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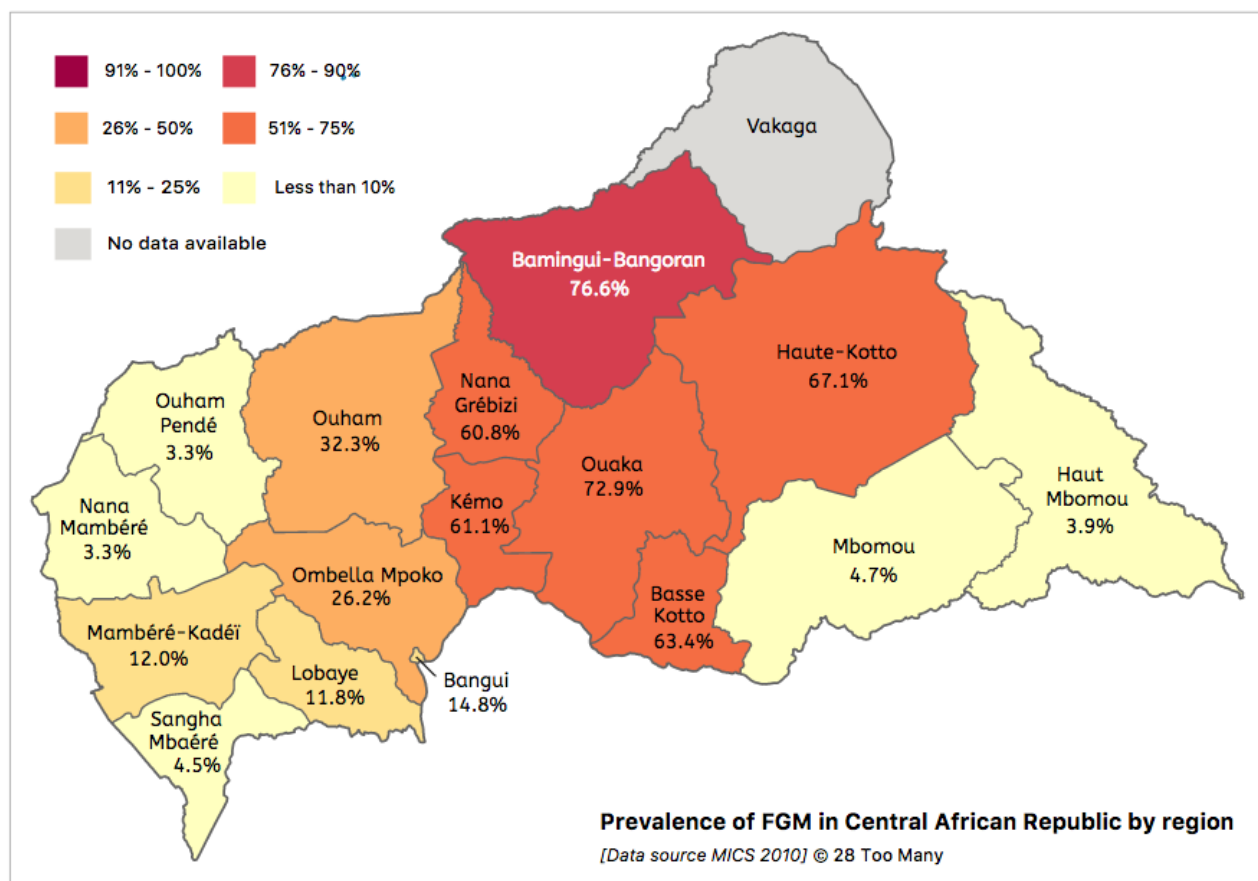


CENTRAL AFRICAN REPUBLIC: THE LAW AND FGM

July 2018

In the Central African Republic, the prevalence of FGM in women aged 15–49 is 24.2%.

The prefectures with the highest prevalence are in the centre.



- In 2006, more than half of girls aged 0–14 who had undergone FGM were cut between the ages of 10 and 14.
- ‘Flesh removed’ is the most common type of FGM practised.
- Approximately 89% of girls aged 0–14 who have undergone FGM were cut by a traditional practitioner.
- 75.2% of women (aged 15–49) and 55.5% of men (aged 15–59) think that FGM should be abandoned.

Source of data: ICASEES (2010) *Enquête par grappes à indicateurs multiples MICS, RCA 2010 Rapport final*, pp.241-242. Bangui, RCA ICASEES. Available at https://mics-surveys-prod.s3.amazonaws.com/MICS4/West%20and%20Central%20Africa/Central%20African%20Republic/2010/Final/Central%20African%20Republic%202010%20MICS_French.pdf.

For further information on FGM in CAR see <https://www.28toomany.org/car/>.

Domestic Legal Framework

Overview of Domestic Legal Framework in the Central African Republic	
<i>The Constitution explicitly prohibits:</i>	
✓	Violence against women and girls
X	Harmful practices
X	Female genital mutilation (FGM)
<i>National legislation:</i>	
✓	Provides a clear definition of FGM
✓	Criminalises the performance of FGM
✓	Criminalises the procurement, arrangement and/or assistance of acts of FGM
✓	Criminalises the failure to report incidents of FGM
X	Criminalises the participation of medical professionals in acts of FGM
X	Criminalises the practice of cross-border FGM
✓	<i>Government has a strategy in place to end FGM</i>

What is The Law Against FGM?

An overview of the international and regional treaties signed and ratified by the Central African Republic (CAR) can be found in Appendix I of this report.

The Central African Republic’s legal system is based on the French civil law system.

The current **Constitution of the Central African Republic** (adopted in 2015) does not directly address harmful practices or FGM.¹ However, **Article 3** affirms the right to bodily integrity and states that ‘no one shall be subjected to torture, rape or cruel, inhuman, degrading or humiliating treatment or punishment.’ Under **Article 5**, ‘The law guarantees men and women equal rights in all areas’, and under **Article 6**, ‘The protection of women and children against violence and insecurity . . . is an obligation for the State and other public authorities.’

The main law against FGM is Law No. 06.032 on the Protection of Women Against Violence in Central African Republic (Law No. 06.032), dated 27 December 2006.²

Law No. 10.001, the Penal Code of the Central African Republic (Penal Code), dated 6 January 2010, also criminalises the performance of FGM.³

(An earlier **Ordinance No. 66/16 Abolishing the Practice of Female Circumcision** was passed in 1966. This recognised that FGM has harmful consequences to both the physical and mental health of young

women⁴, but it is unclear whether this ordinance created any associated criminal penalty for incidents of FGM.)

What The Law Covers

Article 9 of Law No. 06.032 defines the act of FGM as ‘all procedures including the partial or total removal of the female genital organs practised for cultural or religious reasons or for all other non-therapeutic reasons.’ There is no definition included, however, of ‘non-therapeutic reasons’.

Both **Law No. 06.032 (Articles 19–20)** and the **Penal Code (Articles 114–115)** prohibit and set out the punishments for the practice, planning, or promotion of FGM carried out ‘by traditional or modern methods’.

Article 21 of Law No. 06.032 and **Article 116 of the Penal Code** require anyone who is aware of any planned or previously performed FGM to report it to the appropriate authorities.

Articles 74 and 109 of the Penal Code define punishments for those who neglect or abandon children under the age of 15, and those punishments are more severe when a child has been mutilated. Additionally, if the perpetrator has authority over the child or a duty to care for the child, such as a relative, teacher or caretaker, the punishments are even more strict.

Medicalised FGM

The medicalisation of FGM does not appear to be significant in the CAR. According to available data, 1.9% of women who have had FGM are reported to be cut by a health professional.⁵

The law in the CAR does not directly reference FGM carried out by a health professional or in a medical setting; however, the wide scopes of **both Law No. 06.032** and the **Penal Code** do appear to apply universally and thus should encompass any health professionals involved in the practice.

The wording in **Article 9 of Law No. 06.032** prohibiting FGM for all ‘non-therapeutic’ reasons, whether by traditional or modern methods, suggests that a surgical operation deemed necessary for the physical health and well-being of a woman would likely not be punishable. It is not possible to confirm this point in the absence of a clear definition of ‘non-therapeutic’.

Cross-Border FGM

In some countries where FGM has become illegal, the practice has been pushed underground and across borders to avoid prosecution. It is not known to what extent the movement across national borders for the purpose of FGM is an issue for the CAR. Current laws do not directly address cross-border FGM, and there does not appear to be any specific regulation or other legislation relating to FGM carried out on or by citizens of the CAR in other countries.

Penalties

Law No. 06.032 (Article 19) and the **Penal Code (Article 114)** set out similar punishments for violation of the law:

- The performance, planning or promotion of FGM carries a punishment of imprisonment from two to five years and a fine ranging from 100,000 to 1,000,000 francs CFA (US\$177–1,770).

- The punishment may be doubled for repeat offences.

Law No. 06.032 (Article 20) and the **Penal Code (Article 115)** state that if FGM results in the death of the victim, the punishment is forced labour for life.

Law No. 06.032 (Article 21) and the **Penal Code (Article 116)** also set out that anyone with knowledge of planned or performed FGM who fails to report it to the proper authorities is punishable by a term of imprisonment from six months to one year and a fine of between 50,000 and 500,000 francs CFA (US\$88.50–885.00).

In addition, under **Article 74 of the Penal Code**, if anyone intentionally injures or beats a child, resulting in mutilation, the punishment is forced labour for a period not specified in the code. However, if the perpetrator is a parent, grandparent or any other person having authority or custody over the child, the punishment is forced labour for life.

Under **Article 109 of the Penal Code**, if a child is mutilated, crippled or left with a permanent disability due to neglect or abandonment, the punishment is imprisonment from five to ten years. If the perpetrator is a parent, grandparent, or any other person with authority over the child or to whom the child has been entrusted, the punishment is forced labour for a period of ten to twenty years.⁶

Implementation of The Law

Cases

It has not been possible to find any recent cases where the laws detailed in this report have been applied.

Relevant Government Authorities and Strategies

Key government departments in the CAR include the Ministry of Health and the Ministry of Social Affairs. **The National Committee to Curb Traditional Practices Harmful to the Health of Women and Girls and Violence Against Women** was established by an inter-ministerial decree in 2001. The Committee is responsible for creating a national plan of action against harmful practices and violence against women. It is empowered to initiate studies and collect data, as well as to put forward measures designed to eradicate these practices. It is also empowered to list, assess and disseminate all existing legal instruments that protect women and girls against harmful practices and violence.⁷

The National Police are tasked with law enforcement, but it has been reported that they lack the capacity to maintain public safety. In 2009 there were only 1,350 officers, mainly based in the capital Bangui, for a country of four million people.⁸ Allegations of disciplinary problems and corruption have led to a poor public image of the police, and it is not clear if any law enforcement has taken place or any cases have been brought forward under the laws criminalising FGM.

Civil Society Observations

The lack of law enforcement in the CAR has been widely noted. Some commentators have reported that no serious crimes have been prosecuted since 2013 and many groups have carried out executions and sexual violence with impunity.⁹ A United Nations Human Rights Council report in 2016

by an independent expert on the situation in the CAR noted that 'criminal justice remains practically non-existent' and that, between July 2015 and January 2017, the Criminal Court of Bangui held only one session, following a five-year period of inactivity.¹⁰ The lack of resources and staff remains a major obstacle, and, outside of Bangui, access to judicial resources is even more limited.

While legislation is in place to tackle gender-based violence, including FGM, it is reported that local magistrates often have difficulty in accessing the most recent versions of the law and may not receive appropriate legal training.¹¹

At a local level, FGM is reportedly continuing in many parts of the country, despite the law – for example, in the regions of Damara and Bogangolo.¹²

Conclusions and Suggestions for Improvement

Conclusions

- The CAR criminalises the practice of FGM through **Law No. 06.032** and the **Penal Code**, and the law appears to cover all types of perpetrator (i.e. those who perform, aid or abet, procure or fail to report FGM). The law does not directly address medicalised FGM or cross-border FGM.
- The lack of a functioning judicial system, however, means these laws are unlikely to be acting as a deterrent and perpetrators are not being prosecuted. The CAR is also currently in a state of mounting tension and violence that has displaced many from their homes. This unstable situation makes it even more difficult to enforce laws and record cases of FGM.
- At the local level, there appears to be a lack of knowledge about, or access to, the most recent versions of the law, as well as insufficient legal training.

Suggestions for Improvement

National Legislation

- The national law should define the meaning of 'non-therapeutic reasons' and ensure that all forms of FGM are clearly criminalised, so that there is no potential loophole in the law.
- Research needs to establish if and where cross-border FGM is an issue and thus how it should be incorporated into the law.
- The law needs to clearly criminalise and set out punishments for incidences of medicalised FGM.
- Laws need to be made accessible and easy to understand in all local languages.
- Stability in the judicial system is urgently needed to allow for law enforcers and courts to function normally; this is currently a major obstacle to the country achieving its obligations under international and national treaties and laws to protect women and children.

Implementation of the Law

- Research is required to better understand the current prevalence and practice of FGM in the CAR (including any cross-border movement), to efficiently target programmes, funding and law enforcement.

- Once a more robust judicial system is in place, increased awareness-raising of the relevance and implications of the anti-FGM law will be required in all 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 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.
- 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 that come to the attention of 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 safe spaces) should be put in place for girls at risk of FGM.

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- 1 *Constitution de la République Centrafricaine Texte Final* (2015) Available at <http://www.unesco.org/education/edurights/media/docs/4358dd0d0bd2a5c021b2bcfa03bfdff47db70a74.pdf>.
 - 2 *République Centrafricaine: Loi no. 06.032 du 2006, portant protection de la femme contre la violence en République Centrafricaine [Central African Republic]* (2006) Available at <http://www.refworld.org/docid/54f821684.html>.
 - 3 Loi n° 10.001 portant Code pénal centrafricain (2010) *LOI N°10.001 Portant Code Penal Centrafricain*. Available at http://www.wipo.int/wipolex/en/text.jsp?file_id=195086.
 - 4 Ordinance No. 66/16 of 22 February 1966 Abolishing the Practice of Female Circumcision, cited in Case Matrix Network (2017) *Prosecution of Sexual and Gender-Based Violence in Central African Republic*, p. 31. Available at <http://www.legal-tools.org/doc/54164b/>.
 - 5 Population Reference Bureau (2017) *Female Genital Mutilation/Cutting: Data and Trends*, p.10. Available at <http://www.prb.org/pdf17/FGMC%20Poster%202017.pdf>.
 - 6 *Currency exchange rates calculated as at 10 November 2017*.
 - 7 Convention on the Elimination of All Forms of Discrimination against Women (2013) *Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined initial and second to fifth periodic reports – Central African Republic*, paras. 129–130. Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=CEDAW/C/CAF/1-5.
 - 8 See Yuki Yoshida (2014) *Understanding the 2013 Coup d'état in the Central African Republic*. Available at https://web.archive.org/web/20150724072812/http://www.monitor.upeace.org/innerpg.cfm?id_article=1026#_ednref16.
 - 9 See Lewis Mudge (2017) 'A Step Toward Justice in the Central African Republic', *Human Rights Watch*, 21 February 21. Available at <https://www.hrw.org/news/2017/02/21/step-toward-justice-central-african-republic>.
 - 10 Human Rights Council (2016) *Report of the Independent Expert on the situation of human rights in the Central African Republic*. UN General Assembly A/HRC/33/63. Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/33/63.
 - 11 Case Matrix Network, *op. cit.*, pp.31–32.
 - 12 Journal de Bangui (2016) *Damara-Bogangolo: une sage-femme déplore l'excision sur les filles*, 14 January. Available at <http://www.journaldebangui.com/article.php?aid=9227>.

Cover image: UN Photo/Eskinder Debebe (2017) *School Sensitization on Gender Based Violence*. Available at <https://flic.kr/p/Zmssyo>.

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.

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.

Appendix I: International and Regional Treaties

CENTRAL AFRICAN REPUBLIC	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (<i>ICCPR</i>)			✓ 1981	
International Covenant on Economic, Social & Cultural Rights (1966) (<i>ICESCR</i>)			✓ 1981	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (<i>CEDAW</i>)			✓ 1991	
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (<i>CTOCIDTP</i>)			✓ 2016	
Convention on the Rights of the Child (1989) (<i>CRC</i>)	✓ 1990	✓ 1992		
Regional				
African Charter on Human & Peoples' Rights (1981) (<i>ACHPR</i>) (Banjul Charter)		✓ 1986		
African Charter on the Rights and Welfare of the Child (1990) (<i>ACRWC</i>)	✓ 2003			
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (<i>ACHPRRWA</i>) (Maputo Protocol)	✓ 2008			

'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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Acknowledgements:

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