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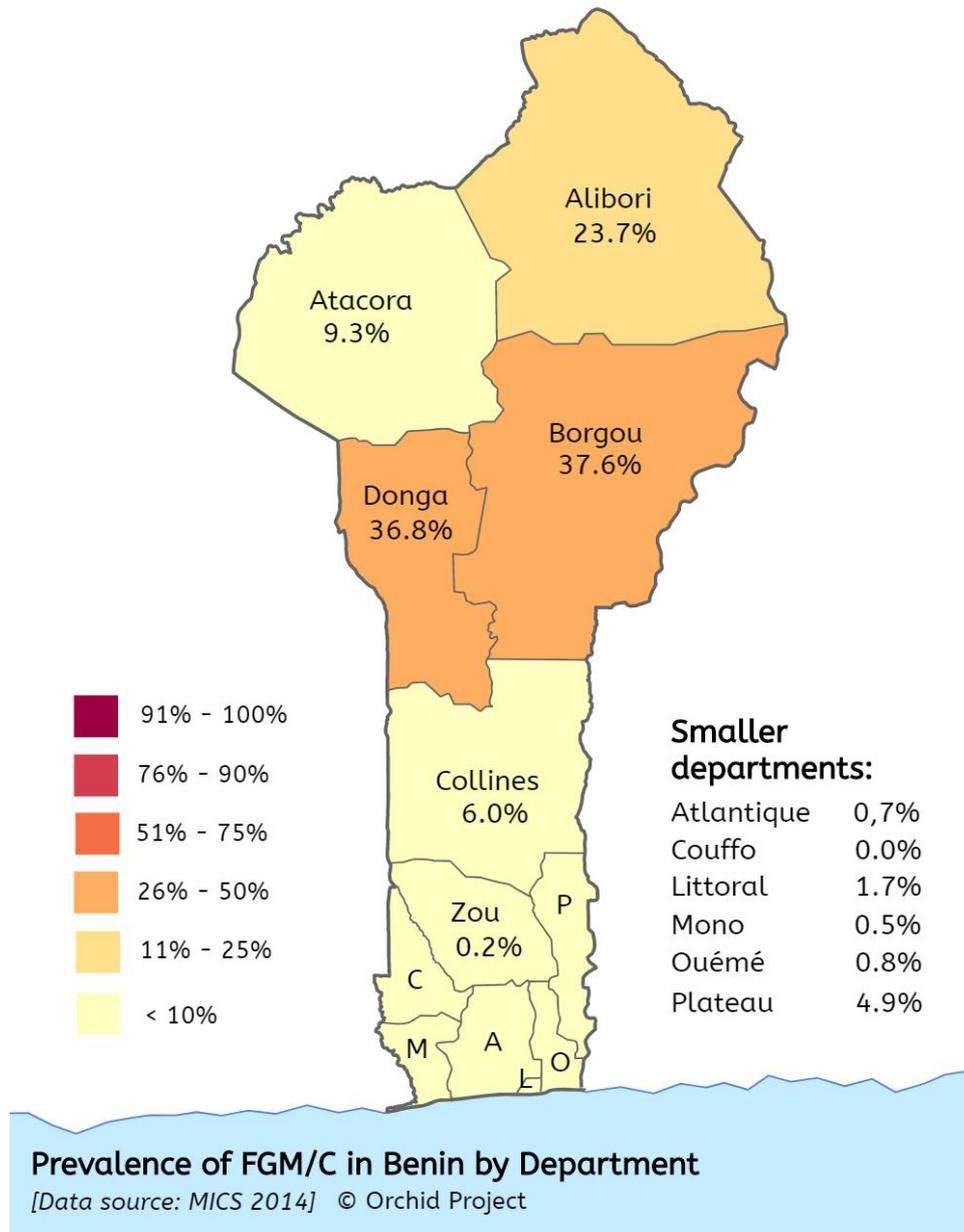


BENIN: THE LAW AND FGM/C

September 2018

In Benin, the prevalence of FGM/C in women aged 15–49 is 9.2%.

The departments with the highest prevalence are in the north.
Of Benin's 12 departments, five record a prevalence of less than 1%.



- 85.3% of women aged 15–49 who have undergone FGM/C were cut before the age of 15.
- ‘Flesh taken’ is the most common type of FGM/C practised.
- Almost all FGM/C is carried out by ‘traditional agents’ (including traditional cutters and birth attendants).
- 86.3% of women aged 15–49 who know of FGM/C believe the practice should not continue.

Source of data: Institut national de la statistique et de l'analyse économique (INSAE) (2015) *Bénin. Enquête par grappes à indicateurs multiples 2014, Rapport final*, pp.289–293. Cotonou, Bénin : Institut national de la statistique et de l'analyse économique. Available at https://mics-surveys-prod.s3.amazonaws.com/MICS5/West%20and%20Central%20Africa/Benin/2014/Final/Benin%202014%20MICS%20FR_French.pdf.

For further information on FGM/C in Benin, see <https://www.fgmc.org/country/benin/>.

Domestic Legal Framework

Overview of Domestic Legal Framework in Benin	
<i>The Constitution explicitly prohibits:</i>	
✓*	Violence against women and girls
X	Harmful practices
X	Female genital mutilation/cutting (FGM/C)
<i>National legislation:</i>	
✓	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

* Specifically, 'The State shall protect the family and particularly the mother and child.'

** No evidence of a national action plan currently in place.

What is the Law Against FGM/C?

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

Benin's domestic legal system is largely based on the French civil law system and some customary law.

The **Constitution of Benin (1990)**¹ does not explicitly refer to harmful practices or FGM/C. The State is under obligation to respect and protect the human person under **Article 8**, and the right to integrity of the person is further protected under **Article 15**. Under **Article 18**, 'No one shall be submitted to torture, nor to maltreatment, nor to cruel, inhumane or degrading treatment', and under **Article 19**, 'any individual or any agent of the state who shall be found responsible for... (such an act) . . . whether of his own initiative or whether under instruction, shall be punished in accordance with the law.' **Article 26** ensures men and women are equal under the law and that the 'State shall protect the family and particularly the mother and child'. Finally, of relevance, **Article 40** places a duty on the State to diffuse and teach the content of the Constitution and all human-rights treaties duly ratified by Benin in all national languages and by means of mass communication (particularly by radio and television).

The first – and main – law prohibiting FGM/C is Law No. 2003-03 on the Suppression of Female Genital Mutilation in the Republic of Benin, issued on 3 March 2003.²

This was reinforced by later laws:

- **Law No. 2011-26 on the Prevention and Repression of Violence Against Women** (January 2012)³ – this law has a wider application as **Article 2** prohibits ‘all acts of violence against any female . . . leading or possibly leading to damage or any physical, sexual or psychological pain’ and specifically refers to FGM/C under the main Law 2003-03.
- **Law No. 2015-08 of the Children’s Code in the Republic of Benin⁴ – Section IX, Articles 185-188** refer directly to FGM/C performed on children.

What the Law Covers

Article 2 of the main Law no. 2003-03 prohibits female genital mutilation in all its forms. **Article 3** defines FGM as ‘any partial or total removal of the external genitalia of a female and/or any other surgical act performed on [a woman’s] organs’. Excluded from this definition in the law, however, are surgical operations performed on genital organs under medical prescription.

Articles 4–9 of the main law set out the following offences and associated penalties:

- **Article 4** – the performance of FGM/C on a woman;
- **Article 5** – the performance of FGM/C on a minor under 18 years of age;
- **Article 6** – FGM/C that results in death of the victim;
- **Article 7** – helping, assisting or requesting the services of an FGM/C practitioner, or giving them instructions or the means to perform a genital mutilation;
- **Article 8** – repeated offences; and
- **Article 9** – failing to both prevent an act of FGM/C, having been informed that it was planned, and failing to report it immediately to the nearest state prosecutor or police criminal investigation department for legal purposes.

The main law, at **Article 10**, also expressly requires professionals working in medical centres (either public or private) to provide victims of FGM/C with the appropriate care and assistance they need, and to inform the public prosecutor or nearest police officer of any case brought to their centres.

In addition, **Law no. 2011-26**, addressing violence against women, is broader in scope: **Article 2** prohibits any form of violence against women, including FGM/C, which is further defined in **Article 3** as ‘all procedures including the partial or total removal of the female genital or external organs or the lesion of the female genital organs for cultural, religious or other non-therapeutic reasons.’ The law does not, however, define what might constitute a ‘therapeutic’ reason.

Law no. 2015-08, the ‘Children’s Code’, also includes a definition of sexual mutilation and FGM at **Article 3**: ‘partial or total removal of the external genitalia of females and/or any damage to these organs’. It prohibits all forms of sexual mutilation on children in **Article 185**, but excludes surgical operations performed on genital organs under medical prescription in **Article 186**. An obligation to denounce FGM/C and report cases is set out in **Article 187**: ‘Any person – having knowledge of cases

of sexual mutilation of a child shall immediately inform the nearest prosecutor or police officer'. Similar to the main Law No. 2003-03, the **Children's Code at Article 188** also requires that any person in charge of a medical centre (either public or private) is under an obligation to provide appropriate care and assistance to those who have undergone FGM/C and inform the public prosecutor or nearest police officer of cases.

Medicalised FGM/C

The medicalisation of FGM/C does not appear to be significant in Benin, according to available data: only 0.2% of women aged 15-49 are reported to be cut by a health professional.⁵

The law in Benin does not directly refer to FGM/C carried out by members of the health profession or in a medical setting. The wide scope of the main **Law No. 2003-03** does, however, appear to apply universally and thus should encompass any health professionals involved in the practice.

Both **Law No. 2003-03** and the **Children's Code** place a responsibility on those in charge of medical centres to provide care and assistance to victims of FGM/C and report the crime to public prosecutors or the police (as outlined above). These laws also exclude surgical operations under medical prescription from the prohibition.

Law no. 2011-26 on violence against women also alludes to FGM/C for 'non-therapeutic reasons', although there is no accompanying definition.

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. Media reports suggest that families from Benin are still crossing borders to have their girls cut; Burkina Faso, Niger, Nigeria and Togo are all mentioned as possible destinations. According to one local activist in the north-eastern border town of Ségbana, for instance, people from local farms 'regularly cross the border to get cut in Nigeria.'⁶

However, **Law No. 2003-03** does not directly address cross-border FGM/C, and there does not appear to be any specific regulation or other legislation relating to FGM/C carried out, on or by citizens of Benin in other countries.

Penalties

Law no. 2003-03 (2003) establishes the following criminal penalties for its violation:

- **Article 4** – the performance of FGM/C on a woman carries a punishment of imprisonment for between six months and three years and a fine of between 100,000 and two million francs CFA (US\$174–3,483);
- **Article 5** – the performance of FGM/C on a minor (under 18 years of age) carries a punishment of imprisonment for between three and five years and a fine of up to three million francs CFA (US\$5,228);
- **Article 6** – if the FGM/C procedure results in death, the sentence ranges from five to twenty years' forced labour and a fine of between three and six million francs CFA (US\$5,228–10,456).

- **Article 7** – any person who helps, assists, or requests the services of an FGM/C practitioner, or gives them instructions or the means to perform a genital mutilation, is considered an accomplice and held liable to the same sentence as the principal offender;
- **Article 8** – in the event of a repeated offence, the maximum penalty is applied without possibility of suspension; and
- **Article 9** – the failure to prevent planned FGM/C from taking place and/or failing to inform the authorities or police of an act of FGM/C immediately carries a fine of up to 100,000 francs CFA (US\$174).⁷

In addition:

- **Law no. 2011-26 (2012)** provides that psychological violence against a woman (which includes a negative impact on her rights and dignity and impairing physical or mental health) carries a fine of up to one million francs CFA (US\$1,744⁸).
- **Law no. 2015-08 (2015), the Children’s Code**, reinforces the penalties listed in the main law of 2003 above and provides that any person who, having been informed that FGM/C is planned on a child, does nothing to prevent the act, shall be prosecuted for failure to provide assistance and sentenced to between six months’ and two years’ imprisonment and a fine of between 250,000 and 500,000 francs CFA (US\$436–872⁹).

Implementation of The Law

Cases

The extent to which FGM/C is punished under the law in Benin is not fully known, and there is a lack of detailed, publicly available information regarding cases brought to court. It has not been possible to find any recent cases where the laws listed in this report have been applied.

Relevant Government Authorities and Strategies

It is not clear which government authorities in Benin are responsible for enforcing the laws that cover FGM/C, nor whether there is a specific national action plan currently in place. Government departments have previously supported non-governmental organisations’ (NGOs) information campaigns as part of ongoing efforts to end the practice.

The three laws outlined above indicate that there is a willingness at the national level to tackle FGM/C and that the public prosecutor and judicial police should play roles in the prohibition of the practice, as the first points of contact in cases of FGM/C.

Civil Society Observations

Evidence suggests that there has been progress towards ending FGM/C in Benin through grassroots projects, such as sensitising former cutters to become counsellors in their communities. Anti-FGM/C programmes continue in Benin with funding from international sources, including projects planned in the rural regions of Alibori and Borgou in 2018, supported by the Canadian Government.¹⁰

Available data suggests a trend towards lower FGM/C prevalence among younger women (see <https://www.fgmcri.org/country/benin/>). The introduction of legislation and related penalties in 2003 and a crackdown on cross-border movement were considered to have sent out a strong message.

However, recent reports suggest that the practice may have gone underground and that some cutters who had abandoned the practice have resumed their work. Girls are also reportedly still being taken across borders to undergo FGM/C.¹¹ It has not been possible to verify these accounts or collect further anecdotal information to date for this report.

Conclusions and Suggestions for Improvement

Conclusions

- Benin prohibits the practice of FGM/C through Law No. 2003-03 on the Suppression of Female Genital Mutilation in the Republic of Benin, issued on 3 March 2003.
- While this piece of legislation, Law No. 2011-26 (2012) on violence against women and Law No. 2015-08 (2015), the Children's Code appear to cover all types of perpetrator (i.e. those who perform, aid or abet, procure or fail to report), it has not been possible to identify any actual cases in which these laws were enforced.
- The law does not address cross-border FGM/C, and reports of continuing movement over borders to carry out the practice is a concern.

Suggestions for Improvement

National Legislation

- The law needs to urgently address cross-border FGM/C and criminalise and punish all perpetrators.
- Laws need to be made accessible to all members of society and easy to understand in local languages.

Implementation of the Law

- A clearer idea of Government responsibilities for the enforcement of anti-FGM/C laws in Benin and how that relates to national plans to end the practice is required.
- The lack of relevant information about the enforcement of the law in Benin needs to be addressed. There is scope for a database to be set up to bring together details of cases and decisions and thus contribute to the work of government departments, law-enforcers and NGOs working to end FGM/C. This would, however, require dedicated resources and funding, as many of the websites/portals that have been reviewed during this project seem underdeveloped.
- 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.

- 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.
- It would be beneficial to focus on further strengthening partnerships across borders and enforcing laws across national borders where illegal activity continues to take place, particularly in the north of Benin.
- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around the law.
- 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, the provision of emergency telephone lines or safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

BENIN	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (<i>ICCPR</i>)			✓ 1992	
International Covenant on Economic, Social & Cultural Rights (1966) (<i>ICESCR</i>)			✓ 1992	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (<i>CEDAW</i>)	✓ 1981	✓ 1992		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (<i>CTOCIDTP</i>)			✓ 1992	
Convention on the Rights of the Child (1989) (<i>CRC</i>)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (<i>ACHPR</i>) (Banjul Charter)	✓ 2004	✓ 1986		
African Charter on the Rights and Welfare of the Child (1990) (<i>ACRWC</i>)	✓ 1992	✓ 1997		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (<i>ACHPRRWA</i>) (Maputo Protocol)	✓ 2004	✓ 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.



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- 1 *Benin's Constitution of 1990* (1990) [English translation by Jessie L. Matthews]. Available at https://www.constituteproject.org/constitution/Benin_1990.pdf?lang=en.
 - 2 *Loi n° 2003-03 Portant répression de la pratique des mutilations génitales féminines en République du Bénin*
 - 3 *Loi n° 2011-26 Portant prévention et répression des violences faites aux femmes (9 January 2012)*
 - 4 *Loi n° 2015-08 Portant code de l'enfant en République du Bénin (23 January 2015)*
 - 5 Institut National de la Statistique et de l'Analyse Économique (INSAE) et ICF International (2013) *Enquête Démographique et de Santé du Bénin 2011–2012*, p.337. Calverton, Maryland, USA: INSAE et ICF International. Available at <http://dhsprogram.com/pubs/pdf/FR270/FR270.pdf>.
 - 6 richard (2012) 'Pratiques des mutilations génitales féminines : La superstition fait perdurer la fin de l'excision au Bénin', *La Presse du Jour*, 27 June. Available at <http://www.lapressedujour.net/archives/17207>.
 - 7 *Currency conversions as at August 2018* (<https://www.xe.com/currencyconverter/>).
 - 8 *Currency conversion as at August 2018* (<https://www.xe.com/currencyconverter/>).
 - 9 *Currency conversion as at August 2018* (<https://www.xe.com/currencyconverter/>).
 - 10 Leonora Chapman (2018) 'Canadá invierte millones para detener la mutilación genital femenina en Benín', *Radio Canadá Internacional*, 6 February. Available at <http://www.rcinet.ca/es/2018/02/06/canada-invierte-millones-para-detener-la-mutilacion-genital-femenina-en-benin/>.
 - 11 Anne Mireille Nzouankeu (2017) 'Cutters turn counsellors to fight female genital mutilation in Benin', *Reuters*, 6 February. Available at <https://www.reuters.com/article/us-benin-fgm/cutters-turn-counselors-to-fight-female-genital-mutilation-in-benin-idUSKBN15L0JZ>.

Cover image: *Anton_Ivanov (2018) OUIDAH, BENIN – Jan 10, 2017: Unidentified Beninese beautiful woman smiles and holds her little baby at the local market. Benin people suffer of poverty due to the bad economy. Shutterstock photo ID: 592613078.*

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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