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FGM... let's end it.

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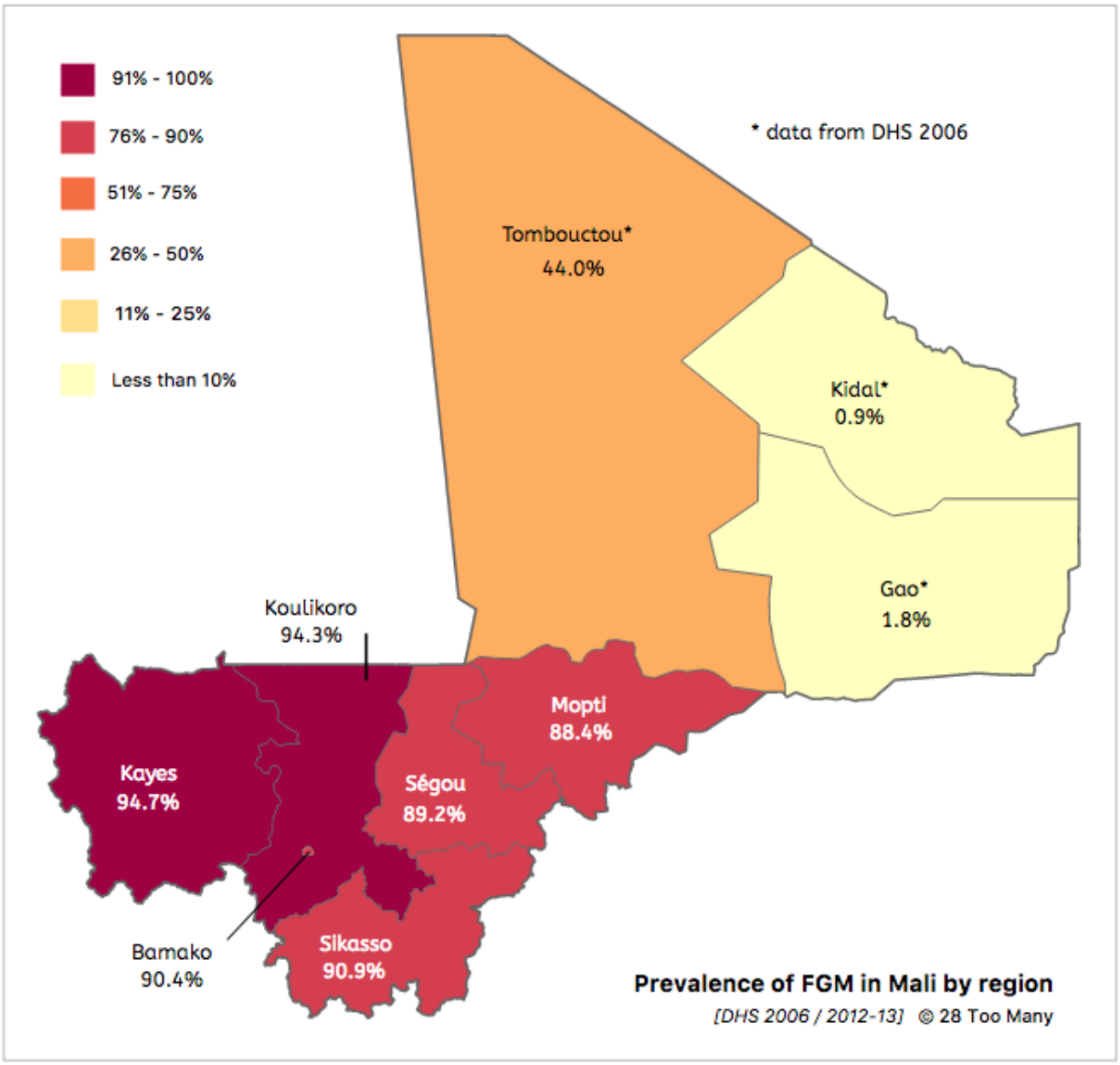


MALI:
THE LAW AND FGM/C

September 2018

In Mali, the prevalence of FGM/C in women aged 15–49 is 91.4% (excluding northern regions – see map below).

The regions with the highest prevalence are in the south-south-west of the country.



- FGM/C is most likely to take place before the age of five.
- 'Cut, flesh removed' is the most common type of FGM/C practised.
- 88.1% of women aged 15–49 were cut by traditional practitioners.
- 71.9% of women aged 15–49 and 79.1% of men aged 15–59 believe that FGM/C should continue.

Source of data: Cellule de Planification et de Statistique (CPS/SSDSPF), Institut National de la Statistique (INSTAT/MPATP), INFOSTAT et ICF International (2014) *Enquête Démographique et de Santé au Mali 2012–2013*, p.296. Rockville, Maryland, USA : CPS, INSTAT, INFO-STAT et ICF International. Available at **http://www.dhsprogram.com/pubs/pdf/FR286/FR286.pdf**.

*For further information on FGM/C In Mali see **https://www.fgmcri.org/country/mali/**.*

Domestic Legal Framework

Overview of Domestic Legal Framework in Mali	
The Constitution explicitly prohibits:	
X	Violence against women and girls
X	Harmful practices
X	Female genital mutilation/cutting (FGM/C)
National legislation:	
X	Provides a clear definition of FGM/C
X	Criminalises the performance of FGM/C
X	Criminalises the procurement, arrangement and/or assistance of acts of FGM/C
X	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 Mali can be found in Appendix I of this report.

Mali has a civil law system based on the French civil law model and influenced by customary law; judicial review of legislative acts is undertaken in the Constitutional Court.

The Constitution of Mali (1992)[1] is limited in its commitment to protection for women and girls. It does not explicitly reference violence against women and girls, harmful practices or FGM/C. **Article 1** states that 'the human person shall be sacred and inviolable' and that '[e]very individual shall have the right to life, liberty, security and integrity of his person.' **Article 3** further states that 'no one shall be submitted to torture, nor to inhuman, cruel, degrading or humiliating treatment or brutality.'

There is currently no national legislation in Mali that specifically criminalises and punishes the practice of FGM/C.

There have been many attempts over the years to introduce a ban on FGM/C in Mali. Various draft laws drawn up by both government departments and non-governmental organisations (*NGOs*) have failed to be agreed and passed through parliament. Most recently, in July 2017, a draft law to address gender-based violence (including the prohibition of FGM/C) was prepared and presented to the

Ministry for the Advancement of Women, Children and the Family by the **National Program for the Fight Against Excision** (*PNLE*), with the support of technical and financial partners. It is reported that, once again, continued objections, particularly from high-profile religious leaders who support the practice, have prevented the law from progressing further, and this research has been unable to establish the current status of this draft bill (see below for further details).

Regarding commitments under international and regional treaties signed and ratified by Mali, **Article 116 of the Constitution** states, 'Treaties or agreements regularly approved or ratified shall have, from their publication, an authority superior to that of laws' (subject to reservations). Mali has signed and ratified various treaties relevant to FGM/C, including the **Convention on the Elimination of All forms of Discrimination Against Women** and the **African Charter on Human and Peoples' Rights on the Rights of the Women in Africa** (the Maputo Protocol), both of which create legal requirements for signatories to adopt laws against FGM/C (see Appendix I).

What The Law Covers

In the absence of national legislation prohibiting FGM/C in Mali, there are provisions within the **Criminal Code (2001)**[2] that could be considered relevant to the practice (although there is no evidence that they have successfully been used to prosecute perpetrators of FGM/C to date), including:

- **Articles 202 and 207** – criminalise and punish anyone inflicting 'blows, wounds or committing voluntary violence' on another; and
- **Article 220** – states that anyone who fails to provide assistance to a person in danger, without risk to themselves or others, either by personal action or contacting rescue services, shall face punishment.

Under the **Code of Persons and the Family (2011)**[3] in Mali, **Article 4** states that 'everyone has the right to respect for his body' and 'the human body is inviolable'. **Article 5** sets out that the integrity of the human person may be impaired only in the event of medical necessity (although it does not provide a definition of 'medical necessity'). It goes on to state that 'acts of a religious or customary nature, provided that they are not harmful to health, are not covered by this provision.' FGM/C, given its harmful effects on health, could therefore be considered covered by Article 5.

Draft Law Prohibiting FGM/C – Decision No. 2017-002/MPFEF/SG[4]

The most recent **draft law against gender-based violence**, which includes the prohibition of FGM/C, was put forward to the **Ministry for the Advancement of Women, Children and the Family** in July 2017. **Decision No. 2017-002/MPFEF/SG** established a committee to monitor the adoption of the bill, but it has not yet been voted on by parliament.

This draft law reportedly defines 'FGM' in **Article 6(d)** as 'any procedure resulting in partial or complete injury or removal of the female genitals or other mutilation of the female genitalia for reasons other than medical reasons.' In its current state, **Article 41** states:

> Anyone who proceeds, facilitates, participates or fails to assist a woman or girl undergoing female genital mutilation as defined in Article 6 shall be punished by imprisonment of five to ten years and a fine of XOF 500,000 to XOF 1,000,000.[5]
>
> (a) At any time prior to the sentencing, in the event that the victim suffers a complication or complications related to this criminal offense, including bleeding, fistula, infection or difficulty in delivery, the applicable penalty shall be imprisonment for ten to fifteen years and a fine of XOF 500,000 to XOF 1,000,000.
>
> (b) The penalty shall be life imprisonment if the perpetrator habitually engages in this practice, if he does so for commercial purposes or if this practice results in the death of the victim.
>
> (c) Where the victim is a child, the limitation period for the public prosecution for the present criminal offence shall be suspended until the victim reaches the age of maturity.[6]

This draft law was due to be examined by parliament in 2018, but no further details on progress were available at the time of writing.

Medicalised FGM/C

Medicalised FGM/C is not widespread in Mali: almost all FGM/C continues to be carried out by traditional practitioners.

In the absence of national legislation specifically criminalising FGM/C, **Circular No. 99-0019**[7], issued in 1999 by the **Minister of Health, the Elderly and Solidarity**, contained an administrative instruction to hospital directors, the **Prohibition of Excision in Health Facilities**. It stated that 'the practice of FGM cannot be tolerated' and urged hospital directors 'to take the necessary steps to prevent the practice, alleged or actual, of excision in health facilities under your moral and technical responsibility.' This Circular still remains in force; however, it does not contain sanctions in the event of non-compliance and does not have the power of a law that has passed through parliament. In theory, also, health workers employed by the Ministry of Health could face disciplinary sanctions for failing to perform their duties under **Article 73 of Law No. 02/53/ANRM**[8] of 16 December 2002 regarding **Statute of Public and Civil Servants**, but there is no evidence that this has been used to date.

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. Mali shares borders with Burkina Faso, Côte d'Ivoire, Guinea, Mauritania, Niger and Senegal, where FGM/C prevalence and the implementation and enforcement of laws varies widely.

The absence of any national legislation banning FGM/C in Mali gives families and cutters from neighbouring countries the opportunity to move across borders to avoid prosecution. Cross-border FGM/C is an ongoing challenge across West Africa, but there is an absence of data on the number of women and girls across the region who are taken abroad to be cut.

The existing national laws in Mali make no provision for the punishment of cross-border FGM/C. Furthermore, there is no specific provision for cross-border crimes in general in the Criminal Code.

Penalties

There are currently no penalties set out in the laws of Mali for practising FGM/C.

Penalties for anyone inflicting 'blows, wounds or committing voluntary violence' under the **Criminal Code** include five to twenty years' imprisonment in the event of unintentional death (under **Article 202**) or imprisonment of one to five years and a fine of between 20,000 and 500,000 francs CFA (US$35–884[9]) if causing illness or personal inability to work for more than 20 days (under **Article 207**). Anyone who fails to provide assistance to a person in danger (under **Article 220**) is liable to imprisonment for between one month and three years and/or a fine of between 24,000 and 1 million francs CFA (US$42–1,769[10]).

Medical professionals may also be penalised under **Article 207 of the Criminal Code** for inflicting wounds or committing voluntary violence. Punishments include suspension for between five and ten years (in all cases); between five and 20 years' imprisonment, depending on the seriousness of the crime; and, optionally, a ban from the country for one to ten years.

There is a lack of evidence that any of these provisions have been successfully used in relation to FGM/C in Mali. Only one court case has reportedly used the Criminal Code following the death of a two-and-a-half-year-old girl from FGM/C in 2013. The father reported the crime to the police, and the case was judged in Kayes, but no further details are available.[11]

The **draft law against gender-based violence** currently under consideration in Mali sets out punishments including a range of fines and prison sentences, as set out above.

Implementation of The Law

Cases

In the absence of national legislation banning FGM/C, there are few publicly reported prosecutions or court proceedings in relation to the practice in Mali. There is also a lack of evidence that other national legislation has been used in any way to prosecute perpetrators of FGM/C. There is generally weak implementation and enforcement of both international and regional instruments that are meant to protect women and girls.

Relevant Government Authorities and Strategies

The leading government department in Mali responsible for gender issues, including the elimination of FGM/C, is the **Ministry for the Advancement of Women, Children and the Family**. The coordination of work to end FGM/C is the responsibility of both the **National Action Committee for the Abandonment of Practices Harmful to the Health of Women and Children** (*Comité National d'Action pour l'Abandon des Pratiques Néfastes*), established in 1999, and the **National Program for the Fight against Excision** (*Programme National de Lutte pour l'abandon de l'Excision*) (*PNLE*), established in 2002. The most recent **National Action Plan** adopted by the Malian Government to address FGM/C covers the period 2015–2019.

The PNLE is divided into three separate bodies: a scientific and technical steering committee, a direction committee and an advisory board. It is responsible for a range of education and support services, including vital public-awareness-raising activities. The PNLE is central to the coordination and evaluation of national policy to end FGM/C in Mali, and it has been closely involved in the recent drafting and consultation phase of the proposed bill against gender-based violence.

In 2011 Mali became part of the **UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation** (*UNJP*). The UNJP has supported a wide range of projects and works in partnership with the Government and the PNLE to conduct research, monitoring, awareness-raising campaigns and training in communities and schools, as well as provide support services for victims of gender-based violence.

Civil Society Observations

Civil society observes that the Malian Government continues to fail to act upon the recommendations of the international community to adopt anti-FGM/C laws and thus fully support its efforts to eradicate the practice. For at least the last 15 years, various international treaty monitoring committees, while welcoming efforts in Mali to implement anti-FGM/C programmes, have also criticised the continuing absence of national legislation criminalising the practice.[12] While the Government reportedly acknowledges the need to pass a law and many key decision-makers appear to support the introduction of national legislation, the process is continually delayed by opposition, particularly from high-profile religious leaders who support the practice.

In the absence of a law, some doctors are reportedly practising FGM/C undercover and the government Circular (see 'Medicalised FGM/C' above) does little to deter them – civil society comments that it urgently needs revising to include penalties for practising medicalised FGM/C. Indeed, an ongoing challenge across Mali is that many of those members of society in positions of authority, including doctors, members of the judiciary and the police, are themselves from practising communities and continue to support FGM/C.

There is also a lack of capacity within the police force to respond to reports of FGM/C; for instance, an emergency telephone line (80333) for victims of gender-based violence in general, established in 2014 with the support of UN Women, goes through to the police, but they are reportedly unable to respond to the volume of calls (1,600 in 2016) due to under-resourcing. The telephone line is also not currently publicised as providing specific support to victims of FGM/C, although it would be within its remit to help anyone affected by the practice.

Conclusions and Suggestions for Improvement

Conclusions

- FGM/C prevalence in Mali remains high, and pressure to maintain the practice, particularly from high-profile religious leaders, continues to be a challenge for all those working to protect the health and rights of women and girls.
- Although Mali has signed up to many of the international and regional treaties that are relevant to protecting women and girls from gender-based violence and harmful practices, there is weak implementation and policy development. To date, various draft laws proposing to ban FGM/C in Mali have failed to be agreed and formally adopted by the state.
- While both international and grassroots NGOs and activists continue to work in communities to advocate for an end to FGM/C, the failure to pass an anti-FGM/C law undermines these efforts.

Suggestions for Improvement

National Legislation

- There is an urgent need to adopt robust national policy and pass legislation in Mali to protect women and girls of all ages from FGM/C. This should be done through the most relevant pieces of legislation, including the proposed law on gender-based violence currently awaiting passage through parliament and by amending the Criminal Code to make FGM/C a criminal offence.
- Anti-FGM/C laws need to be drafted in full consultation with representatives of all members of society, and the Government should draw on the experience of other FGM/C-practising countries who have implemented legislation to ensure that the content of the law is applicable and enforceable in the context of Mali.
- Laws need to criminalise and punish all perpetrators of the practice (including those who perform, procure, aid or abet FGM/C). Instances of medicalised FGM/C and cross-border FGM/C need to be included, too.
- Criminalising the failure to report FGM/C that is planned or has taken place is a further key consideration when protecting women and girls through national laws.
- The Government also has a responsibility to protect uncut women and girls (and their families) from verbal abuse, physical threats and exclusion from society. Such provisions are included in the laws of some other countries (for example, Uganda).
- Laws also need to protect all victims of FGM/C: women and girls who are pressured by society into agreeing to FGM/C should not be subject to criminalisation and further punishment.
- All relevant laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

Once national legislation is in place to protect women and girls from FGM/C, the following actions will contribute to efforts to end the practice in Mali.

- 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 be beneficial.
- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around 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 would improve efficiency and inform policy-makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- All professions (including those in health and education) need training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM/C.
- Support and protection for victims and witnesses in FGM/C cases will be essential.
- 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 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 these 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

MALI	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1974	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1974	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1985	✓ 1985		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 1999	
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		Reservation placed on Article 16
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1981	✓ 1981		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1996	✓ 1998		
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.

#NOFGM

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1 *Mali's Constitution of 1992* (1992) [Translated by Daniel G. Anna]. Available at (French) https://www.un.int/mali/sites/www.un.int/files/Mali/decret_ndeg_92-0731_p-ctsp_portant_promulgation_de_la_constitution.pdf and (English) https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en.

2 *Code Penal LOI No. 01-079 due 20 Aout 2001* (2001) Journal Officiel de la Republique du Mali. Available at http://www.droit-afrique.com/upload/doc/mali/Mali-Code-2001-penal.pdf.

3 *Code of Persons and the Family, 2011* (2011) Available at https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7690328CA644E8F8C1258084002ED4C7&action=openDocument&xp_countrySelected=ML&xp_topicSelected=GVAL-992BUF&from=state&SessionID=DLYYGUEO0Y.

4 *Draft text dated January 2017 supplied to 28 Too Many for the purposes of this study.*

5 *US$884–1,769 as at August 2018 (https://www.xe.com/currencyconverter/).*

6 *The age of majority in Mali is 18 years.*

7 Ministère de la Santé et de l'Hygiène Publique (1999) *Circulaire 99-0019, Interdiction de l'excision dans les établissements de santé*. Available at http://mail.cnom.sante.gov.ml/index.php?option=com_content&view=article&id=323:circulaire-99-0019-interdiction-de-lexcision-dans-les-etablissements-de-sante&catid=61&Itemid=87.

8 *Loi n° 02-053 du 16 décembre 2002 portant statut général des fonctionnaires* (2002) Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=71444&p_country=MLI&p_count=234.

9 *Currency conversion as at August 2018 (https://www.xe.com/currencyconverter/).*

10 *Currency conversion as at August 2018 (https://www.xe.com/currencyconverter/).*

11 UNFPA (undated) Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa, p.37. Available at http://wcaro.unfpa.org/sites/default/files/pub-pdf/EN-UNFPA-ANALYSIS-ON-FGM.pdf.

12 *For further information, see Annex 5 of the UNFPA's Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa (pp.90–94).*

Cover image: Marianoblanco (2011) *Mopti, Mali – Sept. 5, 2011: Children playing in the street, Mali.* Shutterstock photo ID: 349049528.

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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