elements, without prejudice to the regime applicable to judicial secrecy.

The party assisting the public prosecutor also has other rights, notably those related to the trial stage. He or she can intervene during the court hearing and address the court at the end of it through an attorney, comment on the evidence produced and call witnesses.

Ordinarily, the application to become a party assisting the public prosecutor implies the payment of court fees and requires legal representation²⁹. Article 11 clearly states that, in FGM cases, there will be no payment of fees or taxes associated with the application to become a party assisting the public prosecutor. With a view to promoting the application to become a party assisting the public prosecutor in these cases, the law could also have provided for a clearer connection to judicial assistance mechanisms.

ARTICLE 12 (Special duty of care)

1. Health care professionals shall have the duty to provide physical and psychological assistance to the victims of excision and ensure they receive the most appropriate treatment, in accordance with *lege artis*.
2. Anyone who, by reason of his or her profession, learns about the practice of female excision, in addition to the provisions of the previous paragraph, shall be bound by the regime provided for in Article 8 of this law.

Article 12(1) establishes the duty of health care professionals to provide physical and psychological assistance to FGM victims. It is essential to ensure the specific training of health care professionals, as well as the approval of clear procedural guidelines for these cases, with information about FGM and a set of steps to follow.

Article 12(2) establishes the legal duty to denunciate the practice of FGM to the Judiciary Police, the Public Prosecutor's Office or the Public Order Police. Professional secrecy applies to health care professionals. Nevertheless, professional codes of deontology or ethics usually admit some exceptions, which include child maltreatment and violence against minors. In Guinea-Bissau, there is no question that the legal obligation established by Article 12(2) to denunciate the practice of FGM—whether it's before or after the fact—outweighs professional secrecy in these cases.

It is important to articulate the penal scheme, envisaged by the Criminal Code and the Code of Criminal Procedure, with this legal provision. It is also essential to provide a set of deontological or ethical rules for health care professionals, in which it is made clear what is protected by professional secrecy and in which cases that secrecy must be put aside.



Compared Law

Professional secrecy in Brazil (Waksman 2011):

²⁹ Article 69 (Legal representation): 1. The party assisting the public prosecutor shall always be represented by an attorney. (...)

Professional secrecy	<p>Arises from information given in confidence to the health care professional in the course of the provision of services</p> <p>Information contained in the patient's records must be protected</p> <p>Applies to all persons who have access to information in the patient's records</p> <p>Must not be disclosed to judicial or police authorities (no legal provisions exist validating this type of request for information)</p>
Information covered	<p>Information confided to the health care professional</p> <p>Information discerned in the course of patient care</p> <p>Information discovered which the patient did not intend to disclose</p>
Release from doctor–patient confidentiality	<p>Express consent of the patient</p> <p>Just cause</p> <p>Legal obligation</p>

The image below (image 11) summarizes the content of the law and respective penal consequences for health care professionals in cases of FGM.

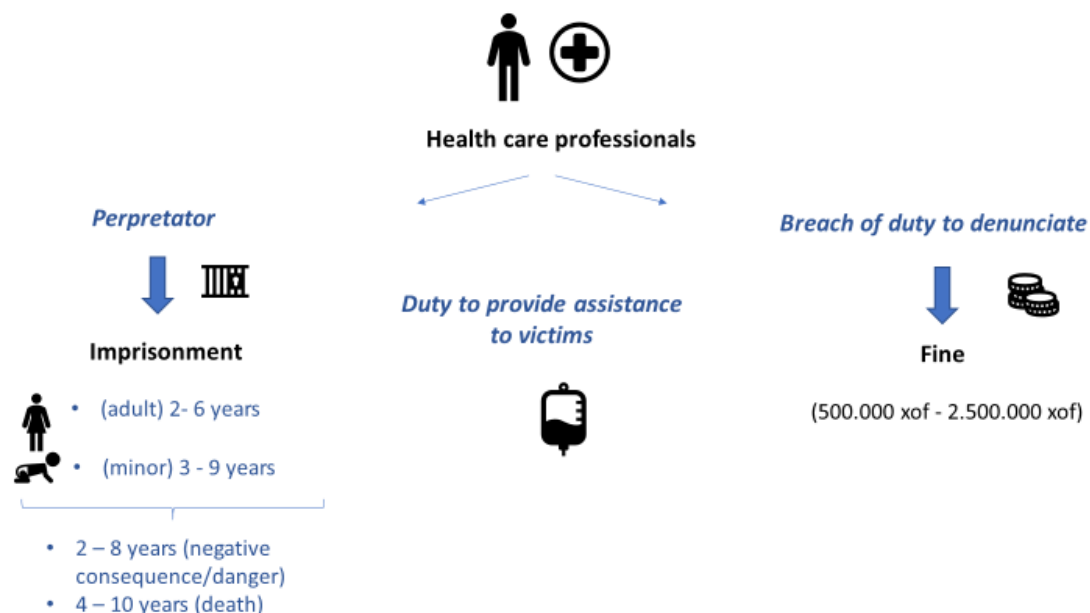


Image 11 – Summary of the content of the law and respective penal consequences for health care professionals in cases of FGM

3.7. FGM and preventive measures

ARTICLE 13 (Government)

The Government, through its competent bodies, shall allocate funds in the General State Budget to:

- support information and community awareness campaigns on the consequences of excision;
- support assistance and social reintegration activities for excision victims.
- promote and encourage awareness campaigns in the media on the harmful consequences of excision;

- d) promote and encourage training and capacity-building activities for opinion leaders and NGOs acting within the communities;
- e) promote greater cooperation between different human rights organizations, religious leaders and traditional power structures in the fight against and denunciation of cases of excision.

The preventive and awareness-raising measures provided for in Article 13 of the Female Excision Law are measures which the government is required to fund.

The prevention of a crime includes a set of strategies and measures aimed at reducing the incidence risk of the crimes and their harmful effects on individuals and society as a whole. These measures can be implemented by individuals, communities, companies, non-governmental organizations and public institutions, including the central government. Crime prevention can be:

- a) primary and universal, strengthening the institutions that support civil society or aspects of the broader physical or social environment that can lead to crime (primary prevention);
- b) secondary and specific, targeting high-risk scenarios or the early identification and subsequent intervention in the life of individuals or groups at risk of becoming involved in criminal activities or becoming victims of crime (secondary prevention);
- c) tertiary, aimed at preventing recidivism among persons who have already been involved in criminal offenses (tertiary prevention).

A comprehensive crime-prevention strategy will incorporate all three approaches. It should be noted that this law focuses essentially on primary and secondary prevention. It is important to develop tertiary prevention strategies funded by the government.

3.8. FGM and asylum

“There is no doubt that rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation (...) are acts which inflict severe pain and suffering—both mental and physical—and which have been used as forms of persecution, whether perpetrated by State or private actors.

(UNHCR 2002)

The 1951 Refugee Convention, ratified by Guinea-Bissau, defines refugee as any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail him or herself of the protection of that country” (Article 1). Since it was adopted, however, the scope of this definition has been expanded. Initially, the persecution was interpreted as being carried out by states or their agents. Currently, it is considered persecution when the state fails to provide adequate protection against persecution by non-state actors.

The applicability of the convention to cases of gender-based persecution was clarified by the Office of the United Nations High Commissioner for Refugees (UNHCR), declaring that it considers FGM to be a form of gender-based violence, amounting to a gender-based and child-specific form of persecution (UNHCR

2009). This means that the age of the girl or whether or not she expresses fear are irrelevant, and the claim for asylum must either way be considered to qualify as persecution.

In the case of Guinea-Bissau, the status of refugee is regulated by Law no. 6/2008, of May 27. Article 1³⁰ refers to the well-founded fear of persecution in terms similar to the above-mentioned convention, and therefore it is legally admissible to grant refugee status to those who apply for it on grounds of FGM in their countries of origin. Similarly, Bissau-Guineans at risk of FGM, whether that risk concerns themselves or their daughters or relatives, can claim asylum in countries like Portugal. Portuguese Law no. 26/2014 amended some aspects of the previous legislation and specified FGM as grounds for claiming and granting asylum³¹.

Suggestions for improvement of anti-FGM law in Guinea-Bissau

By (28 Too Many 2018)

- ♣ Although medicalized FGM is not currently a challenge in Guinea-Bissau, the performance of FGM by a health professional or in a medical setting should be explicitly criminalized and punishments set out in the main legislation (to reflect and tighten the medical malpractice laws set out in the Criminal Code). Any potential loopholes need to be closed.
- ♣ Any future amendments to the law should include protection for uncut women and girls (and their families) from any derogatory language or social exclusion from the community, as included in the laws of some other countries.
- ♣ Laws need to be made accessible and easy to understand in all local languages.



Recommended exercise

Critical analysis of anti-FGM legislation

Participants should critically analyze the Female Excision Law, identifying its strengths and limitations, and produce a set of practical recommendations to improve it.

3.9. Reference to the National Strategy to Combat FGM

In 2018, a National Strategy to Combat FGM was approved for 2018–2022, with the following objectives:

1. Achieve complete eradication of FGM throughout the territory of the Republic of Guinea-Bissau by 2030, thereby creating a safe environment for the rights of women and girls and ensuring them

³⁰ “1. The status of refugee shall be granted to any person who: a) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail him or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

³¹ Due to confidentiality provisions regarding this subject, there is no official data on the grounds for claiming international protection or on the age of asylum-seekers in Portugal. Nevertheless, it is known that asylum is granted in Portugal on grounds of FGM. It is also known that the figures are much lower than those found in other European countries, leaving Portugal out of the list of top destinations. According to data on FGM and asylum in the EU, from March 2014, the countries receiving the highest number of this type of asylum application (25,000 women in 2013) are Germany, Sweden, the Netherlands, Italy, United Kingdom and Belgium (UNHCR 2014). Taking into account that the asylum-seekers come in greater number from Somalia, Eritrea, Nigeria, Iraq, Guinea, Egypt, Ethiopia, Mali and Côte d’Ivoire, the absence of Portugal from this update report is not surprising, since it is not a preferred destination for those communities.

access to good health care, high-quality education, physical integrity and respect for all their rights;

2. Provide the country with a (technical-political) strategic instrument to steer the eradication of FGM;
3. Create an institutional environment favorable to the coordination of actions and their respective monitoring and assessment.

The strategy adopts a holistic and integrated approach as well as a progressive methodology which aims to change behaviors to eradicate harmful traditional practices (including FGM) through education. This method considers the priorities and needs of the local populations and is based on respect for human rights in general—and for the rights of children and women in particular—with a view to achieving social change. It also favors partnership with the community through the respect for their social and cultural values.

Our goal is that this plan, borne of a participatory and consensual approach, may allow the parties engaged in the eradication of FGM to significantly contribute to the total and sustainable abandonment of the practice in the short and medium term. We are hopeful to see, in our country, an environment of protection for women and girls that safeguards their full participation in the development of their communities and the country, and see our society voluntarily and definitively embrace the social, economic and developmental impact of respect for the physical integrity of women and girls, in line with the full realization of their rights and intrinsic dignity.

The Prime Minister, Mr. Aristides Gomes

The strategy adopts seven axes of action:

- Strategic Axis 1: strengthening of the capacity of institutions;
- Strategic Axis 2: communication through behavior change and social mobilization;
- Strategic Axis 3: extension and national coverage of capacity-building actions for communities;
- Strategic Axis 4: strengthening of the capacity of the different actors;
- Strategic Axis 5: sub-regional, regional and diaspora cooperation;
- Strategic Axis 6: monitoring measures;
- Strategic Axis 7: coordination, research, follow-up action, evaluation and advocacy.

4. Procedural guides—methodology



Exercise

Draft procedural guides for the different actors with relevant roles regarding FGM: judges, public prosecutors, attorneys, CAJ experts (or public defenders), police authorities, health care professionals, civil society organizations, etc.



Further reading recommendations:

- *Eliminating Female Genital Mutilation: An Interagency Statement* OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO. Geneva: WHO, 2008. In <https://www.who.int/reproductivehealth/publications/fgm/9789241596442/en/>
- Comissão Nacional de Proteção das Crianças e Jovens em Risco [CNPCJR] (2014). *Mutilação Genital Feminina Manual de Procedimentos para CPCJ - Colaborar Ativamente na Prevenção e Eliminação da Mutilação Genital Feminina*. Lisboa: CNPCJR in: https://www.cig.gov.pt/wp-content/uploads/2015/.../Relat_Mut_Genital_Feminina_p.pdf
- Escola de Polícia Judiciária [EPJ] (2012). *Mutilação Genital Feminina - Guia de Procedimentos para Órgãos de Polícia Criminal* in: http://www.instituto-camoes.pt/images/cooperacao/guia_procd_opc_mgf.pdf
- *Maus Tratos em crianças e jovens, Guia Prático de Abordagem, Diagnostico e Intervenção*, Direcção-Geral da Saúde / Divisão de Comunicação e Promoção da Saúde no Ciclo de Vida, Fevereiro de 2011. In: <https://www.dgs.pt/documentos-e-publicacoes/maus-tratos-em-criancas-e-jovens-guia-pratico-de-abordagem-diagnostico-e-intervencao.aspx>

4.1. Introduction

Although FGM is theoretically known in Guinea-Bissau, the (cultural and/or religious) taboos about the female body and women's reproductive health, as well as social norms that encourage girls and/or women to accept suffering “without complaining” (*sufri*), mean that the real consequences of the practice are not truly disseminated and therefore known. As a result, the professional and volunteer responders in most organizations and institutions with expertise in the area of gender-based violence, including competent authorities within the criminal justice system, have little or no specific experience regarding female genital mutilation.

Furthermore, the initial contact with FGM causes perplexity, sadness, helplessness, outrage and doubt regarding the most appropriate response to remove the risk of injury or additional injury to the child and/or mother and family members. It also causes feelings of guilt and regret over the failure to intervene appropriately, due to ignorance. Therefore, it is important to carry out training activities that not only remedy the lack of knowledge but can also help manage the emotions and feelings of the professionals during this first “real” contact with FGM.

It is essential to draft procedural guides with recommendations for more specific action, in line with the mission and competences of the relevant authorities, institutions and/or organizations.

4.2. Guidelines for drafting procedural guides

Indicative list of relevant legislation:

- Constitution of the Republic of Guinea-Bissau (Constitution)
- Organic Law of the Courts, approved by no. 3/2002 of November 20, amended by Law no. 6/2011 (OLC)
- Criminal Code and Code of Criminal Procedure
- Decree-law no. 11/2010, of June 14, on access to law and justice
- Statute of the Bar Association of Guinea-Bissau
- Law no. 8/2010, of June 22 (Organic Law of the National Guard – GN)

- Law no. 9/2010, of June 22 (Organic Law of the Public Order Police – POP)
- Law no. 1 /2009, of September 27 (Statute of the Judges)
- Decree-Law no. 14/2010, of November 15 (Organic Statute of the Criminal Police)

Recommended method for drafting the guides:

- 1) Identify the role performed by each institution: review mission, duties and general competences (using existing laws and regulations);
- 2) Identify key actions relevant to the prevention of or fight against FGM: review specific competences related to FGM (using existing laws and regulations);
- 3) Identify relevant steps (phases or stages) to take for each action: beginning, development and completion, as well as relevant sub-stages;
- 4) Identify challenges and strengths with regard to the key actions and relevant steps: what represents a possible obstacle, what resources are available;
- 5) Develop guidelines on way to leverage collaboration/referral and case management mechanisms: what are the relevant institutions and what are the steps to take, as well as specific information required to build collaboration mechanisms;
- 6) Identify elements required to maximize and optimize resources and increase the impact of the key actions.

Additional guidelines for drafting procedural guides for professional responders in cases of FGM

In the drafting of the procedural guides, it is important to take into account three types of situations that require different treatment:

Situation	Focus	Most relevant entities
1 – Generic risk of FGM: it can be identified in communities and/or regions where the practice is traditionally carried out, based on the religion and social norms or traditions present in the community and/or region	Prevention and awareness	<ul style="list-style-type: none"> • Community leaders (traditional and religious) • NGOs and community organizations • Competent government institutions (such as the Institute of Women and Children) • Health care professionals
2 – Imminent risk of FGM: it can be identified when there is evidence of preparatory acts for the practice, especially at certain times or when a certain age has been reached	Denunciation and urgent procedures with a view to the removal of the risk	<p>All of the above, in articulation with:</p> <ul style="list-style-type: none"> • Police authorities • Public Prosecutor's Office • Access to Justice Centers • Courts <p>Ideally, a protection system will be activated, involving precautionary measures that prevent FGM</p>

3 – Consummated FGM: whenever FGM is detected, whether it was recently performed and there is serious risk to the health of the victim or after the fact (especially if the woman is pregnant)	Treatment and/or assistance Accountability of the perpetrators and/or co-participants	<ul style="list-style-type: none"> • Health care professionals • Access to Justice Centers • Attorneys • Courts
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In the drafting of procedural guides, special attention must be paid to the identification stage and to providing guidelines for interaction with the person at risk and/or victim of FGM:

In order to identify situations of FGM, the responders must be informed about:

- Concept of FGM (including the specific types practices in the place in question);
- Causes and consequences of FGM;
- Local situation and levels of prevalence in each region;
- Types of ceremony and relevant times of the year or ages;
- Signs of the practice and traditions surrounding it.

Interaction with the person at risk and/or victim of FGM

Interaction with the person at risk and/or victim of FGM should comply with the following principles and/or use the following techniques:



Recommended exercise

▪ Interview with the victim/family members

Interaction with
the victim



Trust

Respect

Validation

Avoid revictimization

Active listening

Open ended questions

Non judgment

Technical capacity

Annex 1 – Law no 14/2011, of July 6

Preamble

Guinea-Bissau, as a sovereign State, has embraced democracy as its form of government and exercise of political power. Therefore, it undertakes to respect democracy's underlying values and principles, namely respect for the fundamental rights, as an axiological vector of the democratic rule of law and crystallization of the principle of the inherent dignity of the human person, upon which the modern State is ultimately built.

The freedom of cultural and religious expression is one of the fundamental rights, from which the State's duty to protect and safeguard them arises. However, as they are not autonomous rights, they seek their completion within the legal and constitutional system where they are enshrined, since the Constitution represents a compromise structure inasmuch as it provides many *prima facie* opposed fundamental rights whose practical coherence is the responsibility of the legislator to establish the optimal point of equilibrium between one fundamental right in relation to all others.

In pursuing its mission to uphold justice, ensure security and promote the social welfare of the citizens, it is up to the State to adopt the necessary legislative measures with a view to sanctioning and repressing behaviors contrary to the standards of conduct of life in society, capable of endangering the physical and moral integrity and the inherent dignity of the human person.

Therefore, under the Constitution of the Republic, the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and its Optional Protocol and, above all, the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Maputo Protocol, the National People's Assembly, concerned by the growing social dimension of female excision, orders the following to be valid in accordance with Article 86(g) of the Constitution of the Republic:

CHAPTER I GENERAL PROVISIONS

Article 1 (Scope)

The present law aims to prevent, combat and suppress female excision in the Republic of Guinea-Bissau.

Article 2 (Concept of excision)

For the purposes of this law, the term "excision" means any form of amputation, incision or partial or total ablation of female external genitalia, as well as any physical offenses practiced towards the female external genital organ for social, cultural, religious, hygienic or any other reasons invoked.

Article 3 (Prohibition of excision)

1. The practice of female excision is strictly prohibited in the territory of Guinea-Bissau.
2. Medical intervention on the female genital organ, made within the appropriate sanitary facilities, by a qualified person to correct any anomalies resulting from excision or any others, shall not be considered female excision, for the purposes of this law, provided that the medical act has been approved by the group of doctors assigned to the service, based on a diagnosis indicating the need for this surgery.

CHAPTER II

ON CRIMES AND PENALTIES

Article 4 (Penalty)

Any person who, for any reason, performs the female excision in one of its various forms (clitoridectomy, excision, incision, infibulation) with or without the consent of the victim, shall be punished with imprisonment for 2 to 6 years.

Article 5 (Excision on a minor)

1. The excision practiced on a minor shall be punished by imprisonment of 3 to 9 years.
2. The parents, guardian, or any person who has the child's custody have the duty to prevent the practice of excision.
3. Failure to comply with the provisions of the previous paragraph shall be punished by imprisonment of 1 to 5 years.
4. For the purposes of this law, both the terms "minor" and "child" shall refer to a person below the age of majority.

Article 6 (Aggravation)

1. Anyone who, acting with the intention to practice excision on another person, causes the effects provided for in Article 115(c), (d) and (e) of the Criminal Code, shall be punished with 2 to 8 years in prison.
2. If, instead of the effects provided for in Article 115 referred to in paragraph 1 above, the act causes the death of the victim, the penalty shall be 4 to 10 years in prison.

Article 7 (Co-participation)

Whoever facilitates, incites, encourages or in any way contributes to the practice of female excision shall be treated, for the purposes of this law, as the principal perpetrator of the crime and punished in that capacity.

Article 8 (Omission of aid and complaint)

1. Anyone who, in any way, learns about any preparatory act leading to the practice of excision and fails to take measures to prevent the practice, despite being able to do so without risk to his or her own physical integrity, shall be punished under Article 144 of the Criminal Code for omission of aid.
2. Anyone who, by reason of his or her duties, is aware of the practice of excision, shall have a duty to report it to the Judiciary Police, the Public Prosecutor's Office or the Public Order Police.
3. Any breach of the provisions of the previous paragraph shall be punished by a fine of 500,000 XOF to 2,500,000 XOF.

Article 9 (Fraud of the Law)

The provisions of Articles 4 to 8 of the present law apply to cases in which the national or foreign citizen residing in Guinea-Bissau is displaced and excised in a foreign country.

Article 10 (Criminal procedure)

The criminal procedure for the crimes provided for in this law shall not depend on complaint, denunciation or participation of the victims or their legal representatives.

CHAPTER III

ASSISTANCE AND PREVENTIVE MEASURES

Article 11 **(Judicial assistance)**

Victims or any interested parties wishing to become a party assisting the public prosecutor pursuant to articles 66, 67 and 68 of the Code of Criminal Procedure, in proceedings related to crimes under this law shall be exempt from the payment of any fees or taxes.

Article 12 **(Special duty of care)**

1. Health care professionals shall have the duty to provide physical and psychological assistance to the victims of excision and ensure they receive the most appropriate treatment, in accordance with the legis artis.
2. Anyone who, by reason of his or her profession, learns about the practice of female excision, in addition to the provisions of the previous paragraph, shall be bound by the regime provided for in Article 8 of this law.

Article 13 **(Government)**

The Government, through its competent bodies, shall allocate funds in the General State Budget to:

- a) support information and community awareness campaigns on the consequences of excision;
- b) support assistance and social reintegration activities for excision victims.
- c) promote and encourage awareness campaigns in the media on the harmful consequences of excision;
- d) promote and encourage training and capacity-building activities for opinion leaders and NGOs acting within the communities;
- e) promote greater cooperation between different human rights organizations, religious leaders and traditional power structures in the fight against and denunciation of cases of excision.

Article 14 **(Revocation)**

All legislation that contravenes the norms of this law shall be revoked.

Article 15 **(Entry into force)**

This Law shall come into force 60 days after its publication in the Official Journal.

Approved on June 6, 2011- The President of the National Popular Assembly, Dr. Raimundo Pereira.
Promulgated on July 5, 2011.

To be published.
The President of the Republic, Malam Bacai Sanha.

Annex 2—Court cases
Regional Court of Bafatá: Proc. no. 63/2011, January 25, 2012

Court Ruling

By agreement of the judges comprising the panel on ordinary proceeding with intervention of the court panel, the public prosecutor charges the defendants:

1. Abi T.,
2. Bula B.,
3. Aua S.,
4. Djenabú D.,
5. Serifo D.,

All duly identified for the record (p. 36);

Accusing defendant Abi T. of the commission, in material co-perpetration and consummated form, of two crimes of excision on a minor, as provided under Art. 5(1) of Law no. 14/2011 of July 6, by reference to Art. 16(1) of the C.C.;

Accusing defendants Bula B. and Aua S. of the commission, in material co-perpetration and consummated form, of one crime of excision on a minor, as provided under Art. 5(1) of Law no. 14/2011 of July 6, by reference to Art. 16(1) of the C.C.;

Accusing defendant Djenabú D. of the commission, in co-participation and consummated form, of one crime of excision on a minor, as provided under Art. 5(1) of Law no. 14/2011 of July 6, aggravated by Art. 7 of the same law;

Accusing defendant Serifo D. of the commission, in co-participation and consummated form, of one crime of excision on a minor, as provided under Art. 5(2) and 5(3) of Law no. 14/2011 of July 6, supported by the facts in the indictment (pp. 34–38) and which are set here in full.

The defendants did not contest the accusations or provide witnesses.

Following the order that set a date for the trial, no nullities have occurred, confirming the instance as valid and legitimate.

The court hearing was conducted in compliance with legal formalities.

Reason

Proven facts

1. On an unknown date in 2011, defendant Djenabú D. contacted defendant Abi T. and suggested that she made “use” of her granddaughters after the fasting period;
2. Abi T. refused, but due to the insistence of Djenabú D., eventually conceded and agreed to holding the ceremony after the end of fasting;
3. Defendant Abi T. invited defendants Bula B. and Aua S. to participate in the *fanado* excision ceremony;
6. Defendant Serifo D. agreed to submit her daughter U.D. to that ceremony;

4. On September 25, 2011, around 7:30 a.m., defendants Abi T., Bula B. and Aua S. went to the home of Djenabú D., distributed tasks among them and performed excision on 4 minors (C.D., M.B., U.D. and D.D.);
5. The defendants are first-time offenders and longstanding excision practitioners.

Unproven fact

- Whether the defendants were aware of the prohibition of excision.

Conviction of the court

Based on the body of evidence presented at trial, namely:

- a) statements by the defendants, who confessed to the facts;
- b) medical reports, pp. 30–33 of the record.

Subsumption of the facts

Defendants Abi T., Bula B. and Aua S. stand accused of the crime of excision on a minor.

As regards this crime, Art. 5(1) of Law no. 14/2011, of July 6, establishes that:

“The excision practiced on a minor shall be punished by imprisonment for 3 to 9 years.”

This law further defines that excision is understood to mean any form of partial or total amputation, incision or ablation of the external genital organ of the female person, as well as any physical injury to that organ for social, cultural, religious or hygienic reasons, or any other reason invoked.

The defendants, distributing tasks, abused the bodies of the minors through partial ablation of the victims’ clitorises and labia minora.

And they did so freely and voluntarily.

The constituent elements of the crime of excision on a minor are therefore met, both objectively and volitionally.

Defendants Djenabú D. and Serifo D. stand accused of the same crime in co-participation and consummated form, as provided under Art. 5(2) and 5(3) of Law no. 14/2011 of July 6.

Article 5(2) states that the *“parents, guardian, or any person who has the child’s custody have the duty to prevent the practice of excision.”*

And Article 5(3) adds that *“failure to comply with the provisions of the previous paragraph shall be punished by imprisonment for 1 to 5 years.”*

The unlawfulness of the behavior of defendant Djenabú D. is aggravated by Art. 7 of the same law, which tells us, *“Whoever facilitates, incites, encourages or in any way contributes to the practice of female excision shall be treated, for the purposes of this law, as the principal perpetrator of the crime and punished in that capacity.”*

It is known and proven that defendant Djenabú D. is the grandmother of the minors and had the obligation to disallow the excision—and, on the contrary, she was the one who invited the excision practitioners.

Defendant Serifo D. is the mother of one of the minors and submitted her to the ceremony of her own free will.

The defendants acquiesced to the result of their actions.

And all the defendants claimed ignorance of the law, but there is a principle that says, *“ignorance of the law excuses no one.”*

The Constitution of the Republic of Guinea-Bissau states in Art. 37(1) that:

“The moral and physical integrity of citizens is unfringeable.”

Since excision is a practice that can severely affect physical integrity and sexual development, the State has adopted the necessary legislative measures with a view to sanctioning and repressing behaviors contrary to the standards of conduct of life in society, capable of endangering the physical and moral integrity and the inherent dignity of the human person.

Subsumption and measure of punishment

The subsumption and measure of the quantum of punishment in light of the provisions of articles 65 to 74 of the C.C. must weigh the seriousness of the crime committed and its penal framework, as well as the personality of the perpetrator, attenuating circumstances, degree of guilt.

In the present case, we start from the position that imprisonment is the exception and not the rule.

The imposition of a non-custodial sentence would be sufficient to satisfy the demand for condemnation and criminal prevention.

The defendants are first-time offenders, confessed to the crime and showed signs of remorse, demonstrating a self-critical stance regarding the acts for which they are being prosecuted.

And they cooperated with justice.

The law in question had come into force less than three weeks prior to those acts.

On civil indemnity

Pursuant to Art. 84 of the C.C., compensation for injuries and losses sustained as a result of a crime is mandatory and officiously ordered by the court.

The calculation assumptions of the compensation are governed by the rules of substantive civil law.

Art. 483(1) of the C.C. states that: *“Anyone who, intentionally or recklessly, unlawfully breaches the right of another or any legal provision meant to protect third-party interests shall be obliged to compensate the aggrieved party for damages arising from the breach.”*

Therefore, taking into account the defendants’ age and reduced financial resources, the court will order the payment of a symbolic compensation.

This is a case of non-contractual civil liability.

According to Antunes Varela, *Das Obrigações em Geral*, vol. I, p. 356 and Almeida Costa, *Direito das Obrigações*, 3rd ed., p. 367, the preconditions of non-contractual civil liability include: the breach of a right, unlawfulness, imputation link between act and perpetrator, injury and causal link between act and injury.

The matters alleged and proven meet those preconditions.

Decision

For all these reasons, the panel finds in favor of the public prosecutor's accusation and decides as a result to:

- a) sentence defenders Abi T., Bula B., Aua S., Djenabú D. and Serifo D. to three years imprisonment suspended for the same period, in accordance with Art. 57 of the C.C.;
 - b) sentence the defenders to the payment of compensation in the amount of 20,000 XOF (twenty thousand CFA francs) each within the next 30 days;
 - c) declare the knives used for excision forfeited to the State.
-
- Fees and taxes due set at the minimum amount.
 - Bulletins to the Criminal Records Office

Register and notify

Bafatá, January 25, 2012

- João Gomes Cá



REPUBLIC OF GUINEA-BISSAU

REGIONAL COURT OF BISSAU—CRIMINAL SECTION

Regional Court of Bissau—Criminal Section: Proc. no. 98/2014, December 17, 2014

COURT RULING

I. REPORT

The PP charged, in ordinary proceeding, and requested the trial by the court panel of the defendants:

- Umara B., adult son of _ and _, residing in the neighborhood of _ in Bissau;
- Djina B., daughter of _ and _, born in _, Bafatá, residing in the neighborhood of _ in Bissau;
- Aissatu B., adult daughter of _ and _, residing in the neighborhood of _ in Bissau;
- Fatumata B., 25-year-old daughter of _ and _, residing in the neighborhood of _ in Bissau;
- Cadidjatu B., 24-year-old daughter of _ and _, residing in the neighborhood of _ in Bissau;
- Suncar T., 38-year-old daughter of _ and _, born in _, Gabu, residing in the neighborhood of _ in Bissau.

For the practice of the acts described in the indictment (pp. 89–91) and which are set here in full, charged as material co-perpetrators of a crime of female excision, as provided under Art. 5(1) of Law no. 14/2011.

The defendants did not contest the charges or provide witnesses or any other type of evidence.

Similarly, there were no applications to become a party assisting the public prosecutor.

Following the order which was received by the public prosecutor's office and which set a date for the trial, there were no nullities or preliminary or incidental matters that would be required for the evaluation of the accusation's merits, confirming the instance as valid and legitimate, as attested by the records.

II. JUSTIFICATION OF FACTS

PROVEN FACTS

Once the evidence was presented and the case discussed, the following relevant facts were considered proven:

1. In September of this year, Aissatu B. and Fatumata B. agreed, by initiative of defendant Aissatu B. to submit the girls to genital excision;
2. To this end, defendant Aissatu B., through defendant Cadidjatu B., contacted defendant Suncar T., sister-in-law of defendant Djina B., who gave her the cell phone number for defendant Djina B., the excision practitioner;
3. After all arrangements were made, defendant Djina B. arrived very early in the morning to the home of defendant Suncar T. to carry out what had been agreed, i.e., perform excision on the girls, daughters of defendants Aissatu B. and Fatumata B.;
4. With the help of the mothers Aissatu B. and Fatumata B., excision practitioner Djina B. performed excision on the girls in the bathroom located in the home of defendant Suncar T.;

5. Defendant Suncar T., during the daily prayer ritual, claimed to have heard Djina B. say she was going to excise the girls;
6. Once the girls were excised, they were sent to the home of defendant Cadidjatu B., where they remained the rest of that day;
7. Defendant Cadidjatu B. arranged and contributed to the excision of the three girls;
8. Suncat T. was aware of the preparation for the excision and simply did nothing to stop its performance;
9. The defendants were fully aware that their actions were forbidden and punishable by law and therefore, to hide the fact, they had to perform the girls' excision in the bathroom;

It was further proven that:

10. All defendants are married and have otherwise clean criminal records.

UNPROVEN FACTS

None.

III. REASON FOR THE CONVICTION OF THE COURT

Pursuant to Art. 242 of the CCP, we are now asked to indicate the evidence used as a basis for the conviction of the court.

Nevertheless, the general principle established by Art. 117 is that, while considering the evidence based on the rules of experience, the court is free to form its own conviction. What usually happens is that, in the face of the entirety of the evidence produced, the court relies on certain pieces of evidence to the detriment of others.

Therefore, bearing in mind the matrix of free evidential assessment that is mentioned above, "the evidence is considered according to the court's free assessment, shaped by the rules of experience and the criteria of logic." This conviction relies on a small but credible set of evidence, to the detriment of vast evidential references.

That is why this principle of free assessment of evidence is not arbitrary in nature, nor is it confined to mere impressions created in the mind of judges, but is instead linked to the rules of experience and the criteria of common logic, as well as to the evidence that is not removed from the judgment, which must always be guided by and subject to the structuring principles of criminal procedure, like the legality of evidence.

The conviction of the court regarding the proven facts was effectively based on intelligibility and critical analysis, in conjunction with the entire body of evidence produced at the court hearing and other evidence entered into record—namely photographs of the excised girls and the photographic reports entered into record on a CD, which was discussed in detail at the hearing.

The conviction of the court was also based on the full, free and truthful confession of defendants Djina B., Aissatu B. and Fatumata B., in accordance with Art. 244(3) of the CCP.

And on the statements of defendants Suncar T., Umara B. and Cadidjatu B. confirming that they all knew that the girls would be subjected to excision and took no steps to prevent it.

The court considered the photographs of the excised girls (p. 21 of the record) to be highly relevant.

IV. LEGAL AND PENAL FRAMEWORK

Now that the proven facts have been determined, their legal and penal framework must be established.

The defendants stand accused of the commission of the crime of female excision pursuant to Art. 5 of Law no. 14/2011.

Art. 5(1) of that law stipulates the following:

“Excision on a minor”

1. The excision practiced on a minor shall be punished by imprisonment for 3 to 9 years.
2. The parents, guardian, or any person who has the child’s custody have the duty to prevent the practice of excision.
3. Failure to comply with the provisions of the previous paragraph shall be punished by imprisonment for 1 to 5 years.
4. For the purposes of this law, both the terms “minor” and “child” shall refer to a person below the age of majority.

And Art. 7 states:

(Co-participation)

“Whoever facilitates, incites, encourages or in any way contributes to the practice of female excision shall be treated, for the purposes of this law, as the principal perpetrator of the crime and punished in that capacity.”

In accordance with the precepts in question, we can easily understand that the legal interests protected by the law under which charges are brought are health, life and physical integrity.

We have seen that female excision is the mutilation of female genital organs so that it is impossible for women to subsequently experience sexual pleasure.

The act of mutilation employs different cutting implements, such as blades (some in degrading conditions), scissors and razors.

On the other hand, **female genital mutilation**, a term that more accurately describes the act commonly known as **female excision**, is a practice found in several countries in Africa and Asia, which consists in the amputation of the woman’s clitoris so that she is unable to feel pleasure during the sexual act. It can involve the partial or total removal of external female genitalia.

The mutilation can be carried out in different ways, such as the cutting of the clitoris and the complete removal of the inner and outer labia with the near closure of the vulva, leaving only a small hole for the passage of urine and menstrual fluid.

This practice has nothing in common with male circumcision. Under this tradition, well-meaning parents arrange for the removal of their pre-adolescent daughters’ clitorises and labia.

There is yet another form of genital mutilation called **infibulation**, which consists in suturing the labia or clitoris.

Female circumcision is a term associated to a number of practices which are carried out on the female genitalia and are of cultural—not medical—origin.

The practice of female circumcision is forbidden by Law no. 14/2011. It is considered an unjustifiable and unlawful form of body modification inflicted upon those who are too young or incognizant to make an informed choice. It is also called female genital mutilation.

This practice entails serious, often permanent health risks for the woman.

Female excision is also considered a **serious human rights violation**, as it is a sociocultural tradition that causes irreversible physical and psychological damage and is responsible for the death of girls. It can go from painful to horrific, and the mutilation can be made with inappropriate and non-sterile cutting implements (knives, shards of glass or razors) and the use of anesthetic is rare. It violates every young woman's right to her healthy and normal psychosexual development, and therefore the mutilation of women has become a matter of public health.

Something that cannot be overlooked is the cost of continuous treatment of resulting physical complications and permanent psychological damage.

Laws have been passed to criminalize this customary practice. Although many criminal codes fail to directly mention the terms *female circumcision* or *female genital mutilation*, this practice is nevertheless perfectly framed as a form of "serious violation of the rights of women and girls, which further causes aggravated bodily harm." Many international organizations, including the World Health Organization (WHO), have been making efforts to discourage the practice of female genital mutilation. The *Convention on the Rights of the Child*, signed in September 1990, considers it an act of torture that poses **very serious health risks**:

According to the United Nations International Children's Emergency Fund (UNICEF), more than 125 million women and girls currently living have undergone genital mutilation worldwide. The World Health Organization (WHO) highlights that the procedure has no known health benefits and, among other issues, can cause severe bleeding, urinary problems, cysts, infections and infertility.

Complications during childbirth and increased risk of newborn death are also mentioned by the WHO, which considers the practice a violation of human rights.

Without the above-mentioned legal protections, the fulfillment of the ultimate goal that Guinea-Bissau lawmakers had envisioned for this law would be difficult or even impossible.

According to the record and the proven facts, defendants Aissatu B. and Fatumata B. consented to submit their daughters to excision, fulfilling the requirements of Art. 5 of Law 14/2011. The same is true for defendant Djina B.

On the other hand, defendants Suncar T., Umara B. and Cadidjatu B. learned of the facts without having prevented the procedure. In this case, the facts have been subsumed under Article 7 of the same law.

V. ON THE MEASURE OF PUNISHMENT

When determining the specific measure of punishment, we must consider the guilt and prevention needs demanded by Article 71 of the Criminal Code.

It is now time to specify the quantum of punishment to apply to the case under judgment.

Art. 65(1) and (2) of the Criminal Code establishes that “If the crime is punishable, alternatively, by measures carrying deprivation and non-deprivation of liberty, the court shall give preference to the latter whenever it properly and sufficiently serves the purpose of the punishment.”

On the other hand, the calculation of the quantum of punishment, within the limits defined in the law, is made in light of the guilt of the perpetrator and the demand for prevention, and in that calculation, the court must consider all the circumstances, which while not part of the crime, speak in favor or against the perpetrator.

It is therefore important to note, first of all, the aggravating circumstances: the mid or high degree of unlawfulness of the defendants’ actions in organizing and performing the excision on the girls. In reality, the behavior of the defendants was reprehensible, as we mentioned.

As extenuating circumstances, we have the facts already mentioned at the court hearing, that they are first-time offenders and enjoy family integration.

On the one hand are the demands for general prevention in crimes of this nature, which are increasing and have very serious consequences in society.

Nevertheless, the calculation of the specific punishment must arise from the special rules of prevention, which would dictate a term limited by the need to reintegrate the defendants in society.

So once again, the limit suggested by the degree of unlawfulness and general prevention must be tempered by special prevention, which based on the personality of the suspects, suggests a moderate modicum of restraint.

Considering the degree of unlawfulness, translated into the behavior,

Therefore, the law establishes that, taking into account the personality of the perpetrators, their behavior before and after the crime, and their prior criminal history, their rehabilitation prognostic dictates the following:

- defendant Djina B.: 3 (three) years imprisonment, pursuant to Art. 5(1) of Law no. 14/2011;
- defendants Aissatu B., Fatumata B. and Cadidjatu B.: 3 (three) years imprisonment, pursuant to Art. 7 of the same law;
- defendants Suncar T. and Umaro B.: 12 months imprisonment, converted into a daily fine of 500 XOF, for a total of 180,000 XOF (one hundred and eighty thousand CFA francs), pursuant to Art. 114(1) of the CC.

In reality, measures carrying deprivation of liberty always appear as the last resort of our penal system, although this does not imply—as the precepts in question establish—that there are no cases in which only such a penalty would be appropriate to satisfy all the purposes of punishment.

This clearly defines its value-based perspective regarding the principles that constitute the “axiological and legal awareness” of our society and legitimizes our entire legal (not only penal) system, **as defended by Prof. Castanheira Neves**.

Such behavior by the defendants is not compatible with the prospect of community life as we envision it, despite the continuous daily breaches of values considered unbreachable.

Therefore, it is our understanding that the imposition of custodial sentences to defendants Djina B., Aissatu B., Fatumata B. and Cadidjatu B., and of 12-month imprisonment sentences converted into daily fines of 500 XOF, may force them to reflect on and reconsider the essential values of life in society and reassess their priorities.

VI. ON CIVIL INDEMNITY

Art. 70(1) of the CCP establishes that:

“the claim for compensation for injuries and losses sustained as a result of the crime is made during the criminal proceeding.”

Moreover, the court will officiously order it, irrespective of the formulation of the application, pursuant to Art. 84 of the CC.

The competence of this court to determine the compensation arising from the crime, stems only from the non-contractual civil liability of the perpetrator of the intentional unlawful act, and not from any civil liability.

Note the provisions of Art. 483 of the CC: **“Anyone who, intentionally or recklessly, unlawfully breaches the right of another or any legal provision meant to protect third-party interests shall be obliged to compensate the aggrieved party for damages arising from the breach.”**

Given proven facts and all that has already been said in terms of the legal reasoning, there is no doubt that the defendants, behaving as described, violated a fundamental right, which is the right to life, health and physical integrity.

An analysis of the above-mentioned provision shows that the duty of compensation for civil liability arising from unlawful acts depends on several preconditions:

- the unlawfulness of that act;
- the existence of an imputation link between act and perpetrator;
- that the breach of right or violation of law results in injury;
- that there is a causal link between act performed by the perpetrator and the injury sustained by the victim, so that it can be concluded that one arose from the other.

According to Art. 564 of the CC, the calculation of compensation does not merely cover the losses caused by the benefits that the victim failed to obtain as a result of the injury, but the calculation of the compensation for these losses is a difficult—if not impossible—task. In this regard, Art. 566 of the CC says that:

***“The compensation is set as a monetary value whenever natural reconstitution is not possible, cannot completely redress the damages or is excessively costly, without prejudice to other provisions, which can be addressed by the court and to which the victim would have access at that time if no injury had occurred, and if the exact value of the damages cannot be determined, the court will decide with fairness within the limits that have been proven.*”**

Considering these facts and remaining elements, the court deems it appropriate to sentence defendants Djina B., Suncar T. and Cadidjatu B. to compensate each of the girls in the amount of 500,000 XOF within 60 days. The total amount payable as compensation is 1,500,000 XOF (one million five hundred thousand CFA francs).

In regard to situations involving minors, the Criminal Section of the Regional Court of Bissau lacks material jurisdiction to judge and issue a decision.

VII. DISPOSITIVE RULING

For all these reasons, the judges comprising the court panel agree to:

- a) rule the accusation of the PP proven and well-founded and consequently sentence defendant Djina B. to 3 (three) years imprisonment;
- b) sentence defendants Aissatú B., Fatumata B. and Cadidjatu B. to 3 (three) years imprisonment;
- c) sentence defendants Suncar T. and Umaro B. to 12 months imprisonment, converted into a daily fine of 500 XOF, for a total of 180,000 XOF (one hundred and eighty thousand CFA francs) payable within 30 days pursuant to Art. 45 of the CC;
- d) sentence defendants Djina B., Suncar T. and Cadidjatu B. to compensate each of the girls in the amount of 500,000 XOF within 60 days, for a total of 1,500,000 XOF (one million five hundred thousand CFA francs);
- e) forward the Bulletin to the Criminal Records Office upon res judicata;
- f) fees payable by the defendants set at the maximum amount.

The court panel:

(signatures)

Bissau, December 17, 2014

REGIONAL COURT OF BAFATÁ

Regional Court of Bafatá: Proc. no. 26/2015, May 21, 2015

Court Ruling

By agreement of the judges comprising the panel on ordinary proceeding with intervention of the court panel, the public prosecutor charges defendants Usumane S., Assana B., Egué E., Penda C. and Fatumata S., all identified for the record (pp. 8, 9, 10, 11, 12, 13 and 14);

Accusing them of acts amounting to the commission, in perpetration and consummated form, of one crime of serious offense to physical integrity, pursuant to Art. 115 by reference to Art. 114 of the CC by force of Law no. 14/2011, of July 6, under Art. 2, 3, 4, 5, 6, 7, 8 and 9.

The defendants did not contest the accusations or provide witnesses. Following the order that set a date for the trial, no nullities have occurred, confirming the indictment and instance as valid and legitimate. The court hearing was conducted in compliance with legal formalities.

Statement of grounds

The court has jurisdiction by reason of subject matter, nationality, territoriality and hierarchy. The procedure is appropriate in form and is not tainted by nullity.

The parties have legal personality and sufficient legal capacity.

The parties are legitimate and consider themselves appropriately represented. There are no nullities, exceptions or any previous matters required for the evaluation of the accusation's merits.

Upon discussion of the case, the following facts were considered proven:

- 1- in November 2014, on an unknown date, a *fanado* excision ceremony was held in the village of Gã-Mamudo, in the Ganadu sector;
- 2- this ceremony involved children under one (1) year old;
- 3- the excision of those minors was made with the authorization and consent of the parents and guardians;
- 4- the parents did not prevent the excision of the girls;
- 5- the daughters of Assana B. were excised six years ago, before the excision law came into force.

Unproven facts

- It was not proven that the parents and guardians were absent at the time of their daughters' excision.
- It was not proven that the daughters of Assana B. were excised that day.

Reasoning

It is important to note that the court is free in the assessment of evidence, however bound to the principles enshrined in the law.

By tempering the system of free assessment of evidence with the possibility of control dictated by the requirement for a rationale for the conviction formed, we avoid situations in which the court may be accused of capricious or arbitrary assessment of the evidence and, most importantly, justify the confidence in the court by granting that freedom in the assessment of the evidence, simultaneously safeguarding the credibility of the judicial system.

In light of these considerations, the court's conviction in casu was formed from the statements of the defendants and the direct examinations conducted by health care practitioners (pp. 15–22 of the record). In conclusion, the court's conviction regarding these facts was determined by the assessment of all evidence produced and interpreted in accordance with experience.

Legal and penal framework

The suspects stand accused of the commission of the crime of serious offense to physical integrity, pursuant to Art. 115 by reference to Art. 114 of the CC by force of Law no. 14/2011, of July 6, under Art. 2, 3, 4, 5, 6, 7, 8 and 9.

Art. 5 of Law no. 14/2011 states:

"The excision practiced on a minor shall be punished by imprisonment for 3 to 9 years."

Art. 4(2) of the same law says that the *"parents, guardian, or any person who has the child's custody have the duty to prevent the practice of excision."*

Art. 4(3) adds that *"failure to comply with the provisions of the previous paragraph shall be punished by imprisonment for 1 to 5 years."*

Art. 4(4) clarifies that both the terms "minor" and "child" refer to a person below the age of majority.

The defendants are all mothers of daughters whom they freely delivered to the excision practitioner, acquiescing to the result of their actions and claiming ignorance of the law, which excuses no one as there is a universal principle in place in this regard.

As female excision is a practice with countless harmful consequences to the health of women, the State has sought to stop the practice by creating laws that punish it.

That is the case of Law 14/2011, of July 6, under which the constituent elements of this type of crime are met.

Decision

For these reasons, the panel has decided to:

- a) convict and sentence defendants Ussumane S., Penda C., Egué E. and Fatumata S. to three years imprisonment;
- b) acquit defendant Assana B. due to lack of evidence;
- c) impute court fees to the defendants.

Notify and register. Bafatá, May 21, 2015

The court panel

Dr. João Flaqueia Nabunha (rapporteur)

Dr. Nelson M. do S. Carvalho

Mr. Farim Sanhá

REGIONAL COURT OF GABÚ

Regional Court of Gabú: Proc. no. 071/2014, March 12, 2015

Court Ruling

I - Report

The Public Prosecutor charged, in ordinary proceeding, and requested the trial by the court panel of the defendants:

Braima C., aged 41, an emigrant, married, son of Mamadu C. and Bulu B., born in Djambul, in the Pitche sector and residing in the neighborhood of Embalocunda;

Tida D., of legal age, an excision practitioner, married, daughter of Gundo D. and Salé G., born in Carantaba, in the Pitche sector and residing in Djambur;

Bulu B., aged 82, homemaker, daughter of Tabala B. and Auau E., born in Dor, in the Pitche sector of Gabú and residing in Djambur;

Accusing defendants Braima C. and Bulu B. of the commission, in co-participation, of the crime of female genital mutilation, as provided under Art. 5(1) and (2) and Art. 7 of Law 14/2011, of July 6; and

Accusing defendant Tida D. of the commission, in material perpetration, of the crime of serious offense to physical integrity, pursuant to Art. 115(1)(a) and (b) of the Criminal Code by force of Art. 4, 5(1) and 6 of Law 14/2011, of July 6, which aims to prevent, combat and suppress female excision.

Defendant Braima C. was under coercive measures, in pre-trial detention (see p. 55).

Defendants Bulu B. and Tida D. had been released pending trial (see p. 55).

The defendants did not contest the charges (see p. 60).

The court hearing had been scheduled and, following the failure to locate the defendants, a public notice was issued as presented in pp. 78 and 79 of the record.

There are no nullities, exceptions or any previous matters required for the evaluation of the accusation's merits.

Therefore, the panel held court in absentia, in accordance with Art. 235(1) and (2) of the C.C.P.

And in regard to the defendants, the provisions of Art. 233 of the C.C.P. were observed.

II - Facts

PROVEN FACTS

The court hearing, held as attested by the case file and court record, resulted in the following being proven:

1. On an undetermined date in January 2012, defendants Braima C., Bulu B. and Tida D. made arrangements for the excision of minors Dienabu C., Bulu C., Cadi C. and Binta C.;
2. Defendant Braima C. authorized the use of his own home for the excision of the minors, as had been agreed with the mother, Bulu B.;
3. Defendant Bulu B. then called defendant Tida D., who subsequently performed excision, by herself, on all of the minors, in the form of clitoridectomy;

4. At the time of the crime, the defendants were of legal age and did not have any intellectual impairment;
5. The defendants acted of their own free will and with the purpose of harming the bodies and health of the minors.

2.2. UNPROVEN FACTS

There are no unproven facts.

III Reasoning

The court panel formed its conviction from the facts considered proven as shown in the indictment (pp. 54 and 55).

It is important to consider that, in matters of reasoning of fact and in regard to defendants tried in absentia, the law establishes that, for the purpose of forming the conviction of the court, any evidence that is not produced or examined at the hearing under Art. 242 of the C.C.P. is invalid, but given the provisions of Art. 235(1) and (2) of the C.C.P., the panel, in accordance with that precept, declared the facts outlined in pp. 54 and 55 as proven, since despite all efforts made by this court (see pp. 68 and 76), the defendants are in parts unknown, making it impossible for the court to find them, the logical consequence of which would be their trial in absentia, in accordance with the provisions of Art. 42(1) of the C.R.G.B. in conjunction of Art. 75(2) of the C.C.P., in matters of legal defense guarantees.

Therefore, the court panel is left to conclude that defendants Braima C., Balu B. and Tida D. committed a crime in violation of the law that aims to prevent, combat and suppress female excision, governed by Law 14/2011, of July 6.

IV Legal and penal framework

Knowing the facts declared proven with relevance to the decision, it is time to establish their legal and penal framework.

Defendants Braima C. and Bulu B. stand accused of acts amounting to the commission of crime provided and punishable under Art. 5(1) and (2) and Art. 7 of Law 14/2011, of July 6.

Defendant Tida D. stands accused of the commission of crime provided and punishable under Art. 115(1)(a) and (b) of the Criminal Code, in conjunction with Art. 4, 5(1) and 6(1) of Law 14/2011, of July 6.

Let us then examine the provisions of Law 14/2011, of July 6:

Art. 4 says that, "Any person who, for any reason, performs the female excision in one of its various forms (clitoridectomy, excision, incision, infibulation) with or without the consent of the victim, shall be punished by imprisonment for 2 to 6 years."

Art. 5(1) states that, "The excision practiced on a minor shall be punished by imprisonment for 3 to 9 years."

Art. 5(2), that, "The parents, guardian, or any person who has the child's custody have the duty to prevent the practice of excision."

Art. 6(1), that, "Anyone who, acting with the intention to practice excision on another person, causes the effects provided for in Article 115(c), (d) and (e) of the Criminal Code, shall be punished with 2 to 8 years in prison."

Art. 7 of Law no. 14/2011 establishes that, "Whoever facilitates, incites, encourages or in any way contributes to the practice of female excision shall be treated, for the purposes of this law, as the principal perpetrator of the crime and punished in that capacity."

These offenses fall within the scope of provisions that aim to prevent, combat and suppress female excision, which represents a threat to the body and health of women.

And in the present case, there is also the offense to physical integrity of minors, which is the basis for the legal interest protected by Law no. 14/2011, of July 6.

Considering the precepts referenced, on the one hand, the objective constituent elements of the above-mentioned crimes are met.

On the other hand, in subjective terms, the definition of the crimes require intent—and in this case, there is direct intent, pursuant to Art. 22(1) of the C.C.

Therefore, the court panel has no doubt in regard to the acts committed by the defendants:

1. Braima C. committed the crime provided and punishable under Art. 5(1) of Law no. 14/2011, by force of Art. 7, with a penal framework of imprisonment for three (3) to nine (9) years;
2. Bulu B. also committed the crime provided and punishable under Art. 5(1) of Law no. 14/2011, by force of Art. 7 of the same law, with a penal framework of imprisonment for three (3) to nine (9) years;
3. Tida D. committed the crime provided and punishable under Art. 6(1), with a penal framework of imprisonment for two (2) to eight (8) years.

V Subsumption and measure of punishment

Having established the facts relevant to the legal and penal framework of the case under judgment, it is now time to subsume those facts to the defendants' behavior, in order to assess the possibility of attributing criminal liability to the defendants in these proceedings.

To this end, we must consider the underlying ideas, when determining the specific sentence, of the purposes served by the punishment, firstly, under the legal interest of protecting the physical integrity and health of the minors, the abandonment of this harmful practice that violates the most basic fundamental rights of the girls in the community, their excision, and that the punishment applicable to the defendants cannot, in any case, exceed the measures of guilt.

First of all, the quantum of punishment must be assessed by the need to safeguard the legal interest violated by the acts, so that we can determine the point of reference—the limit below which the punishment will no longer be bearable by the community without jeopardizing the legal interest at hand, the physical integrity and health of the minors, meeting the community's expectations of restitution for the violation of the law. This will be the lower limit of the penal framework.

On the other hand, the guilt of the defendants provides us the highest possible quantum of punishment, even after taking into account the coercive measures.

Finally, considering the point of reference of the need to protect the legal interest at hand and the upper limit established by the guilt of the defendants, we must determine the penalty that best addresses the needs of general and special prevention. Which means that the quantum of punishment must be determined taking into account the behavior of the perpetrator and the demands of general and special prevention, in accordance with the criteria set under Art. 65.

Considering that, on the one hand, the degree of guilt of the defendants in light of the circumstances is relatively high, and on the other hand, the reason of general prevention is marked by the high degree of risk that this harmful practice represents to the physical integrity and health of the girls during their physical, psychological and reproductive development, and knowing that the community, namely the excision practitioners of this region are yet to internalize, after countless information and awareness campaigns against the practice of female genital mutilation, that it not only represents or causes serious

risks to the physical, psychological and reproductive development of the girls, but can also lead to their death.

On the other hand, taking into account the acts committed by the defendants and the seriousness of the crime perpetrated, we see that the crime of female excision is based on the offense against the physical integrity and health of the girls.

Given the facts and considering the safeguard of the legal interest at hand, the court panel has decided to sentence the defendants:

1. Braima C., for co-participation in the commission of a crime of female excision, to five (5) years imprisonment;
2. Bulu B., for co-participation in the commission of a crime of female excision, to four (4) years imprisonment.
3. Tida D., the excision practitioner and material perpetrator of the crime, to six (6) years and five (5) months imprisonment.

VI On civil indemnity

It is important to note that no application was made to become a party assisting the public prosecutor.

In this case, Art. 70 of the C.C.P. dictates:

- (1) "The claim for compensation for injuries and losses sustained as a result of the crime is made during the criminal procedure."
- (2) "If the persons with legitimacy to submit a claim for compensation do not do so, the court shall officiously determine it."

And from Art. 483 of the C.C., it arises that:

- (1) "Anyone who, intentionally or recklessly, unlawfully breaches the right of another or any legal provision meant to protect third-party interests shall be obliged to compensate the aggrieved party for damages arising from the breach."
- (2) "There shall only be an obligation to pay compensation regardless of guilt in the cases specified under the law."

An analysis of this provision shows that the duty of compensation for civil liability arising from unlawful acts depends on the presence of the following preconditions:

- the unlawfulness of that act;
- the existence of an imputation link between act and perpetrator;
- that the breach of right or violation of law results in injury; and finally
- that there is a causal link between act performed by the perpetrator and the injury sustained by the victim, so that it can be concluded that one arose from the other.

In light of the facts and by force of Art. 562, in conjunction with Art. 496(1) and Art. 566(1) and (3) of the CC, the court panel considers it appropriate to sentence the defendants to the payment of compensation to the minors excised, Djenabu C., Bulu C. and Binta C., in the total amount of four million CFA francs (4,000,000 XOF) within the next ninety (90) days, specifically:

1. Braima C., to the payment of compensation in the amount of two million CFA francs (2,000,000 XOF);

2. Bulu B., in the amount of five hundred thousand CFA francs (500,000 XOF);
3. Tida D., in the amount of one million five hundred thousand CFA francs (1,500,000 XOF).

VII - Ruling

For all these reasons, upon analysis and deliberation, the court has decided to:

- a) find in favor of the public prosecutor's accusation against defendants Braima C., Bulu B. and Tida D., provided for and punishable for the crime they are accused in the indictment (pp. 54 and 55 of the record);
- b) sentence defendant Braima C. to five (5) years imprisonment;
- c) sentence defendant Bulu B. to four (4) years imprisonment;
- d) sentence defendant Tida D. to six (4) years and five (5) months imprisonment;
- e) further sentence defendants Braima C. to the payment of compensation in the amount of two million CFA francs (2,000,000 XOF); Bulu B. in the amount of five hundred thousand CFA francs (500,000 XOF); and Tida D. in the amount of one million five hundred thousand CFA francs (1,500,00 XOF); for a total of four million CFA francs (4,000,000 XOF) in favor of the minors, Djenabu C., Bulu C., Cadi C. and Binta C., to be paid within ninety (90) days.
- f) fees payable by defendants Braima C., Bulu B. and Tida D. set at the maximum amount;
- g) set the fee owed to the honorable public defender at twenty-five thousand CFA francs (25,000 XOF).
- h) forward the Bulletin to the Criminal Records Office;
- i) order the issuance of an arrest warrant for the defendants tried in absentia, Braima C., Bulu B. and Tida D.

Notify and register.

Gabu, March 12, 2015

The court panel

Dr. Abduramane Fati F

(rapporteur)

Dr. Bacar Sane

Dr. António lé

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