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FGM... let's end it.

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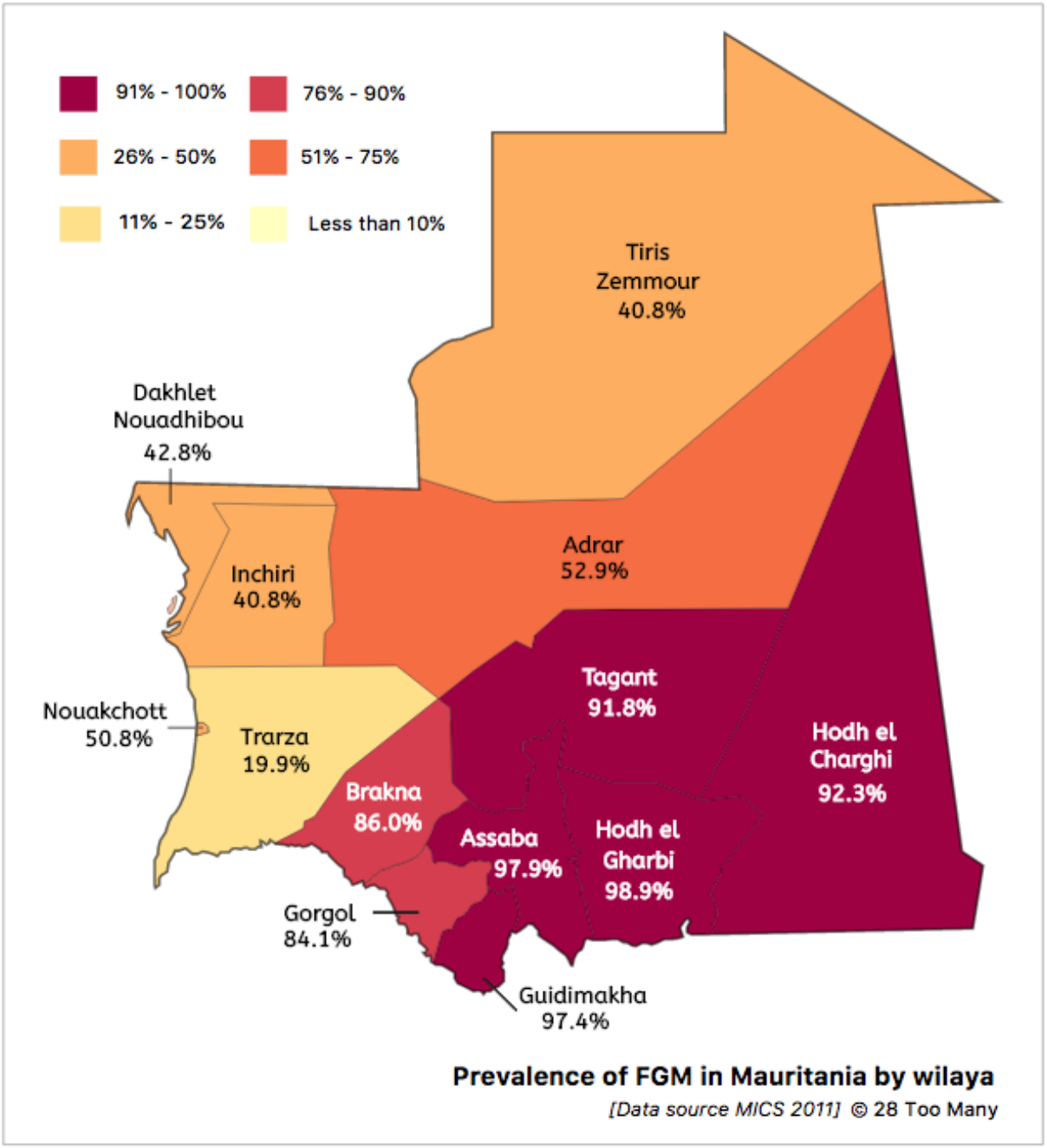
MAURITANIA:

THE LAW AND FGM/C

September 2018

The prevalence of FGM/C in women aged 15–49 is 66.6%.

The regions with the highest prevalence are in the south and south-east.



- FGM/C is practised very shortly after birth and rarely after one year.
- 'Flesh removed' is the most common type of FGM/C practised.
- Approximately 93% of FGM/C incidences are carried out by traditional practitioners.
- 36.1% of women aged 15–49 believe FGM/C should continue.

Source of data: L'Office National de la Statistique (2016) *Enquête par Grappes à Indicateurs Multiples, 2015, Résultats clés*, p.18. Nouakchott, Mauritanie. Available at **https://mics-surveys-prod.s3.amazonaws.com/MICS5/West%20and%20Central%20Africa/Mauritania/2015/Key%20findings/Mauritania%202015%20MICS%20KFR_French.PDF**.

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Mauritania	
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
X	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***

* *The main law only criminalises FGM/C performed on minors (those under 18 years of age).*

What is The Law Against FGM/C?

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

Mauritania's legal system is a mixture of Islamic and French civil law.

The **Constitution of Mauritania** (1991, amended 2012)[1] does not specifically refer to violence against women and girls, harmful traditional practices or FGM/C. **Article 13** states, 'No one shall be . . . submitted to torture and other cruel, inhuman or degrading treatments. These practices constitute crimes against humanity and are punished as such by the law.' The same Article goes on to say that the 'Inviolability of the human person' is guaranteed by the State.

At the time of writing, Law No. 2005–015 on the Criminal Protection of the Child (2005) (*Law No. 2005–015*) is the main law in Mauritania that criminalises and sets out the punishment for FGM/C performed on a child.[2]

In 2016, the Council of Ministers of the Government of Mauritania approved the texts of two new bills on **Gender Based Violence** and **Reproductive Health**. The bills reportedly include a ban on FGM/C and penalties for perpetrators in accordance with the Penal Code.[3]

What The Law Covers

Article 12 of Law No. 2005–015 currently prohibits the practice of FGM/C on minors[4] and sets out the punishment for 'damaging or attempting to harm the genitals of a female child, by infibulation, desensitisation or by any other means'. The law therefore only applies to girls under the age of 18 years.

Law No. 2005–015 does not explicitly address procuring, aiding or abetting the practice of FGM/C, nor the failure to report knowledge of planned or completed FGM/C. It does, however, criminalise FGM/C performed by health professionals.

Medicalised FGM/C

The prevalence of medicalised FGM/C appears to be low in Mauritania. 3% of girls aged 0–14 who have undergone FGM/C (according to their mothers) have been cut by a health professional.[5]

Law No. 2005–015 states under **Article 12** that the performance or attempted performance of FGM/C on a child by a member of the medical or paramedical profession is also prohibited and subject to higher penalties.

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. The movement across borders for the purpose of FGM/C is known to take place in Mauritania, although there is a lack of information on the extent of the problem. Attempts have been made in recent years to implement cross-border programmes to tackle the issue (for example, with Senegal).[6]

Law No. 2005–015 does not directly address cross-border FGM/C: it neither criminalises nor punishes FGM/C carried out on, or by, citizens of Mauritania in other countries.

Penalties

Article 12 of Law No. 2005–015 establishes the following criminal penalties for violation:

- Where the act of FGM/C results in 'harm'" to the child, the perpetrator is liable to punishment of one-to-three years' imprisonment and a fine of 120,000 to 300,000 ouguiyas (US$337.80–844.50[7]).
- The penalty can rise to four years imprisonment and a fine of 160,000 to 300,000 ouguiyas (US$450.40–844.50) when the perpetrator belongs to the medical or paramedical profession.

The texts for the two proposed bills on Gender Based Violence and Reproductive Health, and the penalties proposed therein for FGM/C, are not currently available in the public domain. It is noted, however, that the new legislation will attempt to address concerns raised by the Committee on the Elimination of Discrimination against Women (*CEDAW*) that Law No. 2005–015 is insufficient in only punishing FGM/C when it 'causes harm'.

Implementation of The Law

Cases

It has not been possible to identify any prosecutions brought under Law No. 2005–015. The most recent report published by the UNFPA-UNICEF Joint Programme did not list any arrests or convictions for FGM/C in Mauritania during 2016, and only one case was reportedly brought to court (though no details are given).[8] Again, the CEDAW has previously raised concerns regarding the lack of prosecutions and convictions of FGM/C practitioners in Mauritania.[9]

Relevant Government Authorities and Processes

The **Ministry of Social Affairs, Childhood and the Family** is responsible for the work to end FGM/C in Mauritania.[10] A **National Strategy** on the abandonment of FGM/C was first developed in 2007 to create a favourable institutional environment in which to undertake the work, reinforce the capacity of interventions and develop an integrated plan for communication.[11] In 2008 Mauritania set up a **National Committee** to tackle gender-based violence, including FGM/C.

Since 2011 Mauritania has also worked in partnership with the **UNFPA-UNICEF Joint Programme to end FGM** (*UNJP*) and the **National FGM/C Strategy and Action Plan** was further updated in 2015. Strategies to end FGM/C include education and community support, public declarations of abandonment, and policy and law reinforcement. A government budget-line for work to end FGM/C was introduced in 2016, and the practice is also included as a public-health concern in the **National Strategy on Reproductive Health (2016-2020)** and the **National Strategy on Accelerated Growth and Prosperity (2016-2030)**.[12]

In addition, in 2010, leading clerics in Mauritania issued a *fatwa* condemning the practice of FGM/C as having a negative impact on health.[13]

Civil Society Observations

After intensive public-awareness campaigns, the Government, the UNJP, the National Imams' Association and civil-society organisations across Mauritania have brought the issue of gender-based violence, including FGM/C, into the open, and popular attitudes have shifted.[14] The legal system, to date, has not been supportive of these efforts, however, and it has not been easy for victims of FGM/C to seek or achieve justice. It is widely observed that the law as it stands has never been properly enforced.

Recent observations by civil society also show concern that the draft bill addressing violence against girls that is still waiting to pass through the National Assembly will not be effective, in that it only prosecutes the perpetrator if the girl dies as a result of FGM.C. (28 Too Many and Orchid Project, however, have not been able to verify the content and wording of the draft bill for the purpose of this research.) It has also been commented that there is a general lack of will among the authorities to pass the legislation.

Civil society identifies a clear need for the Government to closely involve the police and judiciary in the enactment of the law against FGM/C, and that all actors, including non-governmental organisations, religious groups and youth organisations must be in a position to disseminate information on the law as part of the wider programmes to end the practice.

Conclusions and Suggestions for Improvement

Conclusions

- **Law No. 2005–015** currently prohibits the practice of FGM/C on minors and sets out the punishment for causing harm to the genitals of a female child. It also criminalises FGM/C performed by health professionals. Women over the age of 18 are not protected by law.
- The law does not currently address procuring, aiding or abetting the practice of FGM/C, nor the failure to report knowledge of planned or completed FGM/C. It also does not criminalise and punish instances of cross-border FGM/C.
- While there is governmental support for raising awareness, the legal framework does not provide robust protection for all women and girls at risk of FGM/C: there appears to be weak law-enforcement and little information on prosecutions to date.

Suggestions for Improvement

National Legislation

- Future amendments to the law in Mauritania need to clearly define the meaning of 'harm', as all types of FGM/C cause harm and should therefore be illegal.
- Legislation needs to be urgently tightened to include women and girls of all ages and to criminalise and punish all who perform, procure, aid or abet the practice of FGM/C (whatever the outcome).
- The law also needs to address movement across national borders and criminalise and punish the performance and procurement of all cross-border FGM/C.
- The law should be strengthened, and the punishment set out, regarding the failure to specifically report knowledge of FGM/C, whether planned or already taken place.
- Laws need to be made accessible and easy to understand in all local languages.

Implementation of the Law

- Adequate monitoring and reporting of cases in Mauritania would improve efficiency and inform policy makers, the judiciary, the police, civil society and all those working to implement and enforce 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.

- 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.
- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around the law.
- There needs to be a focus on further strengthening partnerships across national borders where FGM/C prevalence remains highest and illegal activity continues to take place.
- Tribunals could be encouraged to make sure that 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 they are currently unavailable and a need is identified, appropriate protection measures (for example, telephone helplines or safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

MAURITANIA	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 2004	Reservation on Article 18
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 2004	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)			✓ 2001	
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 2004	
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1991		General reservation[15]
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*)	✓ 1982	✓ 1986		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)				Not signed
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*)		✓ 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 *Constitution de la République Islamique de Mauritanie* (1991) English available at https://constitution.com/constitution-of-mauritania/ and French available at http://extwprlegs1.fao.org/docs/pdf/mau135226F.pdf.
2 République Islamique de Mauritanie (2005) O*rdonnance n°2005-015 portant protection pénale de l'enfant*. Available at http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/73641/75348/F518879681/MRT-73641.pdf.
3 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*, p53. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
4 *The age of majority in Mauritania is 18 years (see http://www.africanchildforum.org/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_2_en.pdf).*
5 UNICEF (2013) *Mauritania: Statistical Profile on Female Genital Mutilation/Cutting*, December 2013. Available at https://data.unicef.org/wp-content/uploads/country_profiles/Mauritania/FGMC_MRT.pdf.
6 Tostan (2014) *Communities in Mauritania and Senegal Work Together Towards Abandoning Female Genital Cutting (FGC)*, 10 September. Available at https://www.tostan.org/communities-mauritania-and-senegal-work-together-towards-abandoning-female-genital-cutting-fgc/.
7 *Conversion of ouguiyas to US dollars as at 20 February 2018.*
8 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting, *op. cit.*
9 Convention on the Elimination of Discrimination against Women (2014) *Concluding observations on the combined second and third periodic reports of Mauritania*.
10 République Islamique de Mauritanie (2014) *Ministére des Affaires Sociales, de l'Enfance et de la Famille*. Available at http://www.masef.gov.mr/spip.php?page=recherche&lang=fr&recherche=MGF&Image49.x=10&Image49.y=8.
11 UN Women (undated) 'Mauritania', *Global Database on Violence Against Women*. Available at http://evaw-global-database.unwomen.org/en/countries/africa/mauritania?formofviolence=c1acf03e0c694de38a557407ce413e65.
12 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting, *op. cit.*
13 Laura Adolphe (2010) 'Des imams interdisent l'excision en Mauritanie', *Afrik.com*, 18 January. Available at http://www.afrik.com/article18522.html.
14 United States Department of State (2015) *Mauritania 2015 Human Rights Report*, pp.17–18. Available at https://photos.state.gov/libraries/mauritania/231771/PDFs/2015%20Human%20Rights%20Report.pdf.
15 *Mauritania ratified the Convention on the Rights of the Child with a general reservation in relation 'to articles or provisions which may be contrary to the beliefs and values of Islam, the religion of the Mauritanian People and State.'*

Cover image: Homo Cosmicos (2012) *Portrait of Mauritanian woman in national dress Melhfa – 10.11.2012 Chinguetti, Mauritania*. Shutterstock ID: 673077751.

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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