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FGM...
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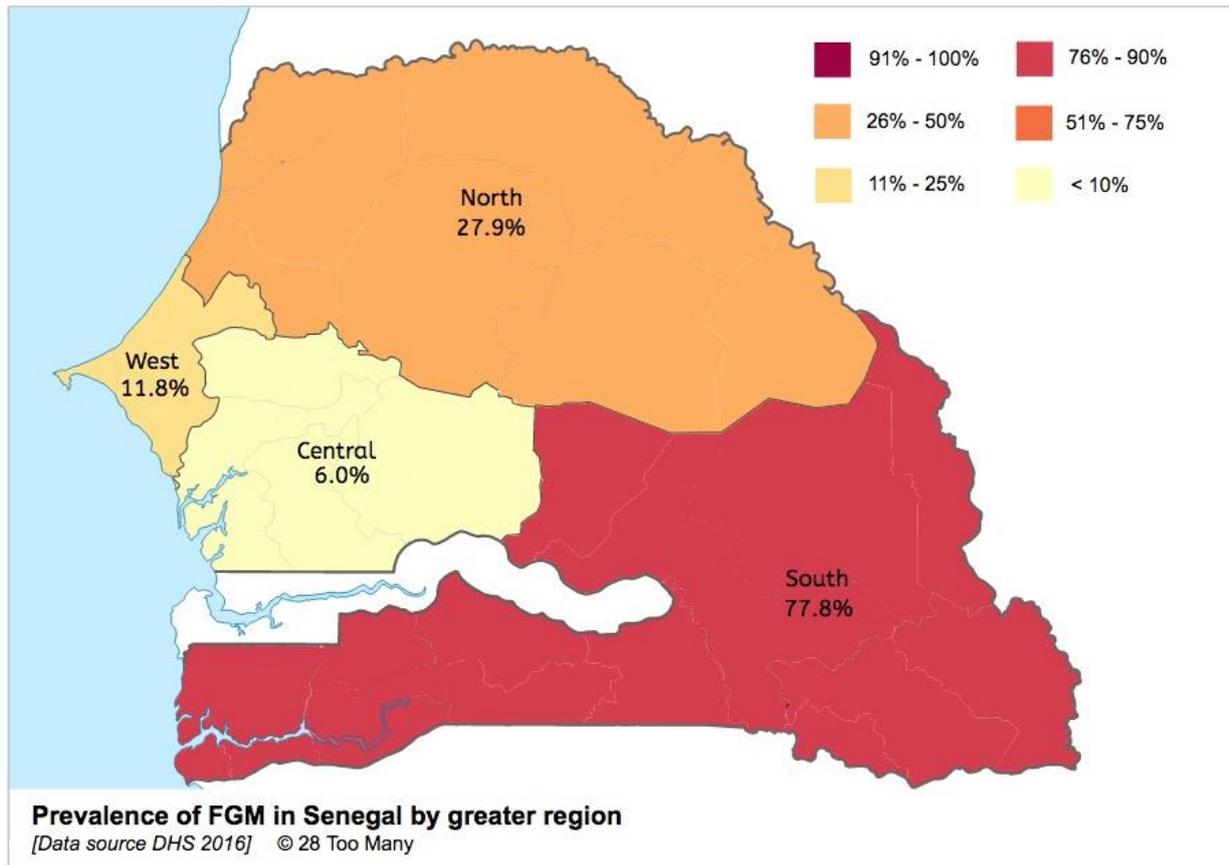


SENEGAL: THE LAW AND FGM

August 2018

In Senegal, the prevalence of FGM in women aged 15–49 is 22.7%.

FGM prevalence varies widely from 77.8% in the South to 6% in the Central region.



- Most girls are cut before the age of ten and around three-quarters (72.2%) of women were cut by the age of five.
- Over 50% of women aged 15–49 were ‘cut, flesh removed’.
- Almost all FGM is carried out by ‘traditional excisors’.
- 80.1% of women and 79.7% of men do not think that FGM should continue.

Source of data: Agence Nationale de la Statistique et de la Démographie (ANSD) [Sénégal], et ICF (2017) Sénégal : Enquête Démographique et de Santé Continue (EDS-Continue 2016). Rockville, Maryland, USA : ANSD et ICF. Available at <https://dhsprogram.com/pubs/pdf/FR331/FR331.pdf>.

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Senegal	
<i>The Constitution explicitly prohibits:</i>	
X	Violence against women and girls
X	Harmful practices
✓*	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
X**	Criminalises the failure to report incidents of FGM
✓	Criminalises the participation of medical professionals in acts of FGM
X	Criminalises the practice of cross-border FGM
✓	Government has a strategy in place to end FGM

* Defined in Article 7 of the Constitution as ‘physical mutilations’.

** Not specifically criminalised; only failure to report crimes in general (see below).

What is The Law Against FGM?

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

Senegal has a civil-law system based on French law; judicial review of legislative acts is undertaken in the Constitutional Court.

The **Constitution of Senegal (revised in 2001)**¹ does not explicitly refer to violence against women and girls or harmful practices; more generally, **Article 5** prohibits discrimination and **Article 7** guarantees the equality of men and women. Although not directly referencing FGM, **Article 7** does provide protection against all physical mutilation as follows: ‘The human person is sacred. It is inviolable. The State has the obligation to respect it and protect it. Every individual has the right to life, to liberty, to security, to the free development of his personality, to corporeal integrity, notably to protection against all physical mutilations.’

The first legislation in Senegal to expressly prohibit FGM was Article 299 bis introduced in January 1999 into the 1965 Penal Code² (Article 299 bis).³ This is the main law in Senegal criminalising and punishing the practice of FGM.

What The Law Covers

Article 299 bis defines FGM as harm to the female person's genital organ by 'total or partial excision of one or more of its elements, infibulation, anaesthetisation, or any other means.' It goes on to outline the criminal offences related to both the performance and procurement of FGM. This article also criminalises aiding or abetting FGM.

Article 49 of the original 1965 Penal Code⁴ criminalised and punished anyone who has knowledge that a crime, in general, is going to be undertaken, but fails to report it to the relevant authorities. **Article 299 bis** does not, however, directly address the failure to report FGM, whether it has taken place or is planned.

In addition, **Law No. 2005-18 (dated 5 August 2005) on Reproductive Health in Senegal**⁵ sets out in **Article 4** that the relevant services to be provided by government include those specifically tackling FGM, sexual abuse and practices harmful to reproductive health. **Article 13** states further, 'All forms of violence, sexual abuse or inhuman or degrading treatment are penalised in accordance with the penal provisions in force.'

Medicalised FGM

Medicalised FGM is not widespread in Senegal, according to available information; almost all FGM continues to be carried out by traditional practitioners. While there are unconfirmed reports that medicalised FGM in Senegal is increasing, a lack of up-to-date, accurate data makes it impossible to confirm if this is a growing problem.

In the event of FGM being carried out by a health professional, the law in Senegal specifically prohibits and criminalises medicalised FGM under **Article 299 bis**, which states, 'If the act of genital mutilation is carried out or facilitated by a member of the medical or paramedical profession, the maximum penalty shall apply.'

Cross-Border FGM

In some countries where FGM has become illegal, the practice has been pushed underground and across borders to avoid prosecution. Senegal shares borders with other countries where FGM prevalence remains high and the existence and enforcement of laws varies widely, including Guinea, Guinea Bissau, Mali, Mauritania and The Gambia.

The movement of families and cutters across borders to perform FGM and avoid prosecution remains a problem for Senegal, and girls living in communities in the south of the country are particularly vulnerable.

There have been several attempts to meet with stakeholders from neighbouring countries and discuss how to resolve this issue. The law as it stands does not support this work, however: **Article 299 bis** does not criminalise nor punish FGM carried out on or by Senegalese citizens in other countries.

Penalties

Article 299 bis establishes the following criminal penalties for violation:

- the performance or attempted performance of FGM carries a punishment of imprisonment for six months to five years;
- if the FGM procedure results in death, the penalty will be forced labour for life;
- the procurement, aiding or abetting of FGM also carries a punishment of imprisonment for six months to five years; and
- the maximum penalty applies if members of the medical or paramedical professions perform or assist an FGM procedure.

While **Article 299 bis** does not criminalise nor set out a punishment for the failure to report FGM, **Article 49 of the Penal Code** states that general failure to report a crime or offence against the bodily integrity of a person is punishable by imprisonment of three months to five years and a fine of between 25,000 and 1 million Francs (approximately US\$45–US\$1,800⁶).

Implementation of The Law

Cases

Since the amendment to the Penal Code in 1999, few prosecutions for FGM have taken place in Senegal (as few as eight in total, according to many reports). Case details are very limited and information about whether sentences were followed through is not widely available.

The most recent report published by the UNFPA-UNICEF Joint Programme did not list any arrests, cases or convictions for FGM in Senegal during 2016.⁷ The Human Rights Report for 2017 also states that no cases were prosecuted during the year.⁸ Other commentators quote some isolated cases as follows⁹:

- In May 2010, the Kaolack Court of Appeal sentenced a perpetrator who performed FGM to six months' imprisonment, and the accomplices were given a three-month prison sentence.
- In July 2007, the Kolda Regional Court judged a case in which a child had died after FGM. The person who performed the FGM as well as two accomplices were sentenced to a three-month suspended prison sentence. This decision was subsequently condemned by some observers as disregarding the applicable law, as FGM resulted in death and thus the criminal court should have had jurisdiction and the sentence should have been forced labour for life.
- In April 2004, the Kolda Regional Court sentenced a perpetrator of FGM to three months' imprisonment and the parent to a six-month suspended prison sentence.
- In February 2004, the Kolda regional court sentenced a perpetrator of FGM and the parent to six-month suspended prison sentences.¹⁰

Additionally, in 2009 a grandmother who arranged for FGM on her 16-month old granddaughter, and the excisor who performed the FGM, were sentenced to six months in prison in Matam

(although they were released after three months). The parents of the child were also sentenced to three months, but were subsequently pardoned.¹¹ The case caused a lot of debate among traditional and religious leaders, who defended the right to continue the practice. While the case succeeded in bringing the law into the public arena through widespread media coverage, it did not appear to encourage further prosecutions and law-enforcement efforts.

There are no reported cases of medical practitioners being prosecuted for performing FGM in Senegal.

Relevant Government Authorities and Strategies

The Ministry of Women, Family and Children is responsible for the work to end FGM in Senegal, and coordination is carried out through the **National Technical Committee to Combat FGM** (comprising government representatives, strategic partners such as international and national non-governmental organisations, and technical and funding partners such as UNICEF, the UNFPA and USAid). Following the amendment to the law in 1999, the Government adopted a **National Action Plan (2000–2005)** to improve networking and coordination and integrate the law into programmes and education. The aim was to eradicate FGM in Senegal by 2015.

In 2008 Senegal was one of the first countries to become part of the **UNFPA-UNICEF Joint Programme to end FGM** and, in 2009, in partnership with the Government, a second **National Action Plan (NAP)** was launched, for the period 2010–2015.¹² The NAP included a budget committed to outreach activities around the national law, including training and sensitisation (under the responsibility of the Department of Justice). In addition, a national Child Protection Plan, which addressed the abandonment of FGM, was adopted for 2016–2018. A Strategy on Gender Equality (2016–2026) and a Children's Code are also currently in production.¹³

Civil Society Observations

Senegal has a wide network of international and national non-governmental organisations (NGOs) working to end FGM and partnering with the UN Joint Programme and various government ministries including Health, Education, Justice and Youth.

Ongoing anti-FGM programmes in Senegal are well documented; they include the promotion of community dialogue and education (such as The Grandmother Project's *Girls' Holistic Development* project¹⁴), public declarations of abandonment (including Tostan's *Community Empowerment Programme*¹⁵), and various training and media campaigns targeted at key professionals and audiences in high-prevalence communities. NGOs and civil society have made attempts over the years to disseminate the content of the anti-FGM law through various written materials and translations into local languages, which has been essential for wider understanding. Available data suggests a gradual trend towards lower prevalence among younger women in Senegal in response to these government and civil-society efforts.¹⁶

Observations by civil society regarding the ongoing work to end FGM and the law in Senegal include the following:

- Communities were not consulted when the law was initially drafted, and insufficient measures were put in place to educate the public and promote support for the law after its introduction in 1999. Hence, it is considered by some activists to be an inefficient piece of legislation that is rarely applied in practice and is still misunderstood and rejected in some communities.
- Dialogue around FGM has generally increased, and, although more people are aware of the law's existence, they are not familiar with the actual content of the legislation (including some local police and judiciary).
- Penalties are generally not strictly enforced, nor are they in line with those set out in the law. However, the UN Joint Programme has previously commented that, although punishments that have been given in the few court cases to date appear lenient, even a short prison sentence has a huge social stigma attached to it in Senegal.¹⁷ Traditional cutters have considerable status in communities and imprisonment is viewed as life-long disgrace.
- There is still a lack of information available around the law in different national and local languages, and the low levels of literacy in some communities require a greater ongoing use of different forms of media to get the message across.
- Victims of FGM are often unaware of the law or do not feel it is useful once the practice has already taken place, and/or they are unwilling to report the perpetrators, who were likely family members. Under-reporting of cases of FGM remains the norm in Senegal.
- There is evidence to suggest that changes to FGM practices have taken place to avoid prosecution, including crossing borders and performing FGM on either girls at a younger age or older women who are mothers themselves.
- There are ongoing challenges to collecting accurate information and data on FGM to inform anti-FGM programmes, and access to details of court cases brought under the legislation is extremely limited.¹⁸
- There remains a conflict of interest among some politicians regarding FGM (political position versus personal beliefs), which impedes progress. This is also a challenge where judges and the police themselves come from practising communities, and further training is needed to tackle this.
- There is also a division in beliefs around FGM among religious leaders, particularly in the south of the country, which perpetuates the practice and encourages illegal initiation ceremonies to take place.

It is also noted that the law in Senegal does not protect women and girls who choose to remain uncut (or their families) from derogatory or abusive language, or from being ostracised from society and local community life.

Conclusions and Suggestions for Improvement

Conclusions

- **Article 299 bis of the amended Penal Code** criminalises and sets out the punishments for performing, procuring, and aiding and abetting the practice of FGM in Senegal.
- The law also sets out a punishment in cases where FGM is performed by a medical professional, but it does not criminalise cross-border FGM, which remains a challenge in some communities.
- Current legislation does not fully punish the failure to report FGM, whether it is planned or has taken place. Although there is widespread knowledge of the law, its detailed content and meaning remains inaccessible and unfamiliar to many practising communities, and under-reporting of FGM remains a huge challenge.
- There appears to be weak law-enforcement, and few cases have been brought to court since the legislation was introduced.

Suggestions for Improvement

National Legislation

- The Penal Code needs to urgently address movement across national borders and criminalise and punish the performance and procurement of all cross-border FGM.
- The Penal Code could be further strengthened within Article 299 around the failure to specifically report knowledge of FGM, whether planned or already taken place.
- As well as protection from abusive language, uncut women and girls (and their families) should also be protected by the law from actions that exclude them from society, including from family events and community activities.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

- Adequate monitoring and reporting of cases in Senegal would improve efficiency and inform policy makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- Anti-FGM programmes should disseminate clear, easy-to-understand and accurate information around the law.
- It would be beneficial to focus on further strengthening partnerships across borders where prevalence remains highest and illegal activity continues to take place.
- 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.

- 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.
- Tribunals could be encouraged to make sure any prosecutions and sentences relating to FGM are clearly reported, including through local media such as community radio, and made available in local languages.
- Increased support and protection for victims and witnesses in FGM cases is essential.
- Where literacy rates are low, information around the law needs to be made available through different media channels and resources.
- All professions (including health and education) need training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM.
- Mandatory reporting of instances of FGM 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 telephone helplines or safe spaces) should be put in place for girls at risk of FGM.

Appendix I: International and Regional Treaties

SENEGAL	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (<i>ICCPR</i>)	✓ 1970	✓ 1978		
International Covenant on Economic, Social & Cultural Rights (1966) (<i>ICESCR</i>)	✓ 1970	✓ 1978		
Convention on the Elimination of All forms of Discrimination Against Women (1979) (<i>CEDAW</i>)	✓ 1980	✓ 1985		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (<i>CTOCIDTP</i>)	✓ 1985	✓ 1986		
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)	✓ 1981	✓ 1982		
African Charter on the Rights and Welfare of the Child (1990) (<i>ACRWC</i>)	✓ 1992	✓ 1998		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (<i>ACHPRRWA</i>) (Maputo Protocol)	✓ 2003	✓ 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.

- 1 *Senegal's Constitution of 2001 with Amendments through 2009* (2001; revised 2009) [English translation by English Translation © 2012 by William S. Hein & Co., Inc./Jefri J. Ruchti]. Available at https://www.constituteproject.org/constitution/Senegal_2009.pdf?lang=en.
- 2 *Act No. 99-05 of 31 January 1999, amending several provisions of the Criminal Code* (1999) Available at http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Senegal/senegal_penal-amt_1999_en.pdf.
- 3 *In legal terms, bis refers to a clause added in a secondary version of a protocol. For example, Article 12 bis may be added between existing Articles 12 and 13, to prevent the need to renumber the following articles.*

- 4 *Code Penal Senegal* (1965) Available at <http://www.wipo.int/edocs/lexdocs/laws/fr/sn/sn010fr.pdf>.
- 5 *Loi n° 2005-18, du 5 août 2005, relative à la santé de la reproduction* (2005) Available at <https://www.healthresearchweb.org/files/05-08-05SANTEREPRODUC.pdf>.
- 6 **As at 23 November 2017.**
- 7 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*, p.59. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
- 8 US Department of State (2017) *Senegal 2017 Human Rights Report*, p.15. Available at <https://www.state.gov/documents/organization/277283.pdf>.
- 9 Excision parlons-en! (2018) *Sénégal*. Available at <https://www.excisionparlonsen.org/senegal/>.
- 10 ***It has not been possible, for the purposes of this research, to establish whether the sentences listed were carried out in part or full, overturned or increased.***
- 11 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (undated) *Senegal: Human Rights Key to Ending FGM/C: Legislation is Just One Aspect of an Effective Campaign*. Available at <https://www.unfpa.org/sites/default/files/resource-pdf/LawSenegal.pdf>.
- 12 République du Senegal (2010) *Plan d'Action National pour l'Acceleration de l'Abandon de l'Excision 2010-2015 Fevrier 2010: Acceleration de l'Abandon de l'Excision : les Communautés s'Engagent*. Available at <https://dokodoc.com/plan-d-action-national-pour-l-acceleration-de-l-abandon-de-l.html>.
- 13 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (2017), *op. cit.*
- 14 ***For further information see <http://www.grandmotherproject.org/projects/>.***
- 15 ***For further information see <https://www.tostan.org/programs/community-empowerment-program/>.***
- 16 ***See <https://www.28toomany.org/senegal/>.***
- 17 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (undated), *op. cit.*, p.4.
- 18 M. J. Middelburg (2016) *Empty Promises? Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal*, p.294. Tilburg University [pending publication].
For further information, see <https://www.annemariemiddelburg.com/>.

Cover image: Hector Conesa (2007) *SENEGAL – FEBRUARY 13: Mother in Peul village near Wassadou, February 13, 2007 near Wassadou, Senegal*. Shutterstock photo ID: 41459377.

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.

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Acknowledgements:

Cleary Gottlieb Steen & Hamilton LLP

Girl Generation Senegal

Tostan Senegal

S.C.P François SARR & Associés

Mrs. Diallo Ndeye Soukeyna Ndao Juriste, membre de l'Association des Juristes Sénégalaises

