THOMSON REUTERS FOUNDATION

28 TOO MANY
FGM...
let's end it.

ORCHID PROJECT



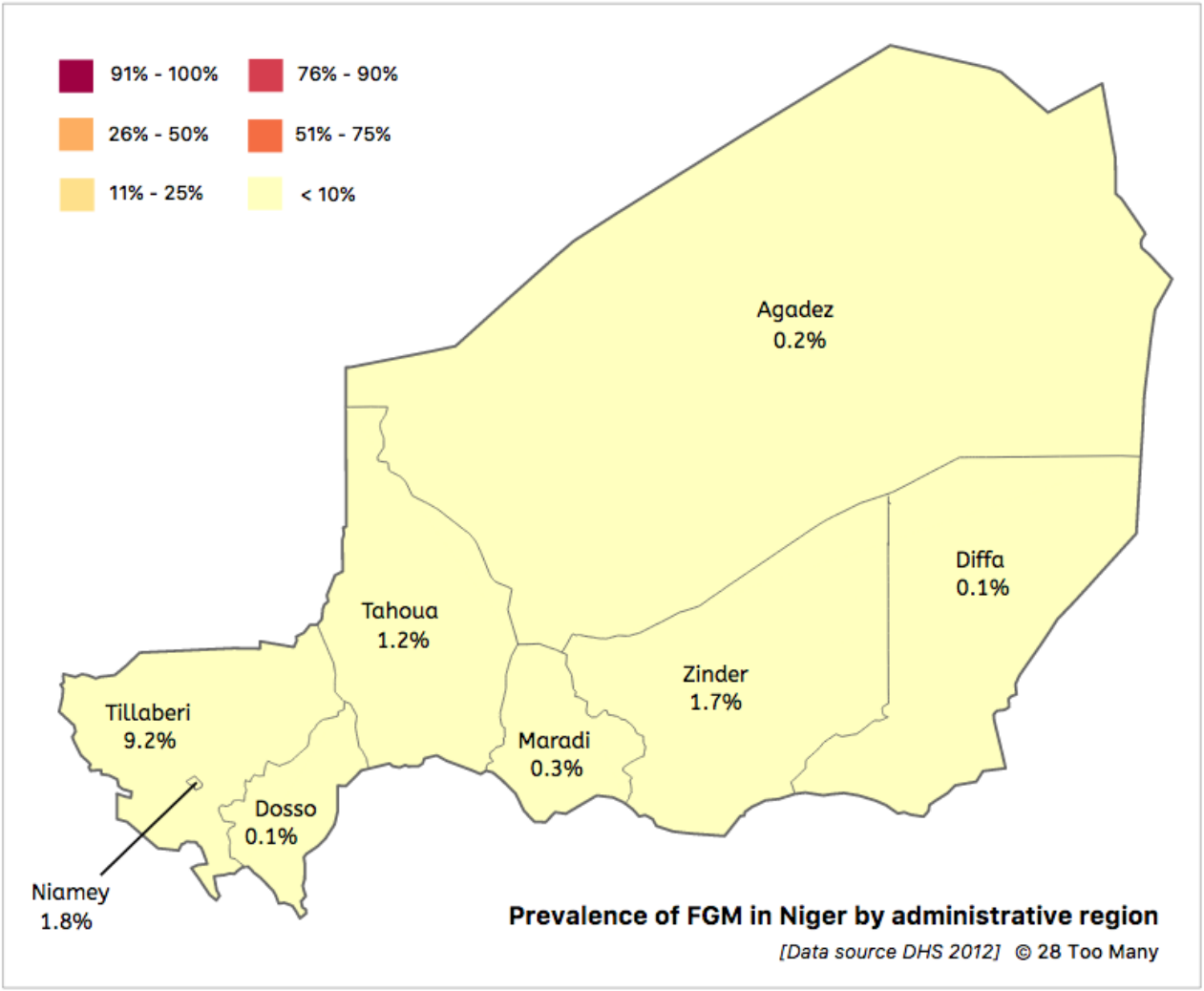
NIGER:

THE LAW AND FGM/C

September 2018

In Niger, the prevalence of FGM/C in women aged 15–49 is 2%.

Tillaberi, in the south-west, has the highest prevalence.



- 75.7% of women aged 15–49 who have undergone FGM/C were cut before the age of five.
- 'Cut, flesh removed' is the most common type of FGM/C practised.
- 84.4% of FGM/C is carried out by traditional cutters.
- 82.4% of women and 85.7% of men (aged 15–49) believe that FGM/C should be stopped.

Note: *Due to the low prevalence of FGM/C in Niger, very few surveyed women have been cut. For this reason, detailed breakdowns by region, etc. should be treated with caution.*

Source of data: Institut National de la Statistique (INS) et ICF International (2013) *Enquête Démographique et de Santé et à Indicateurs Multiples du Niger 2012*. Calverton, Maryland, USA : INS et ICF International. Available at **http://dhsprogram.com/pubs/pdf/FR277/FR277.pdf.**

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Niger	
The Constitution explicitly prohibits:	
✓	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 criminalised; only failure to report crimes in general (see below).*

What is The Law Against FGM/C?

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

Niger has a mixed legal system of civil law (based on French civil law), Islamic law and customary law.

The **Constitution of Niger (2010)**[1], under **Article 11,** imposes an obligation on the State to respect and protect the human person. **Article 14** states that no one shall be subject to torture, slavery, cruel, inhuman or degrading abuse or treatment; anyone found guilty of such acts will be punished according to the law. **Article 22** specifically requires the State to adopt public policies and other measures to eliminate all forms of discrimination concerning women and young girls, as well as measures to combat violence done to them in their public and private lives. Further, **Article 171** states that treaties or agreements regularly ratified supersede domestic laws.

The main law prohibiting FGM/C in Niger is Law No. 2003-025 (the *Penal Code*), adopted in June 2003. This amends the Penal Code of 1961 (Law No. 61-27) and criminalises and punishes all forms of FGM/C.[2]

What The Law Covers

The **Penal Code** defines and criminalises FGM/C in Niger as follows:

- **Article 232.1** defines FGM as 'any assault on the female genital organ by total or partial removal of any of its parts, by excision, infibulation, desensitisation or by any other means.'
- **Article 232.2** criminalises and sets out the punishments for anyone performing, attempting or assisting in the practice of FGM/C, including when the act causes death of the victim.
- **Article 232.3** criminalises and sets out the punishments for FGM/C when the perpetrator is a member of the medical or paramedical profession.

The **Penal Code** does not directly criminalise the failure to report FGM/C. More generally, under **Article 186**, anyone who has knowledge of a crime having taken place or been attempted and not reported it to the relevant authorities immediately will be subject to punishment. It additionally states that, if reporting the crime could have had the effect of preventing or limiting its effects, or if the perpetrator was likely to commit new crimes that such reporting could have prevented, a longer sentence may apply. However, the spouse, relatives or relatives by marriage of either the perpetrator or any accomplices are exempt from the obligation to report the crime to the authorities.

It is also a crime, subject to punishment, to wilfully cause injury, assault or commit any violent act against an individual, including a child, under **Articles 222** and **226** of the Penal Code.

In addition, **Article 7** of **Law No. 2006-16 on Reproductive Health in Niger (2006)** states that everyone has the right to freedom from torture and cruel, inhuman or degrading treatment of their body in general, and their reproductive organs in particular.[3]

Medicalised FGM/C

Medicalised FGM/C is not widespread in Niger, according to available information. Almost all FGM/C continues to be carried out by traditional practitioners.

In the event of medicalised FGM/C being carried out, **Article 232.3 of the Penal Code** criminalises and sets out punishments where the perpetrator is a member of the medical or paramedical profession; maximum penalties apply and the right to practise may be withdrawn for up to five years.

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 a lack of information as to what extent movement across national borders for the purpose of FGM/C is an issue in Niger.

It is clear, however, that FGM/C in Niger is mainly practised in areas bordering neighbouring countries where FGM/C prevalence remains high and the existence and enforcement of laws varies widely, including the Tillabery region, near the border with Burkina Faso and Mali, and the Diffa region, near Chad and Nigeria.[4] Previous reports from the United Nations, for instance, have identified the movement of traditional cutters across the Niger–Burkina Faso border to carry out FGM/C.[5]

The **Penal Code** does not refer to cross-border FGM/C; it neither criminalises nor punishes FGM/C carried out on or by citizens of Niger in other countries.

Penalties

The **Penal Code** establishes the following criminal penalties for violation.

- **Article 232.2** – any person who performs, assists, or attempts to carry out FGM/C will be liable to a term of imprisonment of six months to three years, and a fine of 20,000–200,000 francs CFA (US$35–347).
- **Article 232.2** – if the FGM/C results in death, the perpetrator will be sentenced to a term of imprisonment between 10 and 20 years.
- **Article 232.3** – where the perpetrator is a member of the medical or paramedical profession, the maximum sentence will be carried out and their professional licence to practice will be withdrawn for a maximum of five years.

Regarding failure to report a crime that has taken place or been attempted, under **Article 186** of the Penal Code the punishment ranges from one to six months' imprisonment and/or a fine of 10,000 to 100,000 francs CFA (US$17–174). In circumstances where denunciation of a planned crime could have prevented or limited its effects, the punishment is six months' to three years' imprisonment.

Implementation of The Law

Cases

There have been few prosecutions for FGM/C in Niger. Case details are very limited, and information about whether sentences were followed through is not widely available. The following cases were reported back in 2010:

- In January 2010, three female practitioners were each sentenced to an eight-month suspended sentence and a fine of 40,000 francs CFA (US$69) for performing FGM/C. The case was tried in the Lower Court of Kollo, in the Tillabery Region.[6] In the same month, 45 mothers in Kollo reportedly received fines and eight-month suspended sentences for being complicit in allowing their daughters to be cut. It is possible that these two cases were linked, but no further information is publicly available.[7]
- In November 2010, a woman was charged with seven cases of performing FGM/C on girls aged two months to three years in a village near Niamey. The mothers were also arrested. However, prior to any hearing, the court and mental health specialists determined that the female FGM/C practitioner was unfit to stand trial, and the case was not followed through.[8] There are no details as to whether the mothers went to court.

There are no reported cases of medical professionals being taken to court for performing FGM/C in Niger.

Relevant Government Authorities and Strategies

The **Ministry for the Advancement of Women and Child Protection** is the government department responsible for the coordination of work to end FGM/C in Niger. It supports the **National Committee on Harmful Traditional Practises in Niger (*CONIPRAT*)** in leading the national response.

The Government and CONIPRAT, in partnership with UNICEF and other development partners and NGOs, runs regional campaigns to increase awareness of the harmful consequences of FGM/C among both opinion leaders (including political authorities and local and religious leaders) and children and parents. Retraining for other professions and alternative-livelihood schemes have also been run for traditional practitioners.

An innovative approach to reaching remote communities has been the use of 'awareness caravans', which take information on FGM/C (as well as other topics) around the country. Judges also accompany these caravans to give advice to women who are victims of gender-based violence.[9] Media is also widely used, particularly community radio, broadcasting in local languages, and televised debates involving key religious leaders.[10]

Civil Society Observations

Observers note that the Government, through CONIPRAT's programmes, disseminates information about the law on FGM/C, and both the police and members of the judiciary have been given specialist training regarding FGM/C issues. Importantly, too, the 2003 law has been translated into all of Niger's languages for wider circulation.[11]

Civil society notes, however, that there is more to be done: awareness around the content and meaning of the law generally remains low, and there is a continuing lack of enforcement.[12]

Conclusions and Suggestions for Improvement

Conclusions

- **Law No. 2003-025** (the *Penal Code*) criminalises and punishes those who perform, attempt or assist in the practice of FGM/C, including those from the medical or paramedical profession. Instances of cross-border FGM/C are not prohibited or punished by the current law.
- The **Penal Code** does not explicitly criminalise failure to report FGM/C, but it does set out the punishments for failure to report a crime in general.
- Knowledge of the law and enforcement remain weak across Niger, and it has not been possible to verify the outcome of any prosecutions to date.

Suggestions for Improvement

National Legislation

- The law needs to criminalise and punish any movement across national borders for the purpose of FGM/C.
- The law could be further strengthened in relation to the failure to specifically report knowledge of FGM/C, whether it has taken place, is taking place or is planned.

Implementation of the Law

- Ensure anti-FGM/C programmes continue to include clear and accurate information around the law.
- Adequate monitoring and reporting of FGM/C cases in Niger would improve efficiency and inform policy=makers, the judiciary, the police, and all those working to implement and enforce the law.
- Maintaining and increasing the education of local and religious leaders on the law, including their responsibilities and the importance of the law in protecting women and girls in their communities.
- Judges and local law enforcers need continued 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 in popular local media such as community radio, and made available in local languages.
- Where literacy rates are low, information on the law needs to be made available through all available 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 lines or safe spaces) should be put in place for girls at risk of FGM/C.

---

1 *Niger's Constitution of 2010* (2010) [English translation William S. Hein & Co., Inc., 2012]. Available at https://www.constituteproject.org/constitution/Niger_2010.pdf.
2 Republique du Niger Ministere de la Justice (2003) *Code Penal*. Available at http://www.droit-afrique.com/upload/doc/niger/Niger-Code-2003-penal.pdf.
3 Republique du Niger (2006) *Loi sur la Santé de la Reproduction au Niger (Law on Reproductive Health in Niger)*. Available at https://www.mindbank.info/item/2374.
4 UNICEF (undated) *Priorities in Child Survival, Education and Protection*. Available at https://www.unicef.org/wcaro/WCARO_Niger_Factsheet-11.pdf.
5 US Department of State (undated) *Niger*. Available at https://www.state.gov/documents/organization/160137.pdf.
6 *Ibid*.
7 Laurent Prieur and Abdoulaye Massalatchi (2010) 'W.African genital cutters face fatwa, jail', *Reuters*, 22 January. Available at http://www.reuters.com/article/idUSLDE60L13C.
8 US Department of State, *op. cit.*
9 UN Convention on the Elimination of All Forms of Discrimination against Women (2007) *38th Session of the Committee on the Elimination of Discrimination against Women – Summary record of the 789th meeting*, 24 July. Available at https://digitallibrary.un.org/record/606307/files/CEDAW_C_SR.789-EN.pdf.
10 *Ibid*.
11 UNICEF, *op. cit.*
12 The Women's Torch (2017) *Niger : Lutte contre l'excision, le Niger à la pointe du combat*, 7 February. Available at http://www.thewomenstorch.com/fr/2017/02/07/niger-lutte-contre-lexcision-le-niger-a-la-pointe-du-combat/.

All currency conversions as at August 2018 (https://www.xe.com/currencyconverter/).

Cover image: Danita Delmont (2009) *Niger, Niamey, Portrait of an African Muslim schoolgirl with a blue scarf covering her hair, and holding her hand before her mouth*. Shutterstock photo ID: 177455855.

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.

Acknowledgements: Cleary Gottlieb Steen & Hamilton LLP

Appendix I: International and Regional Treaties

NIGER	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1986	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1986	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)			✓ 1999	Reservations on Articles 2, 5, 15, 16, 29
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 1998	
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1986	✓ 1986		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1999	✓ 1999		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2004			

'**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.

The information in this report has been compiled in cooperation with Cleary Gottlieb Steen & Hamilton LLP from documents that are publicly available and is for general information purposes only. It has been prepared as a work of legal research only and does not represent legal advice in respect of any of the laws of Niger. It does not purport to be complete or to apply to any particular factual or legal circumstances. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with any person or entity. Neither 28 Too Many, Orchid Project, Cleary Gottlieb Steen & Hamilton LLP, the Thomson Reuters Foundation nor any other contributor to this report accepts responsibility for losses that may arise from reliance upon the information contained herein, or any inaccuracies, including changes in the law since the research was completed in September 2018. No contributor to this report holds himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in this project or contribution to this report. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction/s when dealing with specific circumstances. It should be noted, furthermore, that in many countries there is a lack of legal precedent for the penalties laid out in the law, meaning that, in practice, lesser penalties may be applied.

#NOFGM

© Orchid Project & 28 Too Many 2018

Version 2, 2026

research@orchidproject.org