



## **The National Human Rights Commission**

### POSITION PAPER ON

# **THE PROPOSED REPEAL OF THE WOMEN'S AMENDMENT ACT 2015 ON THE CRIMINALISATION OF FEMALE CIRCUMCISION IN THE GAMBIA**



**SUBMITTED TO:**

**THE NATIONAL ASSEMBLY JOINT COMMITTEE OF HEALTH AND GENDER**

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## TABLE OF CONTENTS

I: Background Information.....	3
II: Executive Summary .....	4
III: Female Genital Mutilation in The Gambia: An Overview .....	5
IV: Position of the Commission on the Women’s (Amendment) Bill 2024.....	6
V: Reasons Against the Repeal of the Women’s (Amendment) Act 2015 .....	7
VI: Recommendations.....	10
VII: Conclusion .....	11

## I: BACKGROUND INFORMATION

1. The National Commission on Human Rights (hereinafter the NHRC or the Commission) is a State organ established under the National Human Rights Commission Act, 2017. Although established by Government, the Commission is an independent body and in the performance of its functions is not subject to the direction or control of any person or authority. Its mandate derives from its establishment Act and its operations are guided by the United Nations Paris Principles on the establishment and functioning of national human rights institutions.
2. The functions of the Commission, as provided for under Section 12 of the NHRC Act, are broadly to promote and protect human rights in The Gambia. As the primary human rights organ of the State, the Commission plays an advisory role to the Government on how to effectively enhance the respect, protection and realisation of human rights in The Gambia. Specifically, Section 12 (j) (iii), mandates the Commission to encourage the Government to effectively implement international human rights instruments and other agreements to which The Gambia is a party.
3. This position paper makes the case for the retention of the Women's (Amendment) Act 2015 which prohibits the practice of female circumcision in The Gambia and for the National Assembly not to pass into law the Women's (Amendment) Bill 2024 which seeks to repeal the Women's (Amendment) Act 2015. As a State Party to many regional and international human rights instruments, The Gambia has an obligation to protect women and girls in the country against Female Genital Mutilation / Cutting (FGM/C) which is universally agreed to be a harmful traditional practice with debilitating effects on the life, health, development, and general well being of women and girls.
4. The Commission carries out its mandate and functions through monitoring and investigation of human rights complaints and violations, public education to promote a culture of human rights in the country, awareness raising, research, capacity building for duty bearers, advocacy, and reviewing legislation for compliance with legislation and legal instruments among other strategies. The Commission produces Advisory Notes to state its position on pertinent and topical human rights issues and guide the Government to fulfil its human rights obligations.
5. In submitting this Position Paper to the National Assembly Select Committee on Gender and Health, the Commission seeks to present and state its position on the public consultation regarding the Women's (Amendment) Bill 2024 with a view to fulfilling its advisory role to the National Assembly regarding The Gambia's obligations to protect its women and girls against FGM/C and why a repeal of the Women's (Amendment) Act 2015 would be a serious derogation from those obligations. The Gambia's obligations to respect, protect and fulfil the rights of its women and girls, human rights standards, norms and principles have guided the formulation of this Position Paper.

## II: EXECUTIVE SUMMARY

6. Under the Women's (Amendment) Act 2015, female circumcision is an outlawed or prohibited traditional practice and carries up to three years imprisonment and a fine for anyone who engages in the practice. It also penalizes those who aid the practice and compels mandatory reporting for people who have knowledge of the occurrence of the practice.
7. In this Paper, the Commission seeks to demonstrate the retention of the Women's (Amendment) Act and why the Women's (Amendment) Bill 2024 should be rejected by the National Assembly. There is ample and credible evidence produced by the World Health Organisation, UNICEF and UNFPA and through research conducted in The Gambia that FGM/C is a harmful traditional practice and is also a serious violation of the fundamental rights of women and girls to dignity, life, health, development and protection against torture and bodily integrity.
8. This Position Paper outlines the case for the continuous legal prohibition of female circumcision in The Gambia from a human rights perspective, including the position of the Commission on the proposed Women's (Amendment) Act 2024 which seeks to lift the prohibition against female circumcision. It seeks to persuade the National Assembly, and by extension the public, on the need to maintain the Women's (Amendment) Act 2015. Informed by the evidence from credible international and national organisations and research institutions and human rights standards and principles, the Paper builds a case for the retention of the Women's (Amendment) Act 2015, and proffers recommendations to the National Assembly for the continuous prohibition of female circumcision in The Gambia.

Some of the key recommendations that this Paper makes include that:

- The National Assembly should not pass the Women's (Amendment) Bill 2024.
- The National Assembly should not amend the Women's (Amendment) Act 2015 to legalise any form of female circumcision, in particular the medicalisation or para-medicalisation of female circumcision.
- The government should take immediate steps to fully implement all the recommendations contained in the CEDAW Concluding Observations on The Gambia's 6th CEDAW Periodic Report issued in October 2022 on FGM as well as the November 2019 Universal Periodic Review Report.
- The Ministries of Justice, Health, Gender, Children and Social Welfare and the Commission, in partnership with Civil Society Organisations and the media, should undertake intensive public education and engagements with traditional and religious leaders on female circumcision and its harmful effects on women and girls.

- The Ministries of Justice, Health, Gender, Children and Social Welfare should place before the National Assembly a comprehensive Bill which adequately addresses all the aspects of FGM / Cutting, including protection for victims and provision of psychosocial and medical support.

### III: FEMALE GENITAL MUTILATION IN THE GAMBIA: AN OVERVIEW

9. Female genital mutilation (FGM/C) is internationally recognised as a gross violation of human rights, a form of violence against women and girls and a manifestation of unequal gender relations. According to the World Health Organisation (WHO) definition, female genital mutilation (FGM/C) comprises '*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.*<sup>1</sup>' It notably violates a person's right to physical and mental integrity, freedom from violence, right to the highest attainable standard of health, freedom from discrimination based on sex, freedom from torture and, when FGM/C causes death, right to life. It also amounts to torture or ill-treatment.
10. According to the 2019/2020 Demographic and Health Survey Report, 73 per cent of women aged 15-49 had undergone FGM, a drop from 75% in 2013. It also showed that 65 per cent of these women were circumcised before age 5. FGM/C among girls under the age of 14 (50.6% increased by 8%).<sup>2</sup> The prevalence of the types of FGM/C in The Gambia, as per the WHO classification, are as follows: Type 1: 1%; Type II: 73% and Type III: 17%.<sup>3</sup> From the data, it is apparent that the majority of those who have undergone the practice of FGM/C, Type II, experienced 'mutilation' contrary to the widely held belief that Type 1 circumcision is what is practised in The Gambia.
11. FGM/C is a pervasive abuse of the rights of girls and women that is as old as human civilization.<sup>4</sup> Like in other countries in Africa where the practice is prevalent, in The Gambia FGM/C permeates the social, economic, religious and cultural stratification of the society as it is practised by most tribes. As shown by both the 2018 Gambia Multiple Indicator Cluster Survey (MICS) and the Demographic and Household Survey (DHS) 2019/2020, FGM/C is performed on girls in their early years, or as a rite of passage for girls, to mark the transition to puberty. There is also growing evidence that the age at which girls are subjected to FGM/C has lowered due to the existence of the anti-FGM law.<sup>5</sup>

<sup>1</sup> WHO, Female genital mutilation, Fact Sheet, February 2016 <http://www.who.int/mediacentre/factsheets/fs241/en/> (Consulted 28 November 2016)

<sup>2</sup> 2018 Multiple Indicator Cluster Survey

<sup>3</sup> DHS Report 2019/2020

<sup>4</sup> Joint General Comment on Female Genital Mutilation by the ACERWC and ACHPR, June 2023

<sup>5</sup> Joint General Comment on Female Genital Mutilation by the ACERWC and ACHPR, June 2023

#### **IV: POSITION OF THE COMMISSION ON THE WOMEN'S (AMENDMENT) BILL 2024**

12. It is the view of the Commission that FGM is a serious violation of the fundamental human rights of women and girls. It violates the fundamental right to life and health, which the Government has an obligation to protect under the 1997 Constitution, the Women's Act 2010, the Children's Act 2005 and international and regional human rights instruments that it has ratified without reservations. Similarly, FGM violates women's right to bodily integrity and dignity and amounts to torture and cruel, inhuman and degrading treatment, which contravenes the Convention Against Torture, CEDAW, the Maputo Protocol and the International Covenant on Civil and Political Rights (ICCPR). The Commission holds the position that repealing the Women's (Amendment) Act 2015 would be repugnant to the national and international human rights obligations of The Gambia and expose countless women and girls to a known harmful traditional practice with debilitating health consequences without any legal protection.
13. The Commission is cognisant of the fact that public opinion is already divided on the issue of the repeal and its position may be at variance with those who are in favour of the repeal. At the heart of the debate is the dichotomy between the universality of rights and cultural relativism or the right to practice one's culture and religion. Furthermore, for law and policymakers, it is always challenging to achieve a fine or the right balance between citizens' demand to practice their culture and the State's obligations to respect, protect and fulfil human rights by prohibiting and sanctioning a harmful traditional practice such as FGM. However, the Commission contends that citizens' right to practice their culture or right is not an absolute right and the State has an obligation to restrict such a right where it infringes or violates the fundamental rights of others. There cannot be any justification for the perpetuation of a practice which violates the rights of other people simply because some citizens regard that practice as part of their culture or religion or that it is a popular demand.
14. Every law, policy or action of the State must be in conformity with its human rights obligations, and be in line with human rights principles, standards and norms. Based on the above submission, the Commission advances the following reasons in favour of the anti-FGM law and calls on the National Assembly not to pass the Women's (Amendment) Bill, 2024:

## **V: REASONS AGAINST THE REPEALING OF THE WOMEN'S (AMENDMENT) ACT 2015**

### **Abrogation from The Gambia's Obligations under ratified Regional and International Human Rights Obligations and Commitments:**

15. The Gambia is a party to several international and regional agreements that prohibit FGM and is therefore obliged to put in place legislation and implementation measures towards the prohibition and eradication of FGM. The attempt to repeal the law on FGM undermines The Gambia's commitment to its international agreements and protocols that it voluntarily ratifies and is a party to, in particular, the following;
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>6</sup>
  - Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)<sup>7</sup>
  - UN Convention on the Rights of the Child (CRC)<sup>8</sup>
  - African Charter on the Rights and Welfare of the Child (ACRWC)<sup>9</sup>
  - The Organisation of Islamic Co-operation (OIC) – Cairo Declaration on the Elimination of FGM (CDEFGM).
16. The Maputo Protocol prohibits all forms of FGM, including medicalisation and para-medicalisation of the practice, and calls for their elimination.<sup>10</sup> The ACRWC also prohibits harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child. In particular, the instrument prohibits those customs and practices prejudicial to the health or life of the child; and those customs and practices discriminatory to the child on the grounds of sex or other status.<sup>11</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has indicated that such practices include FGM as it is embedded in the culture and customs of the communities that practice it.<sup>12</sup>
17. The 2023 Joint General Comment on Female Genital Mutilation of the ACERWC and African Commission on Human and Peoples' Rights (ACHPR) and research by UN Agencies such as the World Health Organisation (WHO), UNICEF, UNFPA and other

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<sup>6</sup> Ratified on 1 December 1993

<sup>7</sup> Ratified on 25 May 2005

<sup>8</sup> Ratified on 8 August 1990

<sup>9</sup> Ratified on 14 December 2000

<sup>10</sup> Article 5(b) of the Maputo Protocol

<sup>11</sup> Article 21(1) of the ACRWC

<sup>12</sup> Joint General Comment on Female Genital Mutilation by the ACERWC and ACHPR, June 2023

research organisations have shown the health risks associated with all types of FGM, including severe pain, bleeding, infections and complications during childbirth, elevated rates of anxiety and other mental health disorders. The CEDAW General Recommendation No. 14 calls on States **‘to take appropriate and effective measures with a view to eradicating the practice of female circumcision.’**<sup>13</sup> The 2014 Joint CEDAW and CRC Committees General Recommendation on Harmful Practices, confirms the obligations of States Parties **‘to ensure full compliance . . . to eliminate harmful practices.’**

18. The Human Rights Council (HRC) (to which The Gambia is a member following its request to elected) in 2016 adopted a resolution that recognised FGM as **‘an act of violence against women and girls’** and urged countries to put in place national legislation prohibiting FGM and develop strategies for its enforcement. During its review in November 2019 under the Third cycle of the Universal Periodic Review (UPR), The Gambia accepted all the recommendations of the UPR Working Group on the eradication of FGM, including strengthening effective implementation of the Women’s (Amendment) Act 2015. In 2025, The Gambia will undergo the Fourth UPR cycle during which it will report on the steps it has taken to implement the recommendations it accepted following the 2019 review.<sup>14</sup> Therefore, a repeal of the 2015 Act will greatly affect the reporting of the country on the human rights situation in The Gambia between 2020 – 2025.

### **Violations of Human Rights: Domestic Laws**

19. The Gambia has also enacted domestic laws, in particular, the Children’s Act of 2005 and the Women’s Act of 2015 and its amendment of 2015 on the prohibition of FGM, reflecting the country’s commitment to protecting its women and girls from this harmful practice which is a gross violation of their human rights. The repeal of the Women’s Amendment Act of 2015 would also violate the fundamental rights and freedoms provided for under Chapter 4 of the Constitution as the cultural practice of FGM contravenes the provisions contained therein. **Chapter 4 of the Constitution of The Gambia** protects fundamental rights and freedoms, in particular, the following sections;
  - S18 – The Right to Life - In certain instances, the practice of FGM has even led to the death of girls and women thereby violating this fundamental right.
  - S21 - No person shall be subject to torture or inhuman degrading treatment. traumatic way the practice is carried out as recounted by many survivors.

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<sup>13</sup> UN Committee on the Elimination of Discrimination Against Women (1990) CEDAW General Recommendation No. 14: Female Circumcision. Available at <http://www.refworld.org/docid/453882a30.html>.

<sup>14</sup> Human Rights Council Forty-third session 24 February–20 March 2020 Agenda item 6 Universal periodic review – Report of the Working Group on the Universal Periodic Review - The Gambia



- S28 – Rights of Women to Dignity - Women shall be accorded full and equal dignity of the person with men.
- S29 – Right of Children. Which also provides that ‘legislation enacted in the best interest of children.’
- S33 – Protects from discrimination and further provides under S33(2) that ‘no law shall make any provision which is discriminatory either of itself or in its effect.’

### **Violation of the Right to Health:**

20. The right to health is a fundamental human right for all which is guaranteed in several international and regional instruments The Gambia is party to. The repeal of the law would allow the continued practice of FGM which is a serious violation of the right to health and is proven to be causing severe physical and emotional harm to women and girls. The procedure is often performed without proper medical care, leading to complications such as bleeding leading to shock, transmission of infection, injuries to adjacent organs, dyspareunia, anorgasmia, paraclitoral cyst and chronic pain. It also poses obstetric risks such as prolonged labour, increased caesarean section rates, increased rates of episiotomy, perineal tears, postpartum haemorrhage and increased perinatal complications.<sup>15</sup> In certain circumstances, FGM has even led to death thereby violating the “Right to Life” as provided for under S18 of the Constitution. FGM survivors in The Gambia and different parts of the world have given account of the psychological effects of the practice on them due to the inhumane and traumatic way it is carried out. Such recounts indicate a violation of the right to the highest attainable standard of physical and mental health.

### **Setback for Gender Equality in The Gambia:**

21. FGM is a human rights violation deeply rooted in gender equality and discrimination based on sex, gender, age and other grounds which expressly contradicts the principle of ‘non-discrimination’ provided in s.33 of the Constitution. Repealing the law would be a significant setback for efforts to enhance the welfare of women and girls in the country along with attaining their economic empowerment.

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<sup>15</sup> Obstetric Outcome of Female Genital Mutilation in The Gambia - A Report written for the Network against Gender-Based Violence and ActionAid The Gambia. Page 15

## VI: RECOMMENDATIONS

22. The Commission recommends that the 2015 Law remains in position prohibiting female circumcision in The Gambia. However, a concerted effort is required to effectively implement the Women's (Amendment) Act 2015 with only one successful prosecution since the Act came into being. The Commission has argued in this Position Paper that FGM violates the human rights of women and girls, in particular the fundamental rights to life, health, development and bodily integrity, and amounts to torture, cruel, inhuman and degrading treatment. It violates international human rights legal instruments to which The Gambia is a state party and has obligations to respect and fulfil. Research done in the Gambia has indicated the high prevalence of FGM and its harmful effects on victims and survivors. FGM has no health benefit and international bodies such as the Organisation of Islamic Conference (OIC) and other Islamic Ulemas have categorically stated that the practice has no basis in Islam. In the end, the repeal of the Women's (Amendment) Act 2015 would make The Gambia the first country in the world to repeal a ban against FGM/C and make the country all the more unfriendly to women and girls. This could portray The Gambia as a country that has little regard for the life and health of its women and girls who form more than half of its population. Repealing the 2015 law also seriously dents the name of the country name as a bastion for human rights and its good governance standing in the comity of nations.
23. The Commission makes the following specific recommendations with respect to the Women's (Amendment) Bill 2024:
  - (a) The National Assembly of The Gambia is urged not to pass the Women's (Amendment) Bill 2024 which aims to lift the prohibition against the practice of FGM/C in The Gambia. The Government should, instead, be held accountable for the non-enforcement of the Women's (Amendment) Act 2015. Ensuring the well-being and dignity of women and girls and their protection against all harmful traditional practices should be a national priority.
  - (b) The National Assembly to vigorously support the enforcement of the Women's (Amendment) Act 2015 and urge the Government to put in place educational and other measures towards the total abandonment of FGM/C in the country.
  - (c) The National Assembly to ensure the Government fully implement the 2022 Concluding Observations on The Gambia's 6<sup>th</sup> CEDAW Periodic Review Report and its obligations under CEDAW and the Maputo Protocol to eradicate FGM and promote gender equality along with submitting its report on time to the UPR Working Group in preparation for its dialogue with the Group in 2025.

## **VII: CONCLUSION**

24. It is a concern of the NHRC that repealing the Women (Amendment) Act 2015 would not only undermine the framework for the protection of women and girls but also rollback other child protection measures, especially the possible repeal of the Children's (Amendment) Act 2016 that prohibits child marriage and child betrothal. These key legal provisions, if removed from the statute books of The Gambia, would greatly undermine the limited legal protection framework enacted for the protection of women and girls.