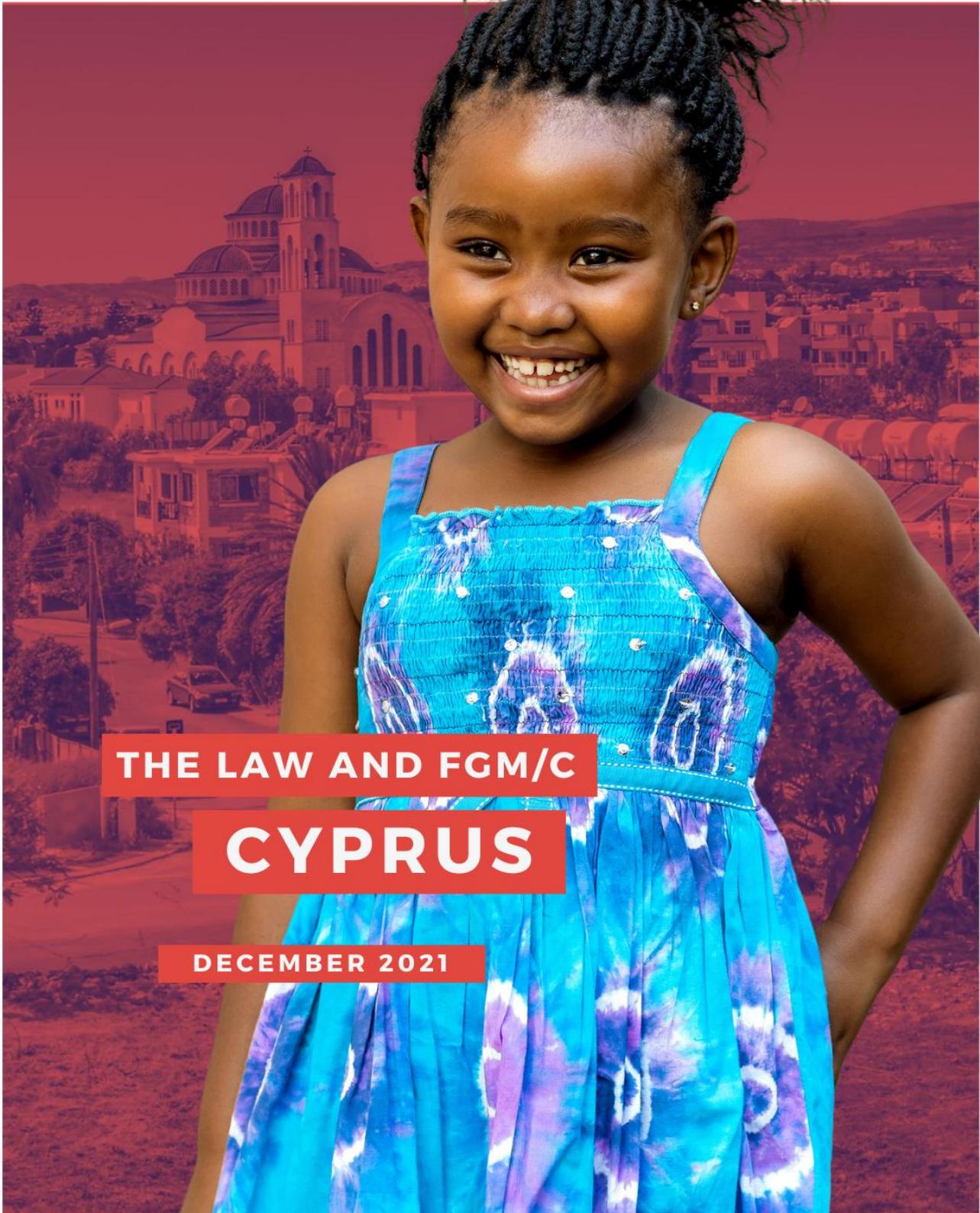




ORCHID  PROJECT



THE LAW AND FGM/C

CYPRUS

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# National Legal Framework

## Overview of National Legal Framework in Cyprus

### National legislation:

- ✓ Specific law/provision criminalising FGM/C
- ✓ Provides a definition of FGM/C
- ✓ Criminalises the performance of FGM/C
- ✓ Criminalises the procurement, arrangement and/or assistance of acts of FGM/C
- X Obligation to report incidents of FGM/C to the authorities
- ✓ Criminalises the participation of medical professionals in acts of FGM/C
- ✓ Extraterritorial application regardless of double criminality

## Introduction

Cyprus is a country in the eastern Mediterranean Sea with an estimated population of 890,000.<sup>1</sup> Cyprus is a unitary republic with a parliamentary democracy. It has a common-law legal system.

### FGM/C Prevalence

A 2016 study published in the *European Journal of Contraception and Reproductive Health Care* estimates that there are 1,301 women and girls who have undergone female genital mutilation/cutting (FGM/C) living in Cyprus.<sup>2</sup> The European Institute for Gender Equality has estimated that, currently, 91 to 129 girls up to the age of 18 are at risk of undergoing FGM/C. The girls mostly originate from Egypt, Sudan, Iraq and Ethiopia.<sup>3</sup>

## National Legal Framework

### General Law

FGM/C is criminalised in Cyprus under a specific provision in general criminal law that entered into force in 2003. **Article 233A(1) of the Cyprus Criminal Code Cap.154** (the *Criminal Code*) criminalises committing FGM/C as well as aiding, abetting, advising or causing another person to commit FGM/C on a women. **Article 233A(3)** specifies that consent of the victim does not constitute a defence or mitigating factor.

### Definition of FGM/C

**Article 233A(1)(a)** defines FGM/C as to cut, or in any way mutilate, all or part of the labia majora or labia minora of the vulva or the clitoris.

**Article 233A(2)** prescribes that those acts are not considered FGM/C (an offence) when such procedure is necessary, whether conducted for a woman's health or conducted on a woman who is at any stage of labour or after labour, or related to labour, provided that such procedure is conducted following the opinion of two other medical practitioners.

## Women and Girls of All Ages

**Article 233A** does not contain a restriction on the age of the victim; therefore, it is implied that FGM/C has been criminalised in Cyprus for women of all ages.

## Procuring, Aiding and Abetting

Procuring, aiding and abetting FGM/C are criminalised in Cyprus under **Article 233A(1)(b) of the Criminal Code**. **Article 233A(1)(b)** prescribes that it is an offence to aid, abet, advise or cause a third person to perform any of the acts described in **Article 233A(1)(a)** on the body of a woman.

## Allowing the Use of Premises

Allowing the use of premises for the commission of FGM/C is not specifically and/or explicitly criminalised in Cyprus under the Criminal Code. However, allowing the use of premises could qualify as 'aiding' under **Article 233A(1)(b)**.

## Providing or Possessing Tools

Providing (specific) tools for the purpose of FGM/C is not specifically and/or explicitly criminalised in Cyprus under the Criminal Code. However, it is very likely that providing (specific) tools for the purpose of FGM/C would qualify as assisting a third person to perform FGM/C on the body of a woman under **Article 233A(1)(b)**.

Possessing (specific) tools for the purpose of FGM/C has not been criminalised in Cyprus. **Article 233A** does not mention possessing tools (specifically) for FGM/C as being an offence, nor does it criminalise preparing for or attempting FGM/C. The Criminal Code does not contain general provisions on attempting an offence or preparing an offence.

## Failure to Report FGM/C

Failing to report FGM/C has not been criminalised in Cyprus. There is no general provision on failing to report an offence in Cypriot criminal law, and failing to report FGM/C is not mentioned in **Article 233A**.

## Medicalised FGM/C

Medicalised FGM/C is criminalised in Cyprus under **Article 233A(1)** in that it prohibits any person from proceeding with FGM/C. However, there are no additional provisions specifically on medicalised FGM/C.

**Article 233A(2)** does, nonetheless, provide a medical exception to FGM/C. For this medical exception to apply, such a procedure should be necessary, whether conducted for a woman's health or conducted on a woman who is at any stage of labour or after labour, or related to labour, provided that such procedure is conducted following the opinion of two other medical practitioners. It is not clear what circumstances should render FGM/C necessary for a woman's health.

## Extraterritoriality

**The Cypriot Criminal Code** extends extraterritorial application to the commission of FGM/C abroad. **Article 233A(4)** prescribes that Cypriot courts shall have jurisdiction for an offence committed by a citizen or non-citizen of the Republic of Cyprus, within or outside the territory of the Republic of Cyprus.

## Penalties

There are penalties for either committing FGM/C or assisting, inducing, advising or causing a third person to perform FGM/C in Cyprus. **Article 233A(5)** prescribes that the offences described in **Article 233(1)** shall be punishable by a *maximum sentence of five years' imprisonment*.

## Protection

### Protecting Uncut Girls and Women

There are general child-protection laws that cover uncut girls. **Article 63(1)(a) of the Law on Children Cap. 32** (the *Law on Children*) defines a child in need of care and protection as, *inter alia*, a child who, having a parent or guardian not exercising proper care, is ill-treated in a manner likely to cause unnecessary suffering or injury to health. **Article 63(1)(b)** also includes a child on whom are inflicted any of the offences mentioned in the Schedule of the law (which includes, *inter alia*, any other offence involving bodily injury to a child). Therefore, it could be the case that FGM/C falls within the scope of bodily injury to a child.

**Article 64(1) of the Law on Children** prescribes that a Juvenile Court, if satisfied that the child is indeed in need of care and protection, may order several measures to ensure this. In the case of an uncut girl at risk of FGM/C, the most relevant are:

- placing the girl out of the home by committing the girl to the care of a fit person, whether a relative or not, who is willing to care for her (**Article 64(1)(b)**); and
- placing the girl, for a specified period not exceeding three years, under the supervision of a welfare officer or probation officer (**Article 64(1)(d)**).

**Article 64(2) of the Law on Children** prescribes that the chief welfare officer or any other welfare officer or any police officer, having reasonable grounds for believing that a child is in need of care or protection, may bring the child before a Juvenile Court. The chief welfare officer must bring before a Juvenile Court any child that appears to him to be in need of care and protection, unless he believes this may be even more detrimental to the interests of a child.

Under **Article 68(1) of the Law on Children**, a child who is to be brought before a Juvenile Court may be removed from home and taken to a place of safety by a welfare officer, police officer or any other person duly authorised by the Juvenile Court.

There are no specific or general laws protecting uncut women, aside from general criminal law.

## Implementation of The Law

### Court Cases

There are no Cypriot court cases in relation to FGM/C known to 28 Too Many.

# Conclusions and Recommendations

## Conclusions

FGM/C is criminalised in Cyprus under a specific provision in general criminal law, **Article 233A of the Criminal Code**. The definition of 'FGM' maintained in the law seems to cover all **types of FGM/C** and is in line with the WHO's definition. **Medicalised FGM/C** is likely to be covered by the general criminality of FGM/C, unless it is performed under specific conditions as set out in Article 233A(2).

**Procuring, aiding and abetting FGM/C** are criminalised in Cyprus under Article 233A.

We have not encountered a provision that contains an **obligation to report** FGM/C, nor is the failure to report criminal in Cyprus.

The Criminal Code extends **extraterritorial application** of Cypriot criminal law to the performance of FGM/C abroad, regardless of double criminality and irrespective of the nationality or residential status of the perpetrator or victim.

## Recommendations

We recommend that Cyprus amend the definition of 'FGM' maintained in the law to fully correspond to the definition of FGM given by the WHO and to specify that it applies to women and girls of all ages.

We also recommend that Cyprus instate an obligation for (at least) relevant professionals and institutions to report cases where FGM/C has been committed and cases where there are reasonable grounds to believe that FGM/C may be committed imminently.

# Appendix I: International and Regional Treaties

CYPRUS	Signed	Ratified/ Acceded	Reservations on reporting?
<b>International</b>			
International Covenant on Civil & Political Rights (1966) ( <i>ICCPR</i> ) <sup>4</sup>	✓ 1966	✓ 1969	No
International Covenant on Economic, Social & Cultural Rights (1966) ( <i>ICESCR</i> ) <sup>5</sup>	✓ 1967	✓ 1969	No
Convention on the Elimination of All forms of Discrimination Against Women (1979) ( <i>CEDAW</i> ) <sup>6</sup>	X	✓ 1985	No
Convention on the Rights of the Child (1989) ( <i>CRC</i> ) <sup>7</sup>	✓ 1990	✓ 1991	No
<b>Regional</b>			
Istanbul Convention <sup>8</sup>	✓ 2015	✓ 2017	Yes*
European Convention on Human Rights <sup>9</sup>	✓ 1961	✓ 1962	No

\* In accordance with Article 78, paragraph 2, of the Convention, the Republic of Cyprus reserves the right not to apply the provisions laid down in:

- (a) Article 30, paragraph 2;
- (b) Article 44, paragraphs 1.e, 3 and 4;
- (c) Article 59.

**‘Signed’**: a treaty is signed by countries following negotiation and agreement of its contents.

**‘Ratified’**: once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.

**‘Acceded’**: when a country ratifies a treaty that has already been negotiated by other states.

# Appendix II: National Laws

## Criminal Code

### Art. 233A

- (1) Τηρουμένων των διατάξεων του εδαφίου (2) συνιστά αδίκημα από οποιοδήποτε πρόσωπο-
  - (α) Η περικοπή, ή ο με οποιοδήποτε τρόπο ακρωτηριασμός ολόκληρου ή μέρους του μεγάλου χείλους (labia majora) ή του μικρού χείλους (labia minora) του αιδοίου ή της κλειτορίδας γυναίκας· ή
  - (β) η βοήθεια, προτροπή, συμβουλή ή πρόκληση της εκτέλεσης από τρίτο πρόσωπο, οποιασδήποτε από αυτές τις πράξεις στο σώμα γυναίκας.
- (2) Οι πράξεις που καθορίζονται στο εδάφιο (1) δε συνιστούν αδίκημα αν εκτελεσθούν από ιατρό και η εκτέλεσή τους είναι αναγκαία, είτε για τη φυσική υγεία της γυναίκας, στην οποία εκτελούνται, είτε εκτελούνται σε γυναίκα που βρίσκεται σε οποιοδήποτε στάδιο τοκετού, ή μετά από αυτό, και σχετίζονται με τον τοκετό:  
Νοείται ότι οι πιο πάνω πράξεις εκτελούνται μόνον κατόπιν γνωμάτευσης δύο άλλων ιατρών.
- (3) Συγκατάθεση εκ μέρους της γυναίκας στην οποία εκτελούνται οι πράξεις που καθορίζονται στο εδάφιο (1) δεν συνιστά υπεράσπιση, ούτε ελαφρυντικό στην επιμέτρηση της ποινής.
- (4) Ανεξάρτητα από τις πρόνοιες του άρθρου 5 του Νόμου, τα Δικαστήρια της Δημοκρατίας έχουν αρμοδιότητα να εκδικάζουν αδίκημα, κατά παράβαση των διατάξεων του παρόντος άρθρου, που διαπράττεται από πολίτη ή μη της Δημοκρατίας και διαπράττεται εντός ή εκτός της Δημοκρατίας.
- (5) Αδικήματα που διαπράττονται κατά παράβαση των διατάξεων του παρόντος άρθρου, τιμωρούνται με φυλάκιση μέχρι πέντε έτη.
- (6) Για τους σκοπούς του παρόντος άρθρου «ιατρός» σημαίνει ιατρό εγγεγραμμένο δυνάμει του περί Εγγραφής Ιατρών Νόμου.

## Law on Children

### Art. 63

- (1) For the purposes of this Part a child in need of care or protection means a person under the age of sixteen years who is–
  - (a) a child who having no parent or guardian or a parent or guardian unfit to exercise care and guardianship, or not exercising proper care or guardianship, is either falling into bad associations, or exposed to moral danger or beyond control or is ill-treated or neglected in a manner likely to cause him unnecessary suffering or injury to health; or
  - (b) a child who–
    - (i) being a person in respect of whom any of the offences mentioned in the Schedule to this Law has been committed; or
    - (ii) being a member of the same household as a child in respect of whom such an offence has been committed; or
    - (iii) being a member of the same household as a person who has been convicted of such an offence in respect of a child; or
    - (iv) being a female member of a household whereof a member has been convicted of incest against another female member of that household, requires care or protection.
- (2) For the purposes of this section the fact that a child under the age of sixteen years is found destitute, or is found wandering without any settled place of abode and without visible means of subsistence, or is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale), or is found loitering for the purpose of so begging or receiving alms, shall without prejudice to the generality of the provisions of paragraph (a) of subsection (1) be evidence that he is exposed to moral danger.
- (3) It shall be the duty of the Director if he is satisfied that a person legally liable for the care and maintenance of any child or children under the age of sixteen years intends to leave Cyprus without taking such child or children with him to object to the Administrative Secretary against the grant of passport facilities until the person concerned has satisfied the Director that the child or children are not likely before they reach the age of sixteen years to become a charge on public funds or to be exposed to moral danger or neglect by reason of lack of care and maintenance.
- (4) The Administrative Secretary on receipt of such objection shall, if he thinks the objection reasonable, refuse passport facilities and notify the applicant of the Director's objections.
- (5) At any time when the reasons for an objection no longer apply the Director shall advise the Administrative Secretary accordingly and will also be responsible for providing written information to the applicant that the objection is withdrawn.

### Art. 64

- (1) If a Juvenile Court is satisfied that any person brought before the Court under this section by the Director or any police officer is a child in need of care or protection the Court may either–
  - (a) order him to be sent to a reform school; or
  - (b) commit him to the care of a fit person, whether a relative or not who is willing to undertake the care of him; or
  - (c) order his parent or guardian to enter into a recognizance to exercise proper care and guardianship; or
  - (d) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a welfare officer or probation officer.

- (2) The Director or any welfare officer or any police officer having reasonable grounds for believing that a child is in need of care or protection may bring him before a Juvenile Court; and it shall be the duty of the Director to bring before a Juvenile Court any child who appears to him to be in need of care or protection unless he is satisfied that the taking of proceedings is undesirable in his interests, or that proceedings are about to be taken by some other person.
- (3) An order made under paragraph (d) of subsection (1) of this section placing a child under the supervision of a welfare officer or a probation officer may require the child to comply during the whole or any part of the period specified in the order with such requirements as the Juvenile Court, having regard to the circumstances of the case, considers necessary for the care or protection of the child and, without prejudice to the generality of this subsection, such order may include requirements relating to the residence of the child.

### **Art. 68**

- (1) A welfare officer or police officer or any person specially authorized by a Court may take to a place of safety any child under the age of sixteen in respect of whom any of the offences mentioned in the Schedule has been or is believed to have been committed or who is about to be brought before a Juvenile Court in accordance with any of sections 64 to 67, and a child or young person so taken to a place of safety, may be detained there until he can be brought before a Juvenile Court.
- (2) If a Juvenile Court before which any child under the age of sixteen is brought is not in a position to decide whether any and if so what order ought to be made under sections 63 to 67, it may make such interim order as it thinks fit for his detention or continued detention in a place of safety or for his committal to the care of a fit person whether a relative or not who is willing to undertake the care of him.
- (3) An interim order under subsection (2) shall not remain in force for more than twenty-eight days; but if at the expiration of that period the Court deems it expedient to do so it may make a further interim order.
- (4) A Juvenile Court which considers it expedient to make an interim order under this section may direct that during the period of the order the child shall be kept under observation or medically examined or that suitable social and personal investigations shall be made so as to furnish the Court at the next hearing with any reports considered necessary for the Court to deal with the case.

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- 1 EuroStat (2021) *Population on 1 January by age and sex*. Available at [https://ec.europa.eu/eurostat/databrowser/view/demo\\_pjan/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/demo_pjan/default/table?lang=en) (accessed 17 June 2021).
  - 2 Luk Van Baelen, Livia Ortensi and Els Leye (UGent) (2016) 'Estimates of first-generation women and girls with female genital mutilation in the European Union, Norway and Switzerland', *European Journal of Contraception and Reproductive Health Care*, 21(6), pp.474–482. Available at <https://biblio.ugent.be/publication/8500431> (accessed 17 June 2021).
  - 3 European Institute for Gender Equality (2018) *Female genital mutilation: How many girls are at risk in Cyprus?* Available at <https://eige.europa.eu/gender-based-violence/female-genital-mutilation> (accessed 17 June 2021).
  - 4 *International Covenant on Civil and Political Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en) (accessed 17 June 2021).
  - 5 *International Covenant on Economic, Social and Cultural Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4) (accessed 17 June 2021).
  - 6 *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4&clang=\\_en#9](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#9) (accessed 17 June 2021).
  - 7 *Convention on the Rights of the Child* (1989) United Nations Treaty Collection: Status of Treaties. Available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en) (accessed 17 June 2021).
  - 8 - Council of Europe (2021) *Chart of signatures and ratifications of Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyenum=210> (accessed 17 June 2021).  
 - Council of Europe (2021) *Reservations and Declarations for Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0> (accessed 17 June 2021).
  - 9 - Council of Europe (2021) *Chart of Signatures and Ratifications of Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at [coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?module=signatures-by-treaty&treatyenum=005](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?module=signatures-by-treaty&treatyenum=005) (accessed 17 June 2021).  
 - Council of Europe (2021) *Reservations and Declarations for Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/?module=declarations-by-treaty&numSte=005&codeNature=0> (accessed 17 June 2021).

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Karel Joseph Noppe Brooks (undated) *Close up candid snapshot of laughing African girl in front of wall outdoors*. 123RF ID 58293609.

*Please note that the use of a photograph of any girl or woman in this report does not imply that she has, nor has not, undergone FGM/C.*

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

The initial research conducted for this report consisted of a questionnaire developed by 28 Too Many (part of Orchid Project) and Ashurst LLP. The information contained in the responses to that questionnaire was then reviewed by Middelburg Human Rights Law Consultancy, updated and used as the basis of further research from relevant sources. This report is mainly based on primary legal sources such as legislation, case law and authoritative literature, but does use secondary sources such as government documents, journal articles and newspaper articles.

This report has been prepared as a work of legal research only and does not represent legal advice in respect of any of the laws of Cyprus. It does not purport to be complete or to apply to any particular factual or legal circumstance. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with any person or entity. Neither 28 Too Many, Orchid Project, Ashurst LLP and Middelburg Human Rights Law Consultancy nor any other contributor to this report accepts responsibility for losses that may arise from reliance upon the information contained herein, or any inaccuracies, including changes in the law since the research was completed in August 2021. No contributor to this report holds himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in this project or contribution to this report. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction/s when dealing with specific circumstances. It should be noted, furthermore, that in many countries there is a lack of legal precedent for the penalties laid out in the law, meaning that, in practice, lesser penalties may be applied.

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