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FGM... let's end it.

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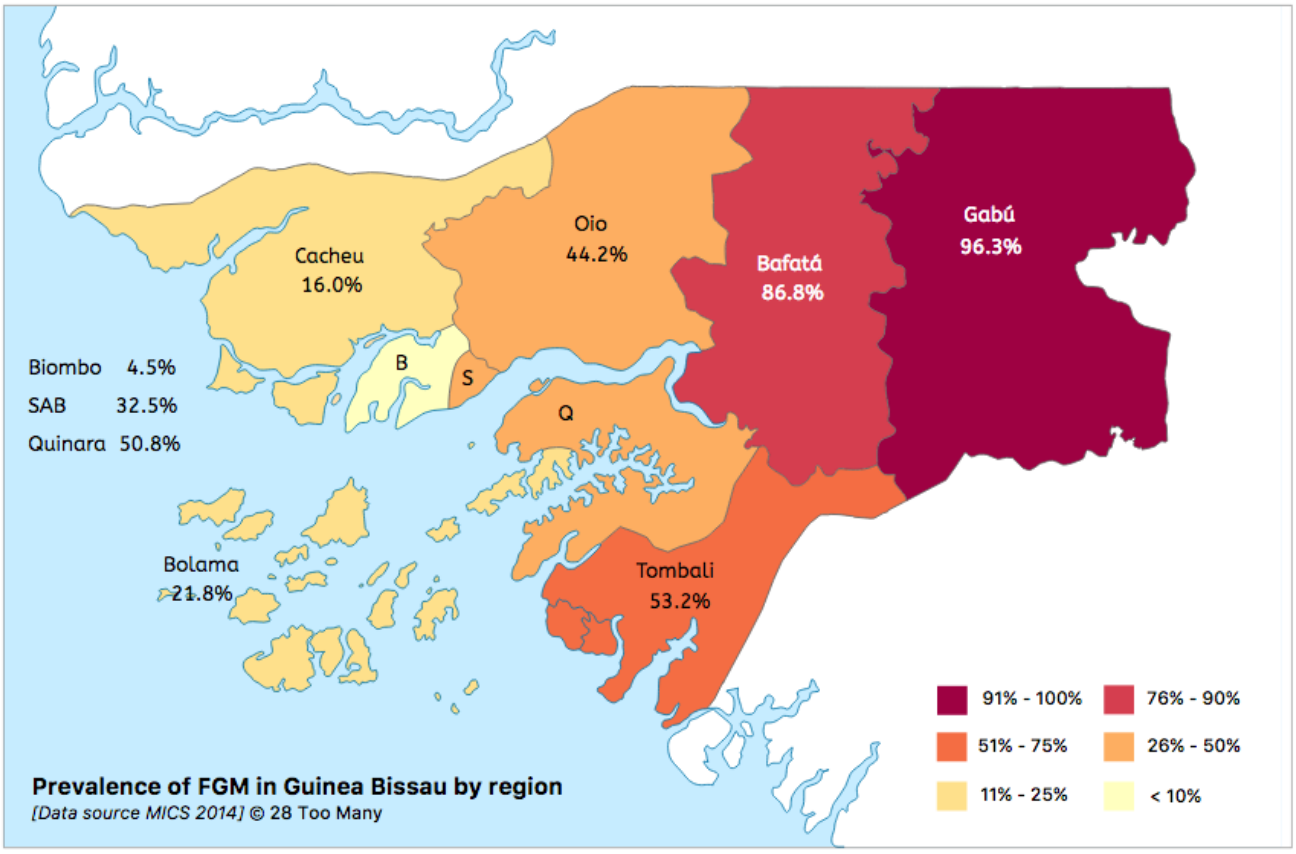


GUINEA BISSAU: THE LAW AND FGM/C

August 2018

In Guinea Bissau, the prevalence of FGM/C in women aged 15–49 is 44.9%.

The regions with the highest prevalence are in the east: Gabú (96.3%) and Bafatá (86.8%).



- FGM/C is usually practised on girls aged 4 to 14, but also on babies and women nearing marriage or close to giving birth.
- 'Flesh removed' is the type of FGM/C practised almost universally.
- Almost all FGM/C is carried out by traditional practitioners.
- 81.4% of women aged 15–49 who have heard of FGM/C believe it should be stopped.

Source of data: Ministério da Economia e Finanças, Direcção Geral do Plano/Instituto Nacional de Estatística (INE) (2014) *Inquérito aos Indicadores Múltiplos (MICS5) 2014, Relatório Final*. Available at **https://mics-surveys-prod.s3.amazonaws.com/MICS5/West%20and%20Central%20Africa/Guinea-Bissau/2014/Final/Guinea-Bissau%202014%20MICS%20Final%20Report_Portuguese.pdf**.

*For further information on FGM/C in Guinea Bissau see **https://www.fgmcri.org/country/guinea-bissau/**.*

Domestic Legal Framework

Overview of Domestic Legal Framework in Guinea Bissau	
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
✓	Criminalises the practice of cross-border FGM/C
✓	***Government has a strategy in place to end FGM/C***

** Not directly criminalised – main FGM/C law applies universally (see below).*

What is The Law Against FGM/C?

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

Guinea Bissau's domestic legal system is a mix of civil law and Portuguese law (incorporated at independence) and is influenced by customary law. Guinea Bissau comprises eight regions and one autonomous sector (Bissau).

The Constitution of Guinea Bissau (1996)[1] does not explicitly refer to FGM/C or other harmful practices, but **Article 15** provides for the protection of all its citizens' physical and mental wellbeing, and **Articles 24 and 25** state that men and women have equal rights and are equal before the law. **Article 37(1)** states, 'The moral and physical integrity of citizens cannot be violated', and **Article 37(2)** sets out that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

The main law relating to FGM/C in Guinea Bissau is the Federal Law to Prevent, Fight and Suppress Female Genital Mutilation passed in 2011 (*Law No. 14/2011*).[2] **This covers all regions and sectors of Guinea Bissau; there are no regional or local laws against FGM/C.**

What The Law Covers

Article 3(1) of Law No. 14/2011 prohibits and criminalises excision in all its forms throughout Guinea Bissau, and **Article 2** defines the practice as 'all forms of partial or total amputation, incision, or ablation of the external genital organ of the female person, as well as all physical offences practised on that organ for social, cultural, religious or hygienic reasons, or any other reason invoked.'[3]

FGM/C is further defined at **Article 4** to include clitoridectomy, excision, incision, and infibulation, for which the punishment for performance is set out. **Articles 5(1) and (2)** criminalise FGM/C performed on a minor[4] and place a duty on the parents, guardians or any person who has custody of the child to prevent the excision. **Article 6** addresses aggravation and punishes anyone whose intention by performing FGM/C is to affect a victim's capacity to work or intellectual capacity in a severe, lasting or definitive manner, causes permanent disease or psychological problems, or threatens the victim's life.

Article 7 criminalises those who assist, facilitate, incentivise or contribute in any way to the practice of FGM/C. Those who become aware of the preparation for FGM/C but fail to report it to the police or other judicial authorities are punishable under **Article 8**. The latter may be excused from reporting if it is likely to cause harm to their own physical integrity (under **Article 144 of the Criminal Code**). The type of reporting required does not vary based on the type of FGM/C involved.

In addition to Law No. 14/2011, the **Criminal Law Code No. 4/1993 (1993)** (the *Criminal Code*) contains provisions which might be relevant to perpetrators of FGM/C. These include:

- **Article 114**:

  (1) A person who causes injury to the body or health of another person will be subject to imprisonment up to three years or a fine.

  (2) The prosecution of this crime, however, depends on complaint from the plaintiff.

- **Article 115**:

  (1) A person who causes injury to the body or health of another person with intention to: (a) deprive the victim of an important organ or limb, (b) seriously and permanently disfigure, (c) affect the victim's capacity to work or intellectual capacity in a severe, lasting or definitive manner, (d) cause permanent disease or psychological problems, or (e) threaten the victim's life, will be subject to imprisonment of two to eight years.

- **Article 208:**

  (1) Any person who publicly and by any means incites another to commit a crime is subject to imprisonment of up to two years or a fine.

  (2) Anyone who publicly praises or rewards another person who has committed a crime and, in such manner, instigates identical crimes, will also be subject to imprisonment of up to two years or a fine.

  (3) If the crime that was instigated under (1) or (2) above was in fact carried out, the applicable penalty, if another more serious penalty is not provided by law, for the person who instigated that crime will be imprisonment of one to five years.

It is not known if any prosecutions have been made in Guinea Bissau under the provisions of the Criminal Code to date.

Medicalised FGM/C

Medicalised FGM/C does not appear to be prominent in Guinea Bissau. According to available data, only 0.1% of women aged 15–49 who have experienced FGM/C are cut by a health professional.[5]

While the wide scope of **Law No. 14/2011** criminalising the practice of FGM/C in all its forms should apply universally and thus encompass any health professionals involved in the practice, it has been suggested that the law may contain a loophole that would permit medicalised FGM/C (i.e. FGM/C paid for privately in a medical setting) under **Article 3(2)**, which states:

> The medical intervention on the female genital organ, made in the appropriate sanitary facilities by a qualified person for the purpose of correcting any anomalies resulting from the excision or not, is not considered to be female excision, for the purposes of applying this law, provided that the medical act has been approved by the group of doctors assigned to the service based on a diagnosis indicating the need for such surgery.

Regarding the responsibilities of medical professionals, **Law No. 14/2011** does address a 'Special Duty of Care' at **Article 12(1)**, requiring managers of health facilities and medical practitioners to provide appropriate physical and psychological treatment to victims of FGM/C as required by law. **Article 12(2)** requires that if anyone, by virtue of their professional qualifications, becomes aware that FGM/C has taken or will take place, he or she is required to report it to the appropriate authorities (in line with **Article 8**).

In addition, there are two articles within the **Criminal Code** that may be relevant to medicalised FGM/C.

- **Article 115(2)** states that interventions and other medical treatments made by those who are professionally qualified will not be considered offences; however, if the act results in danger to the body, health or life of the patient, the agent will be subject to imprisonment of six months to three years.
- **Article 117** establishes that if a person who is duly authorised (i.e. a licensed medical professional) carries out circumcision or excision without taking adequate care to avoid mutilation, disfiguration, incurable physical or mental disease or the death of the victim (i.e. commits medical malpractice), they will be punished by one-to-five years' imprisonment. It is not clear whether this Article refers to male or female circumcision, or both.

According to international NGO Tostan, medicalised FGM/C is not currently a problem in Guinea Bissau and, to date, no health care professionals have been prosecuted for performing FGM/C.[6]

Cross-Border FGM/C

Media reports suggest that cross-border FGM/C has been an issue for Guinea Bissau in the past, as families were crossing from neighbouring countries (such as Senegal) to be cut. As Guinea Bissau has attempted to tighten the laws around FGM/C and improve enforcement, this in turn has led to families trying to take girls out of the country to areas where they can avoid prosecution.

According to **Article 9 of Law No. 14/2011**, movement across borders for FGM/C is a criminal offence subject to punishment, and in cases where a woman or girl is taken to be cut in another country, the provisions of **Articles 4–8** (as above) apply.

Penalties

Law No. 14/2011 establishes the following criminal penalties for its violation.

- **Article 4**: The performance of FGM/C, in any of its forms, with or without the consent of the victim, carries a punishment of imprisonment for two to six years.
- **Article 5(1)**: The performance of FGM/C on a minor carries a punishment of imprisonment for three to nine years.
- **Article 5(3)**: Failure to prevent FGM/C by the parents, guardians or anyone with custody of the child carries a punishment of imprisonment for one to five years.
- **Article 6(1)**: The performance of FGM/C with intent to inflict physical or psychological harm, or threaten life, carries a punishment of imprisonment for two to eight years.[7]
- **Article 6(2)**: In the case of the death of a victim, the punishment is imprisonment for four to ten years.
- **Article 7**: Assisting, facilitating, encouraging or contributing in any way to the practice of FGM/C will be treated in the same way as performance of FGM/C and punished accordingly.
- **Article 8**: Failure to prevent FGM/C or report it to the police or other judicial authorities is punishable with a fine of XOF500,000 to XOF2,500,000 (US$941.57 to US$4,707.85).[8]
- **Article 9**: The penalties set out in Articles 4–8 above also apply when a citizen or permanent resident of Guinea Bissau is taken to another country to be cut.

Implementation of The Law

Cases

The extent to which FGM/C is punished under the law in Guinea Bissau is not fully known, and there is a lack of detailed, publicly available information regarding cases brought to court.

The most recent report published by the UNFPA-UNICEF Joint Programme, in 2016, noted that, since the law was adopted in 2011, 37 judicial cases had been brought to court. During 2016, 21 cases were still pending, particularly in courts outside the city.[9]

One widely reported case took place in 2014, when the cutter and the accomplices (i.e. the victim's mother and father) were tried and convicted. In this case, proceedings were brought by the National Committee for the Abandonment of Harmful Practices (*CNAPN*) of Guinea Bissau. The penalties varied from three years for the person who carried out the FGM/C to one year for the victim's mother and father. There was also a XOF600,000 (US$1,063.94) fine for each convicted person.[10] It is not known whether there was an appeal against these sentences or if they were carried out in full.[11]

Relevant Government Authorities and Strategies

The Government of Guinea Bissau has supported the implementation and enforcement of the law and has generally supported, through partnership programmes and committees, efforts to end FGM/C. The coordination of the work to end FGM/C is undertaken by the **National Committee for the Abandonment of Harmful Practices** and the **Woman and Child Institute** (under the Ministry of Woman, Family and Social Solidarity).

Since 2008, Guinea Bissau has also been part of the **United Nations Joint Programme** (*UNJP*) and a **National Action Plan to Combat Female Genital Mutilation/Cutting (FGM/C)** was put in place for 2010–2015. A **national gender policy** was also implemented following the introduction of the new laws on FGM/C, reproductive health and domestic violence. Government partners working alongside the UNJP also include the **Ministries of Health, Education, Justice and Youth and Culture**. A **Special Commission for Women and Children's Affairs of the People's National Assembly** (Guinea Bissau's legislative body), together with the **Supreme Court** and **Public Prosecutor**, are also involved in the work to end FGM/C.

In addition, a declaration was signed by the **Upper Islamic Council of Guinea Bissau** in 2012 at the end of a two-day conference on the abandonment of FGM/C, recognising that the practice is not required by religion.[12]

National sensitisation campaigns and consultation workshops, in partnership with NGOs such as **Plan International** and **Tostan**, have focused on high-prevalence areas and targeted principal actors, including traditional practitioners of FGM/C; local and religious leaders; and men and grandmothers in the community. The UNJP also supports a shelter in the east of the country for victims of violence, including FGM/C and child marriage.

Law No. 14/2011 under **Article 13** places an obligation on the Government and its institutions to include funds in the General Budget of the States to combat FGM/C by supporting and promoting: **(a)** information and awareness campaigns; **(b)** the assistance and reintegration of victims of FGM; **(c)** media campaigns; **(d)** the training and capacity-building of opinion leaders and NGOs within communities; and **(e)** greater cooperation between different human-rights organisations and religious and traditional leaders to denounce cases of FGM/C.

The relevant authorities for enforcing **Law No. 14/2011** are the **Police** (*Policia de Ordem Publica*) (responsible for conducting public surveillance and law enforcement), the **Judiciary Police** (*Policia Judiciária*) (responsible for conducting criminal investigations) and the **District Attorneys** (*Ministério Publico*) (responsible for prosecuting criminal actions).

Civil Society Observations

In 2016 the **National Committee for the Abandonment of Harmful Practices** stepped up its activities to tackle FGM/C, including advocating for implementation of the law and monitoring movement across borders (particularly with Senegal), both of which have been identified as ongoing challenges for Guinea Bissau. Members of the committee have been concerned that local magistrates do not have the detailed information they need on the relevant articles within the national law, and so are not implementing the legislation as required.[13] It was also recognised that more information on the law needs to be taken out to communities. A lack of funding for these activities, however, remains a challenge.

The criminalisation of FGM/C in 2011 was not widely welcomed by many in Guinea Bissau and, as such, civil society still faces challenges where the law is not adequately enforced. Tostan, for instance, reports that, although the police and judiciary are aware of current legislation and attempt to apply it, pressure remains from some political and religious leaders in communities where traditional beliefs that a girl cannot marry unless she undergoes FGM/C remain strong.[14]

Conclusions and Suggestions for Improvement

Conclusions

- Law No. 14/2011 is a comprehensive piece of legislation and covers all types of perpetrators (i.e. those who perform, procure, aid and abet, or fail to report FGM/C). It addresses cross-border FGM/C, but there remains slight uncertainty regarding its robustness around FGM/C should it be carried out in a medical setting.
- It was not a popular law when passed in 2011. Support for it appears to remain low in some communities and information about its enforcement is limited.
- The involvement of various government departments and committees in anti-FGM/C programmes demonstrates an ongoing commitment to eliminating the practice in Guinea Bissau. However, evidence also suggests a lack of resources, and funding remains a challenge to achieving this at a local level.

Suggestions for Improvement

National Legislation

- Although medicalised FGM/C is not currently a challenge in Guinea Bissau, the performance of FGM/C by a health professional or in a medical setting should be explicitly criminalised and punishments set out in the main legislation (to reflect and tighten the medical malpractice laws set out in the Criminal Code). Any potential loopholes need to be closed.
- Any future amendments to the law should include protection for uncut women and girls (and their families) from any derogatory language or social exclusion from the community, as included in the laws of some other countries.
- Laws need to be made accessible and easy to understand in all local languages.

Implementation of the Law

- It is necessary to ensure that anti-FGM/C programmes receive funding to include clear and accurate information around the law.
- Judges and local law enforcers need adequate support and training around the law and should be encouraged to apply the sentences provided for by the legislation.
- 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 where required.
- There needs to be a focus on further strengthening partnerships and enforcing laws across borders, particularly in the east of the country, where prevalence remains highest.
- Adequate monitoring and reporting of FGM/C cases in Guinea Bissau 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 key 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.
- Where literacy rates are low, information around the law needs to be made available through different media channels and resources.
- 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 helplines or safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

GUINEA BISSAU	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)	✓ 2000	✓ 2010		
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1992	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1980	✓ 1985		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)	✓ 2000	✓ 2013		
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 2005	✓ 1985		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 2005			
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2005	✓ 2008		

'**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.

#NOFGM

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Version 3, 2026

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1 *Constitution of the Republic of Guinea-Bissau* (1984) Available at http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan042871.pdf.
2 República da Guiné-Bissau (2012) *Coletânea Fundamental de Direito Penal e Legislação Complementar*, p.223. Available at http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/legislacao/legislacoes-pertinentes-da-africa/legislacao-guine-bissau.
3 *Ibid*. (translation).
4 *The term 'minor' refers to a child below the age of majority for the purposes of this law. The age of majority in Guinea Bissau is 18 (see http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_2_en.pdf).*
5 UNICEF (2013) *Guinea-Bissau: Statistical Profile on Female Genital Mutilation/Cutting*, p.2. Available at https://data.unicef.org/wp-content/uploads/country_profiles/Guinea-Bissau/FGMC_GNB.pdf.
6 28 Too Many interview with Tostan Guinea Bissau, July 2017.
7 *In accordance with Article 115(c), (d) and (e) of the Criminal Code.*
8 *Exchange rate as of 6 February 2018.*
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.44. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
10 *Exchange rate at 30 October 2017.*
11 28 Too Many interview with Tostan Guinea Bissau, July 2017.
12 Sara Vera-Cruz Quintas (2013) *Mutilação Genital Feminina na Guiné-Bissau: Para quando a sua erradicação?* Available at http://umarfeminismos.org/images/stories/mgf/outros/Sara%20Quintas_MGF%20na%20Guiné-Bissau_Para%20quando%20a%20sua%20erradicação.pdf.
13 Thiago Melo (2016) 'Campanha forma autoridades no combate à mutilação genital feminina na Guiné-Bissau', *Deutsche Welle*, 5 September. Available at http://www.dw.com/pt-002/campanha-forma-autoridades-no-combate-%C3%A0-mutila%C3%A7%C3%A3o-genital-feminina-na-guin%C3%A9-bissau/a-19527154.
14 28 Too Many interview with Tostan Guinea Bissau, July 2017.

Cover image: Anton_Ivanov (2017) *BOLAMA ISLAND, GUINEA BISSAU - MAY 6, 2017: Unidentified local little girl with braids looks ahead in the ghost town of Bolama, the former capital of Portuguese Guinea*. Shutterstock photo ID: 675985372.

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.

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Acknowledgements:
Shearman & Sterling LLP
Tostan Guinea Bissau