

FEMALE GENITAL MUTILATION/CUTTING ACT - 2014

AN ACT TO PROVIDE FOR THE CREATION OF AN OFFENCE OF FEMALE GENITAL MUTILATION/CUTTING, AND OTHER OFFENCES RELATING TO FEMALE GENITAL MUTILATION/CUTTING, FOR THE BETTER PROTECTION OF GIRLS AND WOMEN; AND TO PROVIDE FOR RELATED MATTERS.

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1. Short Title: This Act may be cited as the Prevention and Prohibition of Female Genital Mutilation/ Cutting Act, 2014.

2. Interpretation

—In this Act—

“**broadcast**” means broadcast by wireless telegraphy of sound or visual images intended for general reception;

“**female genital mutilation/cutting**” means any act the purpose of which, or the effect of which, is the excision, infibulation or other mutilation/cutting of the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of a girl or woman for non-medical reasons;

“**midwife**” means a person whose name is registered as such under the laws of Puntland;

“**Sexual reassignment procedure**” means any surgical procedure that is performed for the purposes of altering (whether wholly or partly) the genital appearance of a person to the genital appearance of a person of the opposite sex;

“**law enforcement officer**” includes a police officer, a member of the regional or district administration, a gender and social development officer.

“**registered medical practitioner**” means a person registered as such under the law of Puntland.

“**support services**” includes the provision of shelter, medical services, legal education, training of service providers and advocates against female genital mutilation/cutting, and the provision of psycho-social support.

“**The Minister**” Means the Minister responsible for

“**Written publication**” includes a film, a sound track and any other record in permanent form but does not include a charge-sheet or other document prepared for use in particular legal proceedings.

3. Offences of Female Genital Mutilation/Cutting

(1) A person is guilty of an offence if the person does or attempts to do, an act of female genital mutilation/cutting.

4. Aggravated Female Genital Mutilation / Cutting

1. A person commits an offence of aggravated female genital mutilation / cutting where:

- i. Death occurs as a result of the female genital mutilation / cutting
- ii. The victim suffers disabilities
- iii. The female genital mutilation / cutting is undertaken by a health care worker

A person who commits an offence of aggravated female genital mutilation / cutting shall, on conviction, be liable to imprisonment for life

(2) A person is not guilty of an offence under subsection (1) if;

- (a) the act concerned is a medical or surgical operation performed by a registered medical practitioner on the girl or woman concerned, which is necessary for the protection of her physical or mental health,
 - i. In determining, for the purposes of subsection 2 (a) of this section, whether or not any medical or surgical procedure is performed on any person for the benefit of that person's physical or mental health, no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice.
 - (b) The act concerned is a medical or surgical operation performed by a registered medical practitioner or a midwife, or a person undergoing training to be a midwife, on the girl or woman concerned when she is in any stage of labour, or has just given birth, for purposes connected with the labour or child birth,
 - (c) The act concerned is a sexual reassignment procedure performed by a registered medical practitioner.
- (3) No person shall be charged as a party to an offence committed in relation to her own-self in relation to sub-section (1) of this section.
- (4) For the avoidance of doubt, it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons.

5. Offence of removal from Puntland for purpose of female genital mutilation/cutting

- (1) A person is guilty of an offence if the person removes or attempts to remove a girl or woman from Puntland where one of the purposes for the removal is to have a female genital mutilation/cutting done on her.
- (2) A person is not guilty of an offence under subsection (1) if the act is done and is—
- (a) A medical or surgical operation performed, by a person who is duly qualified to perform medical or surgical operations under the law of the place where the act is done, or has been professionally trained to perform medical or surgical operations, on the girl or woman concerned, which is necessary for the protection of her physical or mental health, or
 - i. In determining, for the purposes of subsection 2 (a) of this section, whether or not any medical or surgical procedure is performed on any person for the benefit of that person's physical or mental health, no account shall be

taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice.

- (b) A medical or surgical operation performed, by a person performing functions corresponding to those of a midwife or a registered medical practitioner, on the girl or woman concerned when she is in any stage of labour, or has just given birth, for purposes connected with the labour or child birth,
- (3) In proceedings for an offence under subsection (1), it shall be presumed, until the contrary is shown, that one of the purposes for the removal from the Puntland by the accused person of the girl or woman concerned was to have an act of female genital mutilation/cutting done to her if—
- (a) the accused person removed the girl or woman from Puntland in circumstances giving rise to the reasonable inference that one of the purposes for such removal was to have an act of female genital mutilation/cutting done to her, and
 - (b) an act of female genital mutilation/cutting was done on her after she was removed from the Puntland and, where she subsequently returned to Puntland, before that return.
- (4) For avoidance of doubt, it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons.
- (5) For the purposes of this section, to “remove a girl or woman from Puntland” includes—
- (a) arranging any part of her travel out of Puntland, (b) accompanying her for any portion of that travel,
 - (c) arranging that she be met when her travel out of Puntland has terminated, or
 - (d) doing any other act that could facilitate her travel out of Puntland.

6. Acts done outside State

- (1) A person is guilty of an offence if the person does or attempts to do, an act of female genital mutilation/cutting in a place other than Puntland, but only if it is done or attempted to be done—

- (a) on board a ship registered in Puntland, or
 - (b) on an aircraft registered in Puntland, or
 - (c) by a person who is a citizen of Puntland or is ordinarily resident in Puntland, and would constitute an offence in Puntland.
- (2) A person is not guilty of an offence under subsection (1) if—
- (a) the act concerned is a medical or surgical operation performed, by a person who is duly qualified to perform medical or surgical operations under the law of the place where the act is done, or has been professionally trained to perform medical or surgical operations, on the girl or woman concerned, which is necessary for the protection of her physical or mental health,
 - i. In determining, for the purposes of subsection 2 (a) of this section, whether or not any medical or surgical procedure is performed on any person for the benefit of that person's physical or mental health, no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice.
 - (b) the act concerned is a medical or surgical operation performed, by a person performing functions corresponding to those of a midwife or a registered medical practitioner, on the girl or woman concerned when she is at any stage of labour, or has just given birth, for purposes connected with the labour or child birth,
- (3) For avoidance of doubt, it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons.
- (4) For the purposes of proceedings for an offence under this section, a person shall be deemed to be ordinarily resident in Puntland if he or she has had his or her principal residence within Puntland for the period of 12 months immediately preceding the alleged commission of the offence.
- (5) Proceedings for an offence under this section may be taken in any place in Puntland and the offence may for all incidental purposes be treated as having been committed in that place.

7. Assisting a girl or woman to mutilate her genitalia

- (1) A person is guilty of an offence if the person aids, abets, counsels or procures a girl or woman to carry out on herself an act of female genital

mutilation/cutting.

- (2) For the avoidance of doubt, it is hereby declared that it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons.

8. Possession of tools or equipment

A person is guilty of an offence if the person is found in possession of tools or equipment for a purpose connected with the performance of female genital mutilation/cutting.

9. Derogatory or Abusive Language

- (1) A person is guilty of an offence if the person uses derogatory or abusive language that is intended to ridicule, embarrass, or otherwise harm a girl or a woman for not having undergone female genital mutilation/cutting.
- (2) Derogatory and abusive language includes language that has a connotation of negativity and is insulting, critical, negative, unflattering, nasty, rude, hurtful, slanderous.

10. Discrimination of a Girl or woman who has not undergone female genital mutilation/cutting.

- (1) A person is guilty of an offence if the person discriminates against or stigmatizes a girl or a woman by denying the girl or woman participation in any economic, cultural, religious, social, political or other activities for not having undergone female genital mutilation/cutting.

11. Wives, Daughters or Female relatives

A person is guilty of an offence if the person discriminates against or stigmatizes another person by denying such other person participation in any economic, cultural, religious, social, political or other activities in the community for the reason that such other person's mother, wife, daughter, or other female relative has not undergone female genital mutilation/cutting.

12. Participating in events leading to female genital mutilation/cutting

A person who participates in any event leading to female genital mutilation/cutting commits an offence.

13. Failure to Report

- i. A person is guilty of an offence if the person, being aware that an act of female genital mutilation/cutting has been, is in the process of being, or intends to be committed on a girl or a woman, fails to report accordingly to a law enforcement officer.
- ii. A person who threatens, harms, inhibits a person from reporting

an offence under this act commits an offence and is liable to a punishment as under subsection (i)

- iii. For the avoidance of doubt, it is hereby declared that it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons.

14. Punishment for Offence.

- (1) A person who is guilty of an offence under section 3, 5, 6, 7 and 8, is liable—
 - (a) on first conviction to a fine of Somalia Shillings 30 million or to imprisonment for a term of 3 year or to both.
 - (b) On subsequent conviction to a fine of Somali shillings 60 million or to imprisonment for a term of 6 years or to both.
- (2) A person who is guilty of an offence under section 9, 10, 11, 12 and 13 is liable on conviction to a fine of Somali Shillings 10 million or to imprisonment for a term of 1 year or to both.

15. Double Jeopardy

- (1) A person who is acquitted or convicted of an offence in a place outside Puntland shall not be prosecuted for an offence under this Act consisting of the same act that constituted an offence of which the person was so acquitted or convicted.

16. Exclusion of the public from hearing

- (1) Subject to subsections (2) and (3), in any proceedings for an offence under sections 2, 3, 4, 5 or 6 the court, may exclude from the court room during the hearing, all persons except officers of the court, persons directly concerned in the proceedings, bona fide representatives of the Press and such other persons (if any) as the court, may in its discretion permit to remain.
- (2) Subsection (1) is without prejudice to the right of a parent, relative or friend of the girl or woman in respect of whom the offence is alleged to have been committed or, where the accused person is not of full age, of the accused person, to remain in court.
- (3) In any proceedings to which subsection (1) applies, the verdict or decision and the sentence (if any) shall be announced in open court.

17. Anonymity of girl or woman concerned.

- (1) After a person is charged with an offence under this Act, no matter likely to lead members of the public to identify the girl or woman as the girl or woman in respect of whom the offence is alleged to have been committed shall be published in a written publication available to the public or be broadcast except as authorised by an order given in

pursuance of this section.

- (2) If, at a trial for an offence under this Act, the Court is satisfied that the effect of subsection (1) is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, the Court shall order that that subsection shall not apply to such matter relating to the girl or woman concerned as is specified in the order;
- (3) If any matter is published or broadcast in contravention of subsection (1), the following persons, namely—
 - (a) In the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the news paper or periodical,
 - (b) In the case of any other publication, the person who publishes it, and in the case of a broadcast, anybody corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper, shall be guilty of an offence.
- (4) Nothing in this section—
 - (a) prohibits the publication or broadcasting of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused person is charged with an offence under this Act, or
 - (b) affects any prohibition or restriction imposed by virtue of any other statute upon a publication or broadcast.
- (5) An order in pursuance of this section does not affect the operation of subsection (1) at any time before the order is given.
- (6) If, after the commencement of a trial of a person for an offence under this Act, a new trial of the person for that offence is ordered, the commencement of any previous trial of that person for that offence shall be disregarded for the purposes of subsections (2) and (3).

18. Punishment for offences

- (1) A person who is guilty of an offence under section 14(3) is liable—
 - (a) on first conviction to a fine of Somali Shillings 10 million or to imprisonment for a term of 1 year or both.
 - (b) On subsequent conviction to a fine of Somali shillings 20 million or to imprisonment for a term of 2 years or both.

(2) Where an offence referred to in subsection (1) has been committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any willful neglect, of a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, is guilty of an offence and may be prosecuted and if found guilty, punished as if he or she were guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

19. Regulations

(1) The Minister may by statutory instrument make regulations for the effective implementation of this Act