

THE UPR PROJECT AT BCU



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The UPR Project at BCU
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About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder and is frequently cited by the OHCHR. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

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INTRODUCTION

1. The Gambia is party to all nine of the core international human rights treaties for which it should be commended.¹ This includes the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In line with the protections afforded by these Covenants, this Stakeholder Report focuses upon **female genital mutilation**.
2. We make recommendations to the Government of The Gambia on these key issues, implementation of which would see the State move towards achieving Sustainable Development Goals 5 and 16 which aim for ‘gender equality and empowering all women and girls’ and ‘access to justice for all’.
3. We encourage The Gambia to commit to improving its human rights protection and promotion by engaging meaningfully with the fourth cycle of the UPR. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations The Gambia accepts, and actively engaging with civil society throughout the process.

FEMALE GENITAL MUTILATION

A. The Gambia and International Law on Female Genital Mutilation (FGM)

4. The WHO defines FGM as “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.”² The practice is typically performed by traditional practitioners on girls between infancy and the age of 15.³
5. In The Gambia, the practice of FGM is imbedded in cultural and religious misinterpretations that disregard the State’s obligations under its domestic, regional, and international law to protect the lives, health and wellbeing of its citizens. The United Nations in The Gambia reported that 73% of Gambian women and girls were subjected to FGM, of which 65% were under the age of five.⁴
6. FGM violates a number of recognised human rights protected in international and regional instruments such as child rights, right to health, right of women to be free from discrimination, right to life and physical integrity, and the right to be free from torture. The practice is therefore in clear violation of the protections afforded by the CRC,⁵ CEDAW,⁶ and ICESCR⁷ all of which have been ratified by the Gambia.

7. The Gambia's regional commitments are also of particular relevance such as the African Charter on Human and Peoples' Rights ('Banjul Charter'), which guarantees everyone's right to "enjoy the best attainable state of physical and mental health."⁸ It has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('Maputo Protocol') which obligates state parties to eliminate "all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards," including "prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and para-medicalisation of female genital mutilation and all other practices in order to eradicate them."⁹
8. The 'African Union Initiative on Eliminating Female Genital Mutilation Programme and Plan of Action 2019 – 2023' (Saleema Initiative) is also significant as it applies to all AU Member States, including the Gambia, and its main goal is "to galvanise political commitment and accelerate action towards zero female genital mutilation cases by 2030 in Africa."¹⁰
9. The Gambia's own domestic laws also safeguard against FGM. Section 19 of the Children's Act prohibits harmful social and customary practices by stating that, no child shall be subjected to any social and cultural practices that affect the welfare, dignity, normal growth and development of the child and, in particular, those customs and practices that are – (a) prejudicial to the health and life of the child; and (b) discriminatory to the child on the grounds of sex or other status. The State also adopted the 'National Policy for the Elimination of Female Genital Mutilation in The Gambia 2022-2026' with the goal of ending the practice in the country by 2030.¹¹
10. In 2015, The Gambia successfully criminalised FGM through the introduction of the Women's (Amendment) Act 2015,¹² however there have been recent attempts to repeal the ban which is discussed in Section B: Implementation of Recommendations, below.

B. Implementation of Recommendations from Cycle Three in 2019

11. The Gambia received 222 recommendations in the Third Cycle of which 207 were accepted and 15 were noted.¹³ A total of 17 recommendations were made regarding FGM and all of them were supported by The Gambia. An analysis of their implementation status is considered below.

Recommendations concerning preventing FGM

12. Seven recommendations focused upon preventing FGM, suggesting actions such as "eradicate traditional practices," "intensify the fight," and "raise awareness." These were received from **Maldives** (para. 127.106); **Germany** (para. 127.107); **Nepal** (para.

127.108); **Ukraine** (para. 127.111); **Burundi** (para. 127.114); **Central Africa Republic** (para. 127.115), and **Gabon** (para. 127.117)).

13. Seventeen recommendations focused on the broader issue of violence against women and girls ('VAWG') or gender-based violence ('GBV'), which includes FGM as well as children's rights and women's rights. (**Philippines** (para. 127.68); **Venezuela** (para. 127.69); **Pakistan** (para. 127.75); **South Africa** (para. 127.76); **Uruguay** (para. 127.79); **Cuba** (para. 127.81); **Morocco** (127.187); **Rwanda** (para. 127.195); **Uganda** (para. 127.110); **Nepal** (para. 127.193); **Iraq** (para. 127.197); **India** (para. 127.41); **Montenegro** (para. 127.67); **Iraq** (para 127.71); **China** (para. 127.72); **Solomon Islands** (para. 127.199) and **Tunisia** (para. 127.201)).
14. These recommendations have **not been implemented** and are addressed in conjunction with the implementation of FGM laws below.

Recommendations concerning Implementation of FGM laws

15. Eight countries identified the importance of not just passing laws prohibiting FGM, but ensuring their application in practice. **Zambia** (para. 127.45); **Honduras** (para. 127.54); **Madagascar** (para. 127.105) and **Spain** (para. 127.200) suggested The Gambia should "[a]mend the Children's Act of 2005 to ensure that it covers all areas of the Convention on the Rights of the Child, including ... female genital mutilation...and ensure its effective enforcement." **Germany** (para. 127.107), suggested The Gambia should "[r]aise awareness and enforce legislation prohibiting the practice of female genital mutilation". **Burkina Faso** (para 127.112); **France** (para. 127.116) and **Italy** (para. 127.118) suggested The Gambia "[s]trengthen the efforts to fully implement the existing legislation aimed at preventing all harmful practices against children, including female genital mutilation."
16. **Burkina Faso** (para. 127.113) and **Gabon** (para. 127.117) suggested The Gambia should "[s]ensitize the public, especially traditional and religious leaders, on the negative consequences of the practices of child marriage and female genital mutilation."
17. These recommendations have **been partially implemented**. The Gambia Child Organisation (GCO) collaborated with more than a dozen civil society organisations to combat Female Genital Mutilation (FGM), child marriage, and sexual violence against children.¹⁴ These efforts targeted 77 communities and reached 49,000 people, focusing on social and behavioral change, mobilising youth and adolescents, and engaging with both in- and out-of-school girls, mothers' clubs, and regional authorities. As part of this initiative, GCO trained 140 education officers on child protection.¹⁵
18. In 2014, The Gambia criminalised FGM, making it punishable by up to three years' imprisonment, and adopted a national strategy and policy for 2022-2026 with the goal of ending the practice in the country by 2030. However, recent calls to overturn the ban on FGM have emerged through a proposed new law, the Women's (Amendment) Bill 2024.¹⁶

In early July 2024, the National Assembly's Health and Gender Committee submitted its recommendations to maintain the FGM ban¹⁷ and Parliament will vote on whether to adopt the bill later in July.

19. The Gambia is among the ten countries with the highest levels of FGM, and if this bill is adopted in the July session of Parliament, The Gambia would become the first country to overturn an FGM ban,¹⁸ setting a dangerous precedent for women's and children's rights. If the ban is lifted, it could lead to an increase in FGM practices, undermining the progress made in protecting women and girls' rights, and potentially affecting other countries' efforts to combat this harmful practice.¹⁹ The proposed repeal is seen as a significant step backwards in the fight against FGM and could weaken global campaigns to end gender-based violence and discrimination.
20. We urgently recommend the government continue to uphold its international and regional obligations, under CEDAW, CRC, the Banjul Charter, and the Maputo Protocol, by retaining the ban on FGM and to reject the new bill which proposes the repeal of the FGM ban.

C. Further Points for The Gambia to Consider

The Role of Education in Combating FGM

21. The COVID-19 pandemic negatively affected the prevalence of FGM, just as it did other forms of gender-based violence. According to the United Nations, due to the challenges associated with the COVID-19 pandemic, an additional 2 million girls are projected to be at risk of undergoing FGM by 2030.²⁰ This represents a 33% reduction in progress towards ending FGM.²¹ The Gambia should enforce its National Strategy and Policy for 2022-2026, which aims to end this harmful practice by 2030. The pandemic has made the goal of creating an FGM-free society by 2030 seem nearly impossible. However, The Gambia can leverage the role of civil society organisations, community leaders, women and girls, youths, adolescent boys, and adolescent girls to ensure they work collaboratively to implement the policy and create an FGM-free society.²²
22. The Gambia's highly controversial bill discussed in Section B, poses a significant threat to human rights, necessitating government intervention to address the root causes. Many communities in The Gambia justify the practice using religion and/or tradition, despite there being no requirement for FGM in Sharia (Islamic law), nor is it part of the Sunna or considered an honourable act.²³
23. The Gambian government should invest in comprehensive education and awareness programs to promote understanding of the impact of this harmful practice. It should engage directly with local, rural, and religious leaders to educate and support them, creating specific provisions to eliminate FGM as a cultural practice. These community-led efforts

will reinforce enforcement mechanisms to ensure compliance. Additionally, survivors should be provided with medical, legal, and psychological support.²⁴ These campaigns will be crucial in changing attitudes and further reinforcing the ban on FGM.

D. Recommendations

We recommend that, before the next cycle of review, the government of The Gambia should:

- i. Fully engage with the recommendations made during the UPR regarding FGM, providing clear responses to recommendations and setting out specific implementation plans.
- ii. Reject the new bill which proposes the repeal of the ban on FGM.
- iii. Uphold its obligations under CEDAW and CRC by retaining the ban on FGM.
- iv. Initiate sensitisation programmes aiming to educate young girls and equip them with safeguards against threats of FGM.
- v. Initiate a dialogue with parents, elders, and local, rural, and religious leaders on the adverse impact of FGM.
- vi. Develop education provisions for all Gambian citizens regarding FGM. This should include, but is not limited to, formal education and training, and other, alternative sources of media.
- vii. Establish opportunities to work with CSOs that are offering projects and strategies to tackle FGM by 2030, providing financial support where possible.
- viii. Allocate a clear and adequate budget for the distinct purpose of eradicating FGM, providing transparent and public plans for how the budget will be used.

¹ See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=64&Lang=EN>.

² World Health Organization, 'Female Genital Mutilation' <www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.

³ *ibid.*

⁴ Gambia Bureau of Statistics, 'The Gambia Demographic and Health Survey 2019-20' <<https://dhsprogram.com/pubs/pdf/FR369/FR369.pdf>>.

⁵ Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990) UNGA Res 44/25. Article 24(3).

⁶ Convention on the Elimination of All Forms of Discrimination against Women, UNGA Res 34/180, 18 December 1979, UN Doc A/RES/34/180, Articles 1 and 2; UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 14: Female Circumcision (1990) A/45/38 and Corrigendum; CEDAW General Recommendation No. 19: Violence against Women Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women (1992) (contained in Document A/47/38); CEDAW General Recommendations Adopted by the Committee on the Elimination of Discrimination Against Women Twentieth session (1999) General recommendation No. 24: Article 12 of the Convention (Women and Health) A/54/38/Rev.1.

⁷ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 12.

⁸ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 16.

⁹ African Union, 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol")' <https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf>.

¹⁰ African Union, ‘African Union Initiative on Eliminating Female Genital Mutilation Programme and Plan of Action 2019 – 2023’ <https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-Saleema_Initiative_Programme_and_Plan_of_Action-ENGLISH.pdf> 13.

¹¹ ‘National Policy for the Elimination of Female Genital Mutilation in The Gambia 2022-2026’ available at <<https://gambia.unfpa.org/en/publications/national-policy-elimination-female-genital-mutilation-gambia-2022-2026>>.

¹² Women’s (Amendment) Act 2015, s 32A.

¹³ See UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Gambia’ (19 December 2019) UN Doc A/HRC/43/6.

¹⁴ See UNESCO, ‘Country Office Annual Report 2022’ <www.unicef.org/media/136866/file/Gambia-2022-COAR.pdf>.

¹⁵ *ibid.*

¹⁶ Kaamil Ahmed and Liz Ford, ‘Move to overturn FGM ban in the Gambia postponed (The Guardian) <www.theguardian.com/global-development/2024/mar/18/move-to-overturn-fgm-ban-in-the-gambia-postponed> (18 March 2024).

¹⁷ See: <https://www.reuters.com/world/africa/gambia-lawmakers-back-recommendations-maintain-fgm-ban-2024-07-08/>.

¹⁸ Human Rights Watch, ‘Gambia: Bill Threatens Female Genital Mutilation Ban’ <www.hrw.org/news/2024/04/19/gambia-bill-threatens-female-genital-mutilation-ban> (19 April 2024).

¹⁹ Kaamil Ahmed and Liz Ford, ‘Move to overturn FGM ban in the Gambia postponed (The Guardian) <www.theguardian.com/global-development/2024/mar/18/move-to-overturn-fgm-ban-in-the-gambia-postponed> (18 March 2024); Mohamed Yusuf, ‘Gambian MPs Advance Bill to Reverse 8-Year Ban on FGM’ (Voice of America) <www.voanews.com/a/gambian-mps-advance-bill-lifting-ban-on-female-genital-mutilation/7533648.html> (19 March 2024).

²⁰ UN, ‘International Day of Zero Tolerance for Female Genital Mutilation’ <www.un.org/en/observances/female-genital-mutilation-day> (06 February 2024). See also Dr Ewelina U Ochab, ‘The Gambia To Decriminalize Female Genital Mutilation?’ <www.forbes.com/sites/ewelinaochab/2024/03/23/the-gambia-to-decriminalize-female-genital-mutilation/#:~:text=According%20to%20the%20U.N.%2C%20as,toward%20ending%20this%20harmful%20practice.> (23 March 2024).

²¹ *ibid.*

²² UNFPA, ‘National Policy for the Elimination of Female Genital Mutilation in the Gambia 2022-2026’ <https://gambia.unfpa.org/sites/default/files/pub-pdf/national_policy_for_the_elimination_of_fgm.pdf>

²³ UNICEF, ‘What is female genital mutilation?’ <<https://www.unicef.org/protection/female-genital-mutilation>>

²⁴ *ibid.* 39.