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FGM...
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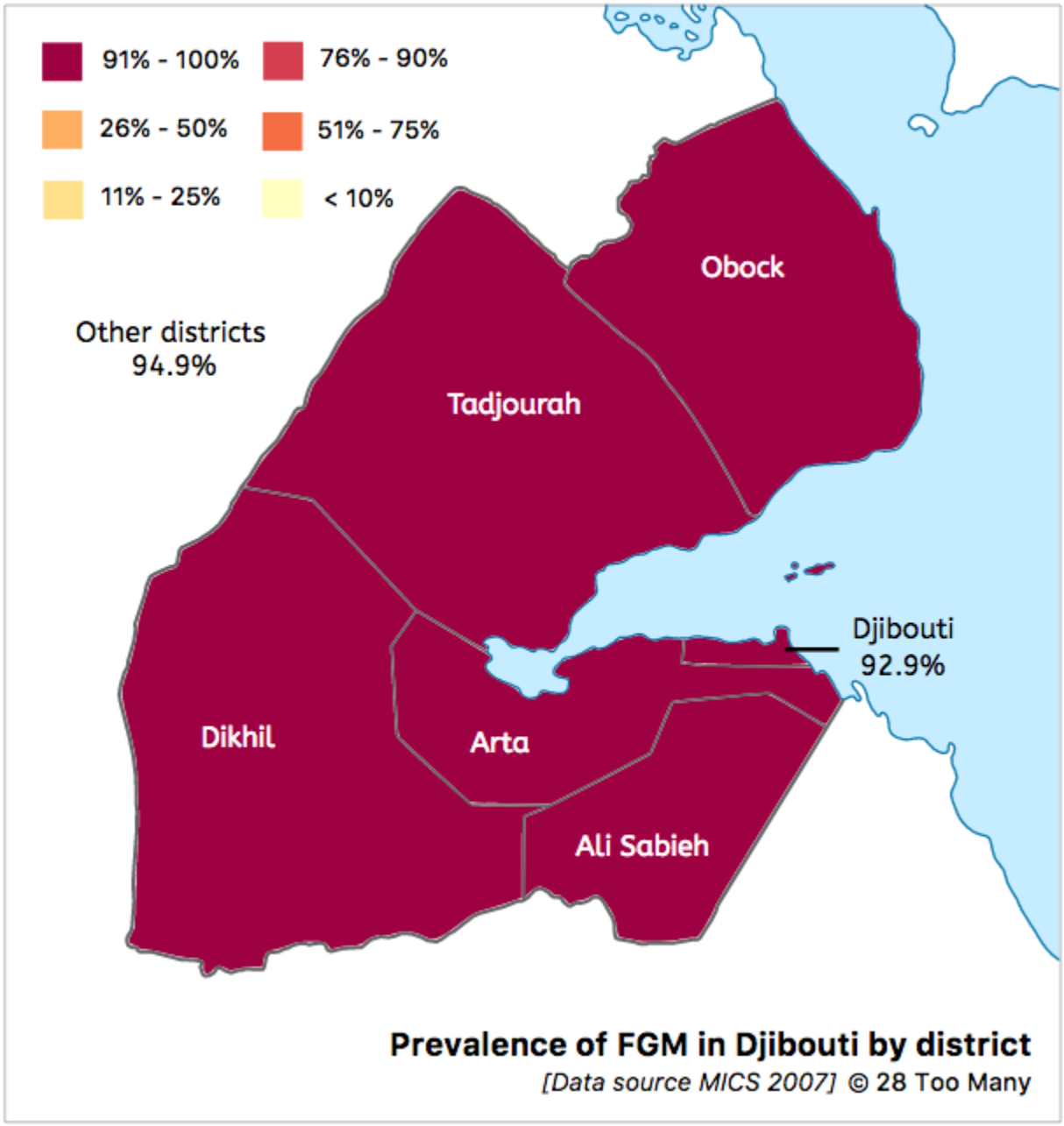
DJIBOUTI:

THE LAW AND FGM/C

July 2018

In Djibouti, the prevalence of FGM/C in women aged 15–49 is 93.1%.

FGM/C prevalence in the Djibouti region is 92.9%; in all other regions, it is 94.9%.



- FGM/C is most likely to be performed on girls between the ages of five and nine.
- Type III (sewn closed) is the most common type of FGM/C practised.
- More than three-quarters of FGM/C is performed by traditional practitioners; about 20% by medical personnel.
- 51% of women aged 15–49 believe that FGM/C should stop.

Source of data: Enquête Djiboutienne à Indicateurs Multiple (EDIM), Ministère de la Santé and République de Djibouti (2007) *Enquete Djiboutienne A Indicateurs Multiples: Rapport Final*. Available at **https://mics-surveys-prod.s3.amazonaws.com/MICS3/Middle%20East%20and%20North%20Africa/Djibouti/2006/Final/Djibouti%202006%20MICS_French.pdf**.

*For further information on FGM/C in Djibouti see **https://www.fgmcri.org/country/djibouti/**.*

Domestic Legal Framework

Overview of Domestic Legal Framework in Djibouti	
The Constitution explicitly prohibits:	
X	Violence against women and girls
X	Harmful practices
X	Female genital mutilation/cutting (FGM/C)
National legislation:	
✓	Provides a clear definition of FGM/C
✓	Criminalises the performance of FGM/C
✓	Criminalises the procurement, arrangement and/or assistance of acts of FGM/C
✓	Criminalises the failure to report incidents of FGM/C
X	Criminalises the participation of medical professionals in acts of FGM/C
X	Criminalises the practice of cross-border FGM/C
✓	***Government has a strategy in place to end FGM/C***

What is The Law Against FGM/C?

An overview of the international and regional treaties signed and ratified by Djibouti can be found in Appendix I of this report.

Djibouti's legal system is based primarily on the French civil code (as it existed in 1997), with features of Islamic religious law (in matters of family law and successions), and customary law.

The current **Constitution of Djibouti** (passed in 1992, amended 2010)[1] does not directly refer to violence against women and girls, harmful practices or FGM/C; however, **Article 10** assures equality before the law, and the State is under an obligation to protect and respect the integrity of the person. **Article 16** states further, 'No one may be submitted to torture, or to inhuman, cruel, degrading or humiliating actions or treatment.'

The Penal Code of Djibouti (the *Penal Code*)[2] came into effect in 1995 and was the first principal legislation criminalising and punishing FGM/C in Djibouti. It was further complemented by Law No. 55 of 2009 (*Law No. 55*)[3] relating to violence against women, including FGM/C.

The Criminal Procedure Code of Djibouti 1995 (the *Criminal Procedure Code*)[4] is also relevant to FGM/C.

What The Law Covers

FGM/C was initially criminalised and punished under **Article 333 of the Penal Code**, which addresses violence that results in 'genital mutilation'. The Penal Code did not, however, provide a definition of genital mutilation or FGM/C, nor did it criminalise the procurement, aiding or abetting of FGM/C.

Article 7 of the Criminal Procedure Code sets out how any organisation whose statutory objective for at least the previous five years has been the fight against FGM/C may exercise on behalf of victims their rights regarding the offences set out in **Article 333** of the Penal Code.

In 2009, **Article 1 of Law No. 55** introduced two amendments to supplement Article 333 of the Penal Code as follows:

1. The law now provides a legal definition of FGM as 'any non-therapeutic operation which involves total or partial removal and/or wounds performed on the female genital organs, for cultural or other reasons.' It does not, however, provide a definition of 'non-therapeutic operation' in this context.
2. It criminalises and punishes anyone with knowledge of FGM/C, whether planned or already performed, who does not immediately notify the public authorities. The law also tightens penalties for the 'instigators and accomplices' of FGM/C (i.e. those who aid and abet the practice).

Article 2 of Law No. 55 also amended **Article 7 of the Criminal Procedure Code** so that organisations with at least three years' experience working against FGM/C may now exercise on behalf of victims their rights regarding the offences set out in Article 333 of the Penal Code.

Medicalised FGM/C

While there is a lack of recent data on FGM/C in Djibouti, UNICEF has previously reported that approximately 20% of FGM/C procedures in the country are carried out by health personnel.[5]

The **Penal Code** does not explicitly criminalise and punish FGM/C performed by health professionals or in a medical setting. Given the wide scope of **Article 333**, however, it would seem to apply universally and should therefore encompass any health professionals who perform FGM/C.

To date, this research has not been able to identify any separate legislation currently in force in Djibouti that specifically deals with medicalised FGM/C.

Cross-Border FGM/C

In some countries where FGM/C has become illegal, the practice has been pushed underground and across borders to avoid prosecution. There is an absence of information on whether any women and girls are taken from Djibouti across borders to be cut in other countries, or to what extent families from neighbouring countries cross into Djibouti for FGM/C. Observations have been made by some activists that girls may be taken to Somalia where 'no one questions the procedure' (there is currently no law in Somalia or Somaliland against FGM/C).[6]

The Penal Code does not currently address cases of cross-border FGM/C, and there do not appear to be any other specific regulations or laws relating to FGM/C carried out on or by citizens of Djibouti in other countries.

Penalties

Under **Article 333 of the Penal Code**, anyone who is found guilty of performing FGM/C will be punished with a five-year prison sentence and a fine of 1,000,000 Djiboutian Francs (approximately US$5,617[7]).

The failure to report FGM/C, whether performed or planned, is punishable with between one month and one year of imprisonment and a fine of 50,000–100,000 Djiboutian Francs (approximately US$281–562[8]).

Those who aid and abet the practice of FGM/C are punishable under **Articles 25 and 26 of the Penal Code**, which state that accomplices to a crime are liable to the same penalties as the main offender.

Implementation of The Law

Cases

It has not been possible to find any recent cases where the laws listed in this report have been applied. The most recent report published by the UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (*UNJP*) did not list any cases of law enforcement in Djibouti during 2016.[9] Other sources also note that, due to ineffective implementation of the law, there have been no convictions in Djibouti to date.[10]

In late 2014 an isolated case was reportedly brought to court when a cutter and a mother were charged with committing FGM/C and received six-month suspended sentences.[11] No further details are available. Despite a fifth of FGM/C procedures reportedly being carried out by health professionals, it has not been possible to identify any cases of malpractice that have been brought against them.

Relevant Government Authorities and Strategies

Working in partnership with the **UNJP** since 2008, government departments, including the **Ministry of the Promotion of Women, Family and Social Affairs** and the **Ministry of Health**, and various organisations such as the **National Union of Djiboutian Women** have organised and participated in public-awareness campaigns to raise knowledge of the harms of FGM/C. These campaigns have resulted in public declarations of abandonment. The work to end FGM/C in Djibouti has been coordinated by **The National Steering Committee for the Abandonment of All Forms of Excision** since 2009, and the Government launched a **National Strategy for Abandonment of All Forms of Excision** in 2016.[12]

The Government has incorporated awareness about FGM/C into its national programme to promote safe motherhood.[13] The UNJP has been supporting the Government to improve sexual and reproductive-health services across communities and provide training for health workers. Surveillance committees also form part of the communication strategy to monitor commitments to abandon FGM/C.[14]

The Government's strategy continues to include outreach to religious leaders. In 2005, the Government, in partnership with **No Peace without Justice** (*NPWJ*) and other non-governmental

organisations (*NGOs*), convened a sub-regional conference called 'Towards a Political and Religious Consensus on the Elimination of Female Genital Mutilation'. The conference concluded with recommendations (the *Djibouti Declaration*), which included that religious leaders play a role in raising awareness of the danger of FGM/C.[15] More recently, in 2016, the **Ministry of Religious Affairs** hosted a workshop to establish a network of religious leaders to fight all forms of FGM/C.[16] Guides have also been produced for imams and other religious leaders, as well as for members of the judiciary, including police officers, with information on dealing with cases of FGM/C.

The Government of Djibouti has previously stated, 'Djiboutian women have a whole arsenal of laws and institutions guaranteeing protection and effective enforcement of their rights', including laws and regulations relating to health, education and justice.[17]

Civil Society Observations

The Government is supportive of international and national NGOs' efforts to disseminate information and provide training and education about the harmful effects of FGM/C. However, there are many challenges identified by civil society to achieving widespread and long-lasting success with anti-FGM/C campaigns, including the continuing use of customary laws, which are not in line with statutory laws and continue to discriminate against women on several matters. Sharia law, on which customary laws are based in Djibouti, is recognised in the Constitution as 'the sole source of law'.[18]

While the Constitution also sets out the principle of gender equality, activists are concerned that discriminatory state laws also persist within the Family Code (adopted in 2002), particularly around early and forced marriage and marital power. A report from the campaign 'Africa for Women's Rights: Ratify and Respect!' (2010) states:

> The effective implementation of laws protecting women in Djibouti comes up against major obstacles, in particular: women's lack of knowledge of the law; extreme poverty and lack of resources; as well as the weight of tradition and stereotypes concerning the role of women in society.[19]

Civil society also notes that a major obstacle to the dissemination of information regarding FGM/C and the law is the high rate of illiteracy in Djibouti.

The UN has expressed concern that, despite efforts, the prevalence of FGM/C remains very high in Djibouti, and notes that 'cases of FGM are generally not reported, prosecuted and punished.'[20] The organisation made the following recommendation in terms of FGM/C and the law to the Government in its CEDAW observations in 2011:

> Effectively enforce Article 333 of the Criminal Code on FGM, which provides for a penalty of 5 years' imprisonment, by prosecuting and adequately punishing perpetrators as well as those complicit in or failing to report the crime, and to provide to the Committee information on the number of reports, prosecutions, convictions, and on the sentences imposed on perpetrators of FGM.[21]

This research has not been able to establish to what extent this recommendation has been implemented since, nor whether information has been supplied to CEDAW as requested.

Conclusions and Suggestions for Improvement

Conclusions

- Djibouti prohibits the practice of FGM/C through Article 333 of the Penal Code, which criminalises and punishes its performance. Subsequent amendments to the law have included criminalising the failure to report FGM/C and aiding and abetting the practice.
- The law in Djibouti does not explicitly criminalise and punish instances of medicalised FGM/C or cross-border FGM/C.
- Evidence suggests that enforcement of the law in Djibouti is very weak and there is a lack of reporting and recording of FGM/C cases. This therefore undermines the efforts being made by the Government, in partnership with international and national organisations, to raise awareness of the harm of FGM/F, and campaigns to end the practice.

Suggestions for Improvement

National Legislation

- The definition of FGM/C introduced into the national legislation in 2009 needs further clarification around the term 'non-therapeutic operation' to ensure there is no loophole in the law.
- The performance of FGM/C by health professionals should be clearly criminalised and punished under the relevant national legislation.
- The movement across national borders to procure or perform FGM/C in another country should be made an offence subject to punishment.
- Laws must be made easy to understand in all local languages and available in alternative forms in areas of lower literacy.

Implementation of the Law

- Judges and local law enforcers need adequate support and training around the law and should be encouraged to fully apply the sentences provided for by the legislation.
- Adequate monitoring and reporting of FGM/C cases in Djibouti would improve efficiency and inform policy makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- Increased involvement of local and religious leaders in education around the law, including their responsibilities and the importance of the law in protecting women and girls in their communities, would also be beneficial.
- Tribunals could be encouraged to make sure any prosecutions relating to FGM/C are clearly reported, including through local media such as community radio, and made available in local languages.
- Adequate support and protection for victims and witnesses in FGM/C cases is needed.

- All professions need continual training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM/C.
- Mandatory reporting of instances of FGM/C by medical staff in hospitals and health centres could be considered.
- Where they are currently unavailable and a need is identified, appropriate protection measures (for example, emergency telephone lines or safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

DJIBOUTI	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 2002	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 2002	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)			✓ 1998	
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 2002	
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		With reservations
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1991	✓ 1991		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1992			
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2003	✓ 2005		

'**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.

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Version 2, 2026

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1 *Djibouti's Constitution of 1992 with amendments through 2010* (1992; amended 2010) [English Translation ©2012 by William S. Hein & Co., Inc.]. Available at https://www.constituteproject.org/constitution/Djibouti_2010.pdf?lang=en.
2 *Le Code Pénal* (1995) Available at https://www.unodc.org/res/cld/document/dji/code_penal_html/Le_Code_Penal.pdf.
3 UN Women (2009) 'Loi N°55/An/09/6ème L Relative À La Violence Contre Les Femmes Notamment Les Mutilations Génitales Féminines', *Global Database on Violence against Women*. Available at http://evaw-global-database.unwomen.org/fr/countries/africa/djibouti/2009/loi-n-55-an-09-6eme-l-relative-a-la-violence-contre-les-femmes-notamment-les-mutilations.
4 *Code de Procedure Penale* (1995) Available at http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92316/107449/F-1995265301/DJI-92316.pdf.
5 UNICEF (2013) *Djibouti: Statistical Profile on Female Genital Mutilation/Cutting*, December 2013. Available at https://data.unicef.org/wp-content/uploads/country_profiles/Djibouti/FGMC_DJI.pdf.
6 The Economist (2016) *The unkindest cut: A rite of passage ranges from symbolic to awful. Where should the line be drawn?*, 18 June. Available at https://www.economist.com/news/international/21700631-rite-passage-ranges-symbolic-awful-where-should-line-be-drawn.
7 *Currency conversion at 8 June 2018 (https://www.xe.com/currencyconverter/).*
8 *Currency conversion at 8 June 2018 (https://www.xe.com/currencyconverter/).*
9 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (2017) *2016 Annual Report of the UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change*, p.28. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
10 Excision parlons-en! (2014) 'Les chiffres de l'excision', *Djibouti*. Available at https://www.excisionparlonsen.org/djibouti/.
11 US Department of State (2017) *Djibouti 2017 Human Rights Report*, p.18. Available at https://www.state.gov/documents/organization/277237.pdf.
12 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting, *op. cit.*
13 US Department of State (2013) *Djibouti: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)*. Available at https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/10/dijibouti.pdf.
14 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting, *op. cit.*, p.29.
15 Sub-Regional Conference on Female Genital Mutilation (2005) *Djibouti Declaration*. Available at http://www.emmabonino.it/campagne/stopfgm/djibouti/declaration_en.pdf.
16 Rachid Bayleh (2016)' Des leaders religieux en guerre contre les MGF', *La Nation*, 1 December. Available at http://www.lanationdj.com/leaders-religieux-guerre-contre-mgf/.
17 Republic of Djibouti, Office of the Prime Minister, Ministry for the Promotion of Women, Family Well-Being, and Social Affairs (2004) *Djibouti: National Ten-Year Evaluation Report on Implementation of the Beijing Platform for Action*, p.18. Available at http://www.un.org/womenwatch/daw/Review/responses/DJIBOUTI-English.pdf.
18 Mustafe Mohamed H. Dahir (2015) 'Researching the Legal System of the Republic of Djibouti', *GlobaLex*. Available at http://www.nyulawglobal.org/globalex/Djibouti.html#ShariaLaw.
19 Africa for Women's Rights (undated) *Dossier of Claims*, p.45. Available at http://www.africa4womensrights.org/public/Dossier_of_Claims/DossierofClaimsENG.pdf.
20 United Nations Convention on the Elimination of All Forms of Discrimination against Women (2011) Committee on the Elimination of Discrimination against Women, Forty-ninth session: Concluding observations of the Committee on the Elimination of Discrimination against Women (Djibouti), 28 July, p.5. Available at http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DJI-CO-1-3.pdf.
21 *Ibid*., p.6.

Cover image: Petty Officer 1st Class Scott Cohen (2008) *A local villager from Petit Douda stands by as Marines and Sailors deployed to Camp Lemonier, Djibouti, distribute clothes, toys, wheel [barrows], building materials and goats to the villagers of Petit Douda, Feb. 23, from money donated by people in the United States* [public domain]. Available at https://commons.wikimedia.org/wiki/File:Marines,_Sailors_hand_out_supplies_to_villagers_in_Petit_Douda,_Djibouti_DVIDS78696.jpg.

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 was prepared in collaboration with TrustLaw, the Thomson Reuters Foundation's global, legal pro bono service that connects law firms and legal teams to NGOs and social enterprises that are working to create social and environmental change.

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***Acknowledgements*:**

Latham & Watkins