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FGM... let's end it.

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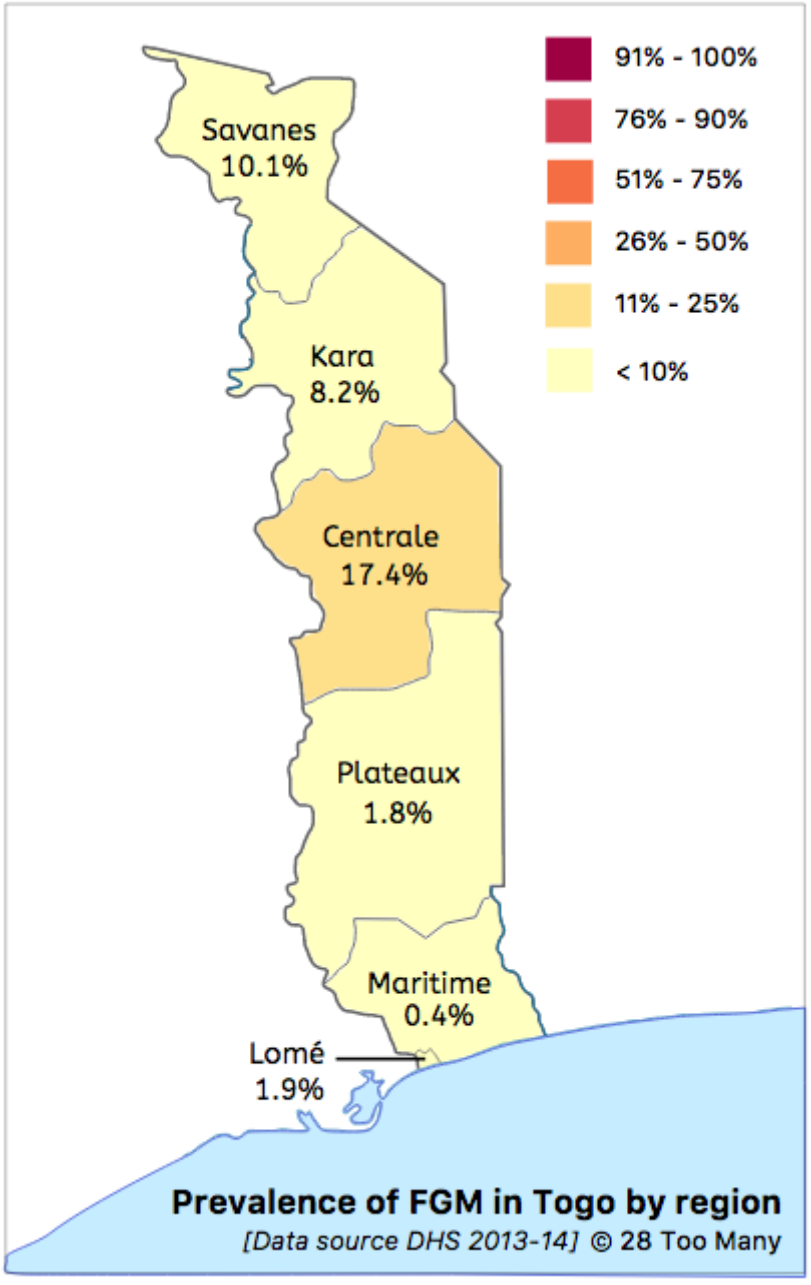
TOGO:

THE LAW AND FGM/C

September 2018

In Togo, the prevalence of FGM/C in women aged 15–49 is 4.7%.

The region with the highest prevalence is Centrale, at 17.4%;
the lowest is Maritime in the south, at 0.4%.



- The available data indicates that cutting is most common in girls under 5 and girls aged 10–14.
- 'Cut, flesh removed' is the most common type of FGM/C practised.
- Almost all FGM/C is carried out by traditional practitioners.
- 94.7% of women and 95.6% of men aged 15–49 believe that FGM/C should be stopped.

Source of data: Ministère de la Planification, du Développement et de l'Aménagement du Territoire (MPDAT), Ministère de la Santé (MS) et ICF International (2015) *Enquête Démographique et de Santé au Togo 2013-2014*, p.274. Rockville, Maryland, USA : MPDAT, MS et ICF International. Available at **http://dhsprogram.com/pubs/pdf/FR301/FR301.pdf**.

*For further information on FGM/C in Togo, see **https://www.fgmcri.org/country/togo/**.*

Domestic Legal Framework

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

** Not directly; cross-border crimes in general are punishable under the Penal Code (see below).*
*** At the time of writing, a current national strategy to end FGM/C in Togo has not been identified.*

What is the Law Against FGM/C?

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

Togo has a civil law system based on the French model mixed with customary law.

The Constitution of Togo (1992, amended 2007)[1] does not specifically refer to violence against women and girls, nor does it address harmful practices or FGM/E. **Article 13** places obligation on the state to guarantee each person's life, security and physical and mental integrity, and **Article 21** states, 'The human person is sacred and inviolable' and 'No one may be submitted to torture or to other forms of cruel, inhuman or degrading treatments.'

The main law relating to FGM/C in Togo is Law No. 98-016, dated 17 November 1998, on the prohibition of female genital mutilation (*Law No. 98-016*).[2]

Law No. 2015-010, the new Penal Code of Togo (*Penal Code*), dated 24 November 2015, also criminalises the practice of FGM/C.[3]

What the Law Covers

The main law, **Law No. 98-016**, bans all forms of FGM/C in Togo and defines FGM as the total or partial ablation of the external genital organs of infant girls, young girls or women and/or all other operations concerning these organs. However, **Article 2** also states that surgical operations on genital organs performed under medical prescription are excluded from this category.

Article 3 sets out that any person, whether using traditional or modern methods, who performs, procures or promotes FGM/C is guilty of voluntary violence against the person that is cut and is subject to punishment. **Article 6**, however, exempts from these provisions the parents or relatives (up to and including the 4th degree) of the perpetrators or accomplices.

Article 6 also creates a positive obligation on any person to report any FGM/C-related offence to a public authority, whether the act of FGM/C has already occurred, is in progress or is being planned. The failure to do so is subject to punishment.

Law No. 98-016 does not directly address FGM/C carried out by health professionals, nor cross-border FGM/C (see below).

Article 217 of the Penal Code also bans all forms of FGM/C in Togo, and **Article 218** gives the same definition and exceptions as **Law No. 98-016**. **Articles 219–221** criminalise and punish anyone who practises or promotes FGM/C and is thus guilty of voluntary violence. **Article 222** also punishes the failure to report to the public authorities FGM/C that has taken place, is in progress or is being planned.

In addition, the following laws in Togo address FGM/C.

- **Law No. 2007-005 on Reproductive Health**[4] addresses the rights of women to reproductive health in **Chapter 2**, and **Article 11** states that no woman should be subjected to torture and/or violence including rape, forced and child marriage, and FGM/C.
- **Law No. 2007-017, the Children's Code**[5], states under **Article 243** that no child (defined as anyone under 18 years of age) shall be subjected to traditional or modern practices harmful to their well-being, and in **Articles 360–365** defines FGM and criminalises and punishes those who practise, promote or fail to report it, in line with the main law, **Law No. 98-016**.

Medicalised FGM/C

The medicalisation of FGM/C does not appear to be significant in Togo: almost all FGM/C is carried out by traditional practitioners.

The current laws in Togo do not directly address FGM/C if it is carried out by a health professional or in a medical setting. Surgical operations on genital organs performed in accordance with a medical prescription are excluded from the general prohibition of FGM/C under both **Article 2 of Law No. 98-016** and **Article 218 of the Penal Code**. The basis (medical or otherwise) on which such surgical operations can be prescribed is not defined, however.

Article 7 of Law No. 98-016 places an obligation on those responsible for public and private health facilities to ensure that victims of FGM/C receive the most appropriate care in their centres or on their premises. They are also required to inform the relevant public authorities without delay, so they can follow up on how the victim came to have had FGM/C, and to carry out any necessary legal action.

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. Togo shares borders with other countries where the existence and enforcement of anti-FGM/C laws vary widely, including Benin, Burkina Faso and Ghana. It has been reported for many years that the movement across national borders to practise FGM/C is a problem across the region and that FGM/C practitioners and families continue to cross from neighbouring communities in Burkina Faso and Ghana into northern Togo to avoid law enforcement. It is unclear to what extent Togolese citizens cross borders into other countries for the purposes of FGM/C.

The main law in Togo, **Law No. 98-016**, does not address cross-border FGM/C. It does not explicitly criminalise or punish FGM/C carried out on or by a citizen of Togo in another country. More generally, the **Penal Code** is applicable to any crime committed in another country by a citizen of Togo (**Article 9**) and also to any offence committed abroad by a Togolese citizen if the act is also punishable by the law of the country where it was committed, unless otherwise stipulated. As FGM/C is criminalised under the Penal Code, any citizen of Togo participating in the practise in another country should be liable to prosecution.

Penalties

Both **Law No. 98-016** and the **Children's Code** establish the following criminal penalties for their violation.

- Anyone found guilty of performing, participating in or promoting FGM/C is subject to two months' to five years' imprisonment (under **Article 4 of Law No. 98-016**) or two-to-five years' imprisonment (under **Article 362 of the Children's Code**) and/or a fine of 100,000 to 1,000,000 CFA Francs under both laws (US$177–1,769[6]). The penalties will be doubled in the case of a repeated offence.
- If FGM/C results in the death of the victim, **Article 5 of Law No. 98-016** and **Article 363 of the Children's Code** increase the punishment to five-to-ten years' imprisonment.
- Failure to report FGM/C to the public authorities, whether it has already been carried out, is taking place or is planned, is punishable under **Article 6 of Law No. 98-016** and A**rticle 364 of the Children's Code** with one month's to one year's imprisonment or a fine of 20,000 to 500,000 CFA Francs (US$35–885).

The more recent **Penal Code of Togo** also sets out penalties for FGM/C that differ from the above.

- **Article 220** punishes anyone guilty of practising or promoting FGM/C with five-to-ten years' imprisonment and/or a fine of 5,000,000 to 25,000,000 CFA francs (US$8,845–44,211). The penalties will be doubled in the case of a repeated offence.
- If FGM/C results in the death of the victim, **Article 221** increases the punishment to 20-to-30 years' imprisonment and a fine of 20,000,000 to 50,000,000 CFA Francs (US$35,370–88,425).
- Failure to report FGM/C to the public authorities, whether it has already been carried out, is taking place or is planned, is punishable under **Article 222** with one-to-five years' imprisonment or a fine of 1,000,000 to 5,000,000 CFA Francs (US$1,769–8,845).

These penalties are higher than those given in either **Law No. 98-016** or **the Children's Code**. While all these laws are in force in Togo, it has not been possible to confirm which provisions and penalties would take precedence in a court of law.

Implementation of the Law

Cases

Publicly available information on FGM/C cases brought to court in Togo is very limited, and it is unknown to what extent law enforcement is proving successful in areas of higher prevalence or the outcome of any prosecutions made in recent years.

A 2016 Human Rights Report on Togo noted, 'The law was rarely enforced, however, because most cases occurred in rural areas where awareness of the law was limited or traditional customs often took precedence over the legal system among certain ethnic groups.'[7]

Relevant Government Authorities and Strategies

Key government departments with responsibility for combating violence against women in Togo include the **Ministry of Social Action**, **Promotion of Women and Literacy**, the **Ministry of Health and Social Protection**, and the **Ministry of Justice and Relations**. Work to end FGM/C in Togo appears to be integrated into the overall government **strategy to combat gender-based violence**, but there is an absence of detailed information on this strategy and, at the time of writing, no national action plan on FGM/C has been identified.

The 2016 Universal Periodic Review of Child Rights in Togo[8] noted that a **national communication strategy** is in place targeting traditional practices such as FGM/C, and this is being implemented with the support of UNICEF. The strategy targets local community and religious leaders and partners with grassroots organisations to achieve commitments to end the practice. Women are also educated on their rights and alternative sources on income opportunities are developed for former traditional FGM/C practitioners.[9]

Civil Society Observations

While available data suggests that FGM/C prevalence in Togo has fallen in younger age groups[10], civil society notes that the practice still continues in remote rural areas, where it is often carried out as a rite of passage into womanhood and pressure remains from some local community and religious leaders to continue the practice.

In 2012 the UN Convention on the Rights of the Child[11] urged the Government of Togo not only to strengthen efforts to raise awareness of the harms of FGM/C, but also to enforce the current national legislation and bring perpetrators to justice. Observers suggest, however, that a commitment to more funding will be needed for this to make progress.

There is also concern that national legislation does not clearly define which surgical operations on genital organs remain legal under current laws. In the absence of clarity, there is a possible loophole, and it is unclear as to whether families could avoid prosecution by obtaining a medical prescription to have the procedure done by a health professional.

Conclusions and Suggestions for Improvement

Conclusions

- Togo has several national laws in place prohibiting the practice of FGM/C, including the prohibition of female genital mutilation, **Law No. 98-016**, and the **Penal Code**. These laws criminalise and impose substantial penalties for the performance and promotion of FGM/C, as well as the failure to report it. Penalties vary, however, and it is unclear which would take precedence in a court of law.
- Current legislation does not explicitly criminalise and punish medicalised FGM/C or cross-border FGM/C. There is also concern that undefined surgical operations on genital organs remain exempt from prosecution.
- There is a lack of publicly available information on any prosecutions to date against perpetrators of FGM/C in Togo. While there is governmental support for raising awareness of the harms of FGM/C, law enforcement appears to be weak and there is an absence of reporting and recording of FGM/C cases.

Suggestions for Improvement

National Legislation

- The law needs to clearly criminalise and punish any incidences of FGM/C performed by health professionals or in a medical setting.
- Definitions need to be clarified to ensure that there are no potential loopholes in the law around surgical operations on genital organs.
- Research needs to establish if and where cross-border FGM/C is an issue and, thus, how it should be incorporated into the principal anti-FGM/C law.
- Greater clarity is also needed to understand which penalties set out in the different laws take precedence; there is currently no case information available to use as a guide.
- Laws need to be made accessible and easy to understand in all local languages.

Implementation of the Law

- Research is required to better understand the current prevalence and practice of FGM/C in Togo (including any cross-border movement) to efficiently target programmes, funding and law enforcement.
- Increased funding for dissemination and awareness-raising of the relevance and implications of the anti-FGM/C law is required in all practising communities.
- Judges and local police need adequate support and training around the law and enforcement procedures. They should be encouraged to fully apply the sentences provided for by the relevant legislation.

- 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, particularly in remote, rural areas where girls are at greatest risk.
- Mandatory reporting of instances of FGM/C coming to the attention of 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.

Appendix I: International and Regional Treaties

TOGO	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)			✓ 1984	
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)			✓ 1984	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)			✓ 1983	
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)	✓ 1987	✓ 1987		
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1982	✓ 1982		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1992	✓ 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 *Togo's Constitution of 1992 with Amendments through 2007* (1992) Available at https://www.constituteproject.org/constitution/Togo_2007.pdf?lang=en.
2 *LOI No. 98-016 du 17 November 1998 portant interdiction des mutilations génitales féminines au Togo* (1998) Available at http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/togo%20-%20loi%20portant%20interdiction%20des%20mutilations%20genitales%20feminines%20au%20togo.pdf.
3 *LOI No. 2015-010 du 24 November 2015 portant nouveau code pénal* (2015) Available at http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104616/127692/F-194593081/TGO-104616.pdf.
4 *LOI No. 2007-05 du 10 janvier 2007 sur la sante de la reproduction* (2007) Available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127592.pdf.
5 *LOI No. 2007-017 du 6 juillet 2007 portant code de l'enfant* (2007) Available at http://www.ilo.org/dyn/natlex/docs/SERIAL/81964/95152/F1737117949/code%20enfant.pdf.
6 *CFA Francs to US Dollars at 18 June 2018 (https://www.xe.com/currencyconverter/). This applies to all currency conversions throughout this report.*
7 US Department of State (2016) *Togo 2016 Human Rights Report*. Available at https://www.state.gov/documents/organization/265524.pdf.
8 UN Office of the High Commissioner for Human Rights (2016) *Togo: Children's Rights References in the Universal Periodic Review*. Available at https://www.crin.org/en/library/publications/togo-childrens-rights-references-universal-periodic-review.
9 US Department of State, *op. cit.*
10 *See www.28toomany.org/togo*.
11 UN Convention on the Rights of the Child (2012) *Consideration of reports submitted by States parties under article 44 of the Convention*, 13 February. Available at http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.TGO.CO.3-4AUV.pdf.

Cover image: Anton_Ivanov (2017) *UNNAMED ROAD, TOGO – JAN 12, 2017: Unidentified Togolese girl [in a] lesson in a local primary school. All subjects are in French language in Togo.* Shutterstock photo ID: 565181137.

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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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.

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