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FGM... let's end it.

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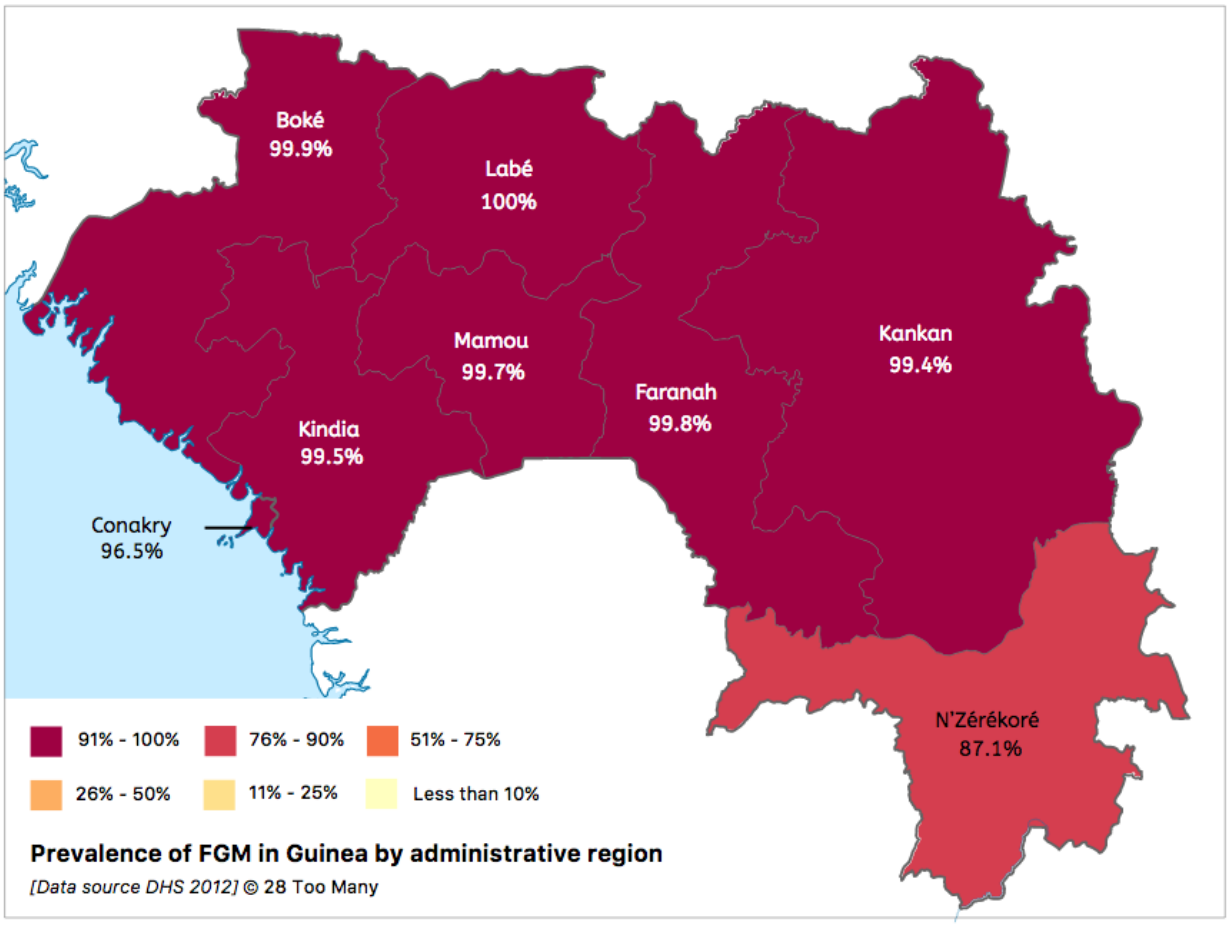
GUINEA:

THE LAW AND FGM/C

September 2018

In Guinea, the prevalence of FGM/C in women aged 15–49 is 96.9%.

The administrative regions with the highest and lowest prevalence are Labé (100%) and N'Zérékoré (87.1%).



- More than 70% of women aged 15–49 who have undergone FGM/C were cut between the ages of 5 and 14.
- 'Cut, flesh removed' is the most common type of FGM/C practised.
- About 80% of women were cut by traditional cutters, but medicalised FGM/C is rising rapidly.
- Support for FGM/C is reportedly rising.

Source of data: Direction Nationale de la Statistique (DNS) (Guinée), MEASURE DHS et ICF International (2013) *Enquête Démographique et de Santé et à Indicateurs Multiples (EDS-MICS) 2012*, p.329. Calverton, Maryland: MEASURE DHS et ICF International. Available at **http://dhsprogram.com/pubs/pdf/FR280/FR280.pdf**.

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Guinea	
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
X*	Criminalises the failure to report incidents of FGM/C
✓	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***

* *Not specifically addressed in the Criminal Code; only failure to prevent crimes in general (see below).*

What is The Law Against FGM/C?

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

Guinea has a civil law system based on the French model.

The Constitution of Guinea (2010)[1] does not specifically refer to violence against women and girls, harmful practices or FGM/C, but **Article 5** places obligation on the State to respect and protect the human person and their dignity, and **Article 6** protects physical integrity, affirming that 'no one shall be subjected to torture, to pain [*peines*] or to cruel, inhuman or degrading treatments.' **Article 8** states, 'All human beings are equal before the law. Men and women have the same rights', and **Article 23** places responsibility on the State to 'promote the well-being of the citizens, to protect and to defend the rights of the human person and the defenders of human rights.'

The Guinean Government has had legislation prohibiting FGM/C since 1965. This was followed by several decrees and ministerial orders in the 1990s and 2000s, which have since been revoked.

The principal legislation now governing FGM/C in Guinea is Law No. 2016/059/AN (the *Criminal Code 2016*)[2], in which Articles 258–261 prohibit FGM/C whether performed by traditional or modern methods.

In addition, Law L/2008/011/AN (the *Children's Code 2008*)[3] criminalised violence against children and explicitly addressed FGM/C under Articles 405–410.

What The Law Covers

Chapter V, Section II: Female Genital Mutilation of the Criminal Code 2016 provides a definition of FGM under **Article 258**: 'Female genital mutilation refers to any partial or total removal of the genitalia of girls or women or any other operations concerning these organs.'

Article 258 goes on to state that all forms of FGM/C are prohibited in the Republic of Guinea; in particular:

- partial or total removal of the clitoris;
- removal of the labia minora or majora; and
- infibulation, which consists of sewing the labia minora or majora, leaving only the meatus (i.e. opening).

Article 259 states that anyone practising FGM/C, whether by traditional or modern methods, or promoting or participating in these practices in any way is guilty of voluntary violence on the woman or girl. Parents of the child and any other person with authority over or custody of the child who authorises or promotes FGM/C will be subject to the same punishment as those who perform the excision.

The Criminal Code 2016 does not specifically oblige a person to report awareness of FGM/C; more generally, **Article 298** states that the failure to prevent either a crime or an offence against the bodily integrity of a person is punishable. Anyone who voluntarily fails to provide assistance to a person in danger of such an offence may also face punishment. A duty to report FGM/C is, however, contained in the draft **Children's Code** (see below).

Other laws that are also relevant to FGM/C in Guinea include:

- **Chapter IV, Section VII: Violence Against Children of the Children's Code 2008** sets out the same definition (under **Article 405**) and prohibition of FGM (in **Articles 406–410**) as the later **Criminal Code 2016**. **Article 410** additionally places an obligation on public and private health facilities to report cases of FGM/C to relevant public authorities.
- **Articles 338–339 of the draft Revised Children's Code** provides for an independent duty to report as soon as one notes or suspects physical or mental harm, sexual abuse, negligence or abuse of a minor (under 18 years of age), even if bound by professional secrecy. However, this new code has not yet been enacted.
- **Law/010/2000/AN of July 2000 on Reproductive Health in the Republic of Guinea** includes **Article 6**, which prohibits any forms of violence or sexual abuse and states that individuals have the right not to be subjected to torture and cruel, inhuman or degrading treatments on his or her body in general and on his or her reproductive organs in particular.[4] **Article 13** provides that FGM/C is criminalised and punishable under the law.

Medicalised FGM/C

Guinea is seeing an increasing trend towards medicalised FGM/C: the most recent data available shows that health professionals (mainly nurses and midwives) cut about 15% of women overall (aged 15–49) and about 30% of girls (aged 0–14).[5]

Article 259 of the Criminal Code 2016, prohibiting the practice of FGM/C by 'traditional or modern methods', applies universally, including to medical practitioners. It further stipulates that the maximum sentence shall be applied when FGM/C is practised 'in a public or private health structure and facilitated by a person belonging to the paramedical or medical staff, in particular doctors, nurses, midwives and technicians.'

In addition, **Article 410 of the Children's Code 2008** requires heads of public and private health structures to ensure that victims of FGM/C seeking assistance in their centres or establishments are provided with the appropriate medical attention. It also requires them to promptly inform the relevant public authorities, so they may monitor the victim's condition and initiate legal proceedings as set out in the Code.

Cross-Border FGM/C

Guinea shares borders with other countries where FGM/C prevalence remains high and the existence and enforcement of laws varies widely. The movement across borders to perform or procure FGM/C and avoid prosecution can be a consequence of laws being implemented and can leave girls living in border communities particularly vulnerable. It is a problem throughout West Africa, but the extent of cross-border movement in and out of Guinea for FGM/C is not clear.

Chapter V, Section II on FGM in the Criminal Code 2016 does not directly criminalise or punish cross-border FGM/C. More generally, however, under **Article 12 of the Criminal Code 2016**, any offence committed in another country by a citizen or resident of Guinea will be punishable if it qualifies as a crime under Guinean law and is punishable by the law in the place where it takes place. It also applies if the crime is committed by a foreigner outside of the territory of the Republic, when the victim is Guinean. The punishment cannot be superior to the one applicable pursuant to the law of the country where the offence is committed. Cross-border FGM/C carried out between Guinea and neighbouring countries such as Mali, Liberia and Sierra Leone, where national legislation to ban FGM/C is still not in place, would therefore not be punishable.

Penalties

The Criminal Code 2016 under Article 259 establishes the following penalties in relation to performing, procuring, aiding and abetting FGM/C.

- Anyone practising FGM/C, whether by traditional or modern methods, or promoting or participating in these practices in any way, is punishable by imprisonment for a minimum of three months up to two years or a fine of 500,000 to 2,000,000 Guinean francs (approximately US$55–220[6]), or both.
- If the act was premeditated or if the victim was ambushed, the prison term is from two to five years or a fine of 1,000,000 to 3,000,000 Guinean francs (approximately US$110–330[7]), or both.
- Parents of the child or any other person with authority over or custody of the child who procures or assists FGM/C will be subject to the same punishment as those who perform the excision.

- The maximum sentence shall be applied when FGM/C is practised in a public or private health structure and facilitated by a person belonging to the paramedical or medical staff, in particular doctors, nurses, midwives and technicians.

In addition, under **Article 260**, if FGM/C leads to disability, the perpetrators shall be sentenced to five to ten years in prison or a fine of 1,000,000 to 3,000,000 Guinean francs (approximately US$110–330[8]), or both.

If the FGM/C results in death, under **Article 261** the perpetrators will be punished with five to twenty years' imprisonment.

The Children's Code 2008 had previously set out the same penalties for FGM/C under **Articles 407–409** (with the exception of a smaller fine for practising FGM/C, which has subsequently been raised in the Criminal Code).

Failure to provide assistance to a person in danger or to prevent a crime or offence against the bodily integrity of a person generally is punishable under **Article 298 of the Criminal Code 2016** by one to five years' imprisonment and a fine of 1,000,000 to 5,000,000 Guinean francs (approximately US$110–550[9]).

Implementation of The Law

Cases

Evidence suggests that, despite the law, prosecutions against FGM/C are rare in Guinea. A few cases have been reported since 2010, but it appears that the courts were lenient, giving only suspended sentences and/or small fines.[10]

> *Unfortunately, the numbers of cases referred to the tribunals do not reflect reality, because society is still ruled by customs and traditions that force women to submit, to remain silent . . .*
>
> *~National Directorate for the Promotion of Women and Gender*[11]

Publicly available information on prosecutions is limited. The following has been noted by local counsel for the purposes of this research.

- In July 2014, the Court of First Instance in Conakry convicted a perpetrator of FGM/C (a woman aged 82) to a two-year suspended prison sentence and a fine of 1,000,000 Guinean francs for violating Articles 405, 406 and 407 of the Children's Code.
- In January 2015, the Court of First Instance in Faranah convicted a perpetrator of FGM/C to a one-year suspended prison sentence and a fine of 500,000 Guinean francs for violating the Criminal Code and the Children's Code.
- In July 2015, the Justice of the Peace of Gueckedou convicted a perpetrator of FGM/C to a six-month suspended prison sentence and a fine of 500,000 Guinean francs for violating the Criminal Code and the Children's Code by performing FGM/C on a nine-year-old girl.

There is little evidence that any medical professionals have been prosecuted to date; only one case against a medical professional, in 2016, has been identified. The Local Council for Children and Families (*Le Conseil local pour l'enfant et la famille – CLEF*) reported a case where a state-registered nurse performed FGM/C on two young girls in the province of Korodou (District of the Urban Commune of Kissidougou). The Justice of the Peace of Kissidougou sentenced the nurse to a six-month suspended prison sentence and a fine of 500,000 Guinean francs.

The most recent report published by the UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation (*UNJP*) listed just 11 cases brought to court in 2016, with only 2 convictions recorded.[12]

Relevant Government Authorities and Strategies

Several government departments in Guinea are responsible for work to end FGM/C, including the **Ministry of Social Affairs and Promotion of Women and Children** and the **Ministry of Education**. In 2011, a restructuring of the **Office for the Protection of Gender, Children and Morals** (*OPROGEM*) took place, which set up offices at the regional level to implement programmes and a national committee to coordinate efforts to end the practice – the **Comité National pour la Promotion de l'Abandon des MGF/E**. In 2012, a **National Strategic Plan for the Abandonment of FGM (2012–2016)** was launched by the Government, which included training for both the judiciary and medical personnel and awareness-raising campaigns with local authorities, traditional and religious leaders and schools.[13] Media has also been used, including television and radio advertising and poster campaigns.

In 2008, Guinea was one of the first countries to become part of the **UNJP**. It has supported a wide range of programmes and services, including community sensitisation, declarations of abandonment and training for religious leaders, health personnel, community social workers and youth. It has also supported the toll-free 116 telephone helpline to report FGM/C offences (managed by **l'Association Guinéenne des Assistants Sociaux**).

Regarding the law, the UNJP has supported the training of law-enforcement officers on the content of the legislation and the use of an SMS monitoring tool to report cases of FGM/C.[14] In August 2016, the prime minister of Guinea reaffirmed the Government's commitment to supporting the work to abandon FGM/C[15] and the UNJP reported that an updated **National Strategic Action Plan** is operational until 2018.

The General Secretariat of Religious Affairs has also issued a *fatwa* (religious ruling) prohibiting the practice of FGM/C in Guinea.

Civil Society Observations

As well as official bodies, there are a range of international and national non-governmental organisations (*INGOs* and *NGOs*) working to protect women's and girls' rights in Guinea. Despite various strategies being implemented to tackle FGM/C, including education and information campaigns and alternative-livelihood training for cutters, prevalence remains high in Guinea and support for the practice, according to some reports, has even been increasing.

Civil society notes many challenges to the implementation and enforcement of the law, including weaknesses in the judicial system and huge pressure from communities to continue the practice.

Knowledge of the content of the law is generally weak, and families often try to interfere in the judicial system at the local level. There has also reportedly been a move away from traditional community celebrations around FGM/C to more individual cases being performed as a way avoid the law.

The concerns of NGOs were reflected by the Office of the United Nations High Commissioner for Human Rights (*UNCHR*), which made the following observations about Guinea in 2016:

> The persistence of FGM/E is in large part due to an absence of vigorous action by judicial authorities to ensure their prevention and eradication. Thousands of young girls are excised across the country every year, during school vacations, with the full knowledge of judicial personnel, including prosecutors and instructing magistrates. Generally speaking, legal texts prohibiting FGM/E are not respected. Excision practitioners are rarely subjected to legal proceedings . . . This is compounded by the fact that the Justice sector in Guinea is poorly funded, and several prefectures with more than 100,000 inhabitants can count on only two magistrates, one legal clerk and fewer than five police officers or gendarmes. When these personnel do seek to address FGM/E issues they are frequently subjected to serious pressures, including threats. On several occasions when alleged perpetrators have been arrested and charged, groups of women have burst into offices and threatened physical violence if they were not immediately released.[16]

Civil society also points out that health professionals, particularly midwives, increasingly flout the law and will continue to do so until the legislation, and particularly the Reproductive Health law, are fully enforced.

Women and girls in Guinea who have not had FGM/C face verbal abuse from their communities and do not receive the social respect and acceptance that those who have been cut traditionally receive. This perpetuates the practice, and current legislation does not protect uncut women and girls from abusive language or exclusion from society.

Conclusions and Suggestions for Improvement

Conclusions

- The main law in Guinea criminalising and punishing the performance, procurement, aiding and abetting of FGM/C is the Criminal Code 2016. Other national legislation, such as the Children's Code 2008 and the Reproductive Health Law of 2000, also provide protection from the practice.
- Current legislation applies maximum penalties for FGM/C carried out by a member of the medical profession; despite this, medicalised FGM/C is increasing in Guinea.
- The law does not specifically criminalise and punish the failure to report FGM/C or instances of cross-border FGM/C.
- Laws in Guinea have not been adequately implemented and enforced to date; convictions are rare, and sentences are lenient. Knowledge of the law is weak, and its content generally disregarded by the judiciary due to intense pressure from communities to continue the practice.

- Strategies are in place to tackle FGM/C, but prevalence remains very high and support for the practice has reportedly increased. Women and girls still face immense pressure to be cut and are stigmatised if they do not submit.

Suggestions for Improvement

National Legislation

- The law should specifically criminalise and punish the failure to report FGM/C to the relevant authorities, whether it has taken place, is taking place, or is planned.
- The law also needs to criminalise and punish any movement across national borders for the purpose of FGM/C.
- The law needs to protect uncut women and girls (and their families) from both abusive language and actions that exclude them from society.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

- Judges and local law enforcers need adequate support and training around the law and should be empowered to fully apply the sentences provided for by the legislation.
- Adequate monitoring and reporting of FGM/C cases in Guinea would improve efficiency and inform policy-makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around 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.
- Increased support and protection for victims and witnesses in FGM/C cases is needed.
- All professions need training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM/C.
- 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 that come to the attention of medical staff in hospitals and health centres could be considered.
- Where these are currently unavailable and a need is identified, appropriate protection measures (for example, the provision of safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

GUINEA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)	✓ 1967	✓ 1978		Reservation on Article 14
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)	✓ 1967	✓ 1978		Considers Article 1 & 26 contrary to principle of universality of international treaties
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1980	✓ 1982		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)	✓ 1986	✓ 1989		
Convention on the Rights of the Child (1989) (*CRC*)			✓ 1990	
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1981	✓ 1982		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1998	✓ 1999		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2003	✓ 2012		

'**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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1 *Guinea's Constitution of 2010* (2010) [English Translation by William S. Hein & Co., Inc.] Available at https://www.constituteproject.org/constitution/Guinea_2010.pdf?lang=en.
2 *Law on the Criminal Code, 2016* [*Loi No. 2016-059/AN portant Code Pénal*] (2016) Available at https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=D5E8B7179C215EA7C12580E40039F562&action=openDocument&xp_countrySelected=GN&xp_topicSelected=GVAL-992BU6&from=topic&SessionID=DXXUSTFWD8.
3 *Children's Code of Guinea (L/2008/011/AN Act of August 19, 2008)* [*Code de l'enfant guineen (Loi L/2008/011/AN du 19 aout 2008)*] (2008) Available at https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=AAC20477AF5D4B28C12576DC0039A4D7&action=openDocument&xp_countrySelected=GN&xp_topicSelected=GVAL-992BUG&from=state&SessionID=DZM89NQJK2.
4 *Act No. L/010/2000/AN of 10 July 2000 (Female Genital Mutilation)* (2000) Available at http://evaw-global-database.unwomen.org/en/countries/africa/guinea/2000/act-no-l0102000an-of-10-july-2000.
5 DHS (2012), pp.329 & 335.
6 *Currency conversion as at 31 December 2017* (*http://www.xe.com*).
7 *Currency conversion as at 31 December 2017* (*http://www.xe.com*).
8 *Currency conversion as at 31 December 2017* (*http://www.xe.com*).
9 *Currency conversion as at 31 December 2017* (*http://www.xe.com*).
10 Cécile Barbière (2017) 'Guinean expert: "We need to target different people in our fight against FGM"', *EURACTIV*, 31 January. Available at https://www.euractiv.com/section/development-policy/interview/guinean-expert-we-need-to-target-different-people-in-our-fight-against-fgm/.
11 National Directorate for the Promotion of Women and Gender cited by UNICEF (2015) *Child Notice Guinea: 2015*, p.93. Available at https://www.unicef.be/content/uploads/2016/06/unc_rapport_child_notice_guinee_en_final_web1.pdf.
12 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.40. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
13 Office of the United nations Commission for Human Rights (2016) *Summary of the OHCHR Report on human rights and the practice of female genital mutilation and excision in Guinea*. Available at http://www.ohchr.org/Documents/Countries/GN/SummaryReportGenitalMutilationGuinea_EN.docx.
14 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting, *op. cit.*, p.41.
15 Guinea Alumina Corporation (2016) *Guinée : Mutilations Génitales Féminines, le gouvernement s'engage dans la lutte*, 6 August. Available at https://www.guinee360.com/06/08/2016/mutilations-genitales/.
16 Office of the United nations Commission for Human Rights , *op. cit.*, p.6.

Cover image: UNMEER (2015) *Reopening of schools in Guinea*. Available at https://flic.kr/p/qPMC21, CCL: https://creativecommons.org/licenses/by-nd/2.0/.

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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