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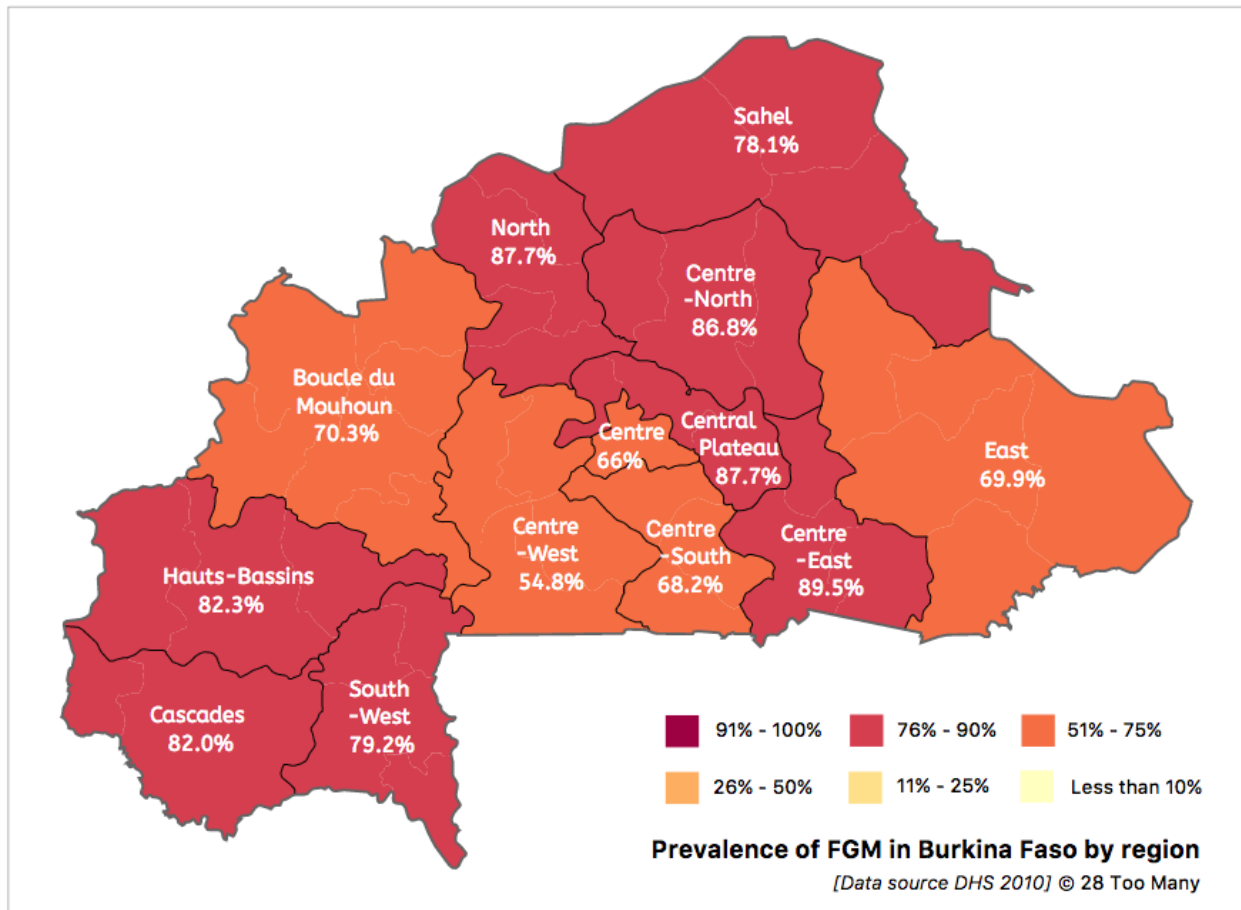
BURKINA FASO: THE LAW AND FGM

September 2018

In 2010 the prevalence of FGM in women aged 15–49 was 75.8%.

There is a clear trend towards lower prevalence among younger women in Burkina Faso.

The regions with the highest prevalence lie in the south-west and in a band across the country from the centre-east towards the north.



- 90.8% of women aged 15–19 who have undergone FGM were cut before the age of ten.
- ‘Cut, flesh removed’ is the most common type of FGM practised.
- Almost all FGM is carried out by ‘traditional agents’ (including traditional cutters and birth attendants).
- More than 85% of the population is against its continuation.

Source of data: Institut National de la Statistique et de la Démographie (INSD) et ICF International (2012) *Enquête Démographique et de Santé et à Indicateurs Multiples du Burkina Faso 2010*, p.291. Calverton, Maryland, USA: INSD et ICF International.] Available at <http://dhsprogram.com/pubs/pdf/FR256/FR256.pdf>.

For further information on FGM in Burkina Faso see <https://www.28toomany.org/burkina-faso/>.

Domestic Legal Framework

Overview of Domestic Legal Framework in Burkina Faso	
<i>The Constitution explicitly prohibits:</i>	
X	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
X*	Criminalises the procurement, arrangement and/or assistance of acts of FGM
✓	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

* Not explicitly set out in the main law (see below).

** Not directly criminalised; cross-border crimes in general are punishable under the Penal Code (see below).

What is The Law Against FGM?

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

Burkina Faso’s legal system is based on the French civil law system and customary law.

The Constitution of Burkina Faso (adopted 1991)¹ does not explicitly reference violence against women and girls, harmful practices or FGM. **Article 1** relates to equal rights of all citizens and **Article 2** protects physical integrity and specifically prohibits and punishes ‘inhuman and cruel, degrading and humiliating treatment, physical and moral torture, [and] mistreatment inflicted upon children . . .’ **Articles 24 and 26** also commit the State to promote ‘the rights of the child’ and ‘the right to health’, respectively. The Constitution also guarantees that the international human rights treaties signed and ratified by Burkina Faso are automatically incorporated into the domestic legal system.

In 2016 a Constitutional Commission was set up to draft a new Constitution for Burkina Faso; it is reported that it will strengthen the rights of women and children.²

In November 1996 the Burkina Faso Government passed Law No. 043/96/ADP to amend the Penal Code (*Penal Code*) to prohibit and punish the practice of FGM.³ This is the principal legislation governing FGM in Burkina Faso.

Since 2013 a review of the **Penal Code** has been taking place, and in May 2018 the proposed new draft legislation was passed by members of parliament. It is reported that the revised Penal Code will further criminalise acts that constitute violence against women and girls and raise the penalties for carrying out FGM.⁴

In addition to the Penal Code, there are other national laws around child protection, domestic violence, medical malpractice and reproductive health that could be considered in relation to FGM.

What The Law Covers

Article 380 of the Penal Code provides a clear definition of FGM and criminalises and punishes anyone who ‘harms or attempts to harm the integrity of the female genital organ by total ablation, excision, infibulation, by desensitization or by any other means’ (i.e. by performing FGM). It also sets out penalties if FGM results in death. The law does not, however, explicitly reference those who procure, aid or abet the practice.

Article 381 criminalises and punishes FGM that is carried out by members of the medical or paramedical profession.

Article 382 punishes those who have knowledge of FGM and fail to report it to the relevant authorities.⁵

In addition, there are various national laws in Burkina Faso relating to child protection, domestic violence and medical malpractice that aim to protect women and children. **Article 13 of Law No. 049–2005 on Reproductive Health**⁶ specifically states:

Everyone, including adolescents and children, has the right to be protected from torture and from cruel, inhuman or degrading treatment of their body, in general, and of their reproductive organs, in particular. All forms of violence and sexual assault to the human body, especially of children and adolescents, are prohibited under the penalties prescribed by the Penal Code.

Article 510 of the Family Code (1989)⁷ also sets out parental responsibility to protect the child and ensure ‘the child’s safety, health, full development and morality’.

Medicalised FGM

Medicalised FGM does not appear to be significant in Burkina Faso, according to available data: less than 1% of women aged 15–49 years are reported to be cut by a health professional.

The law in Burkina Faso directly addresses FGM carried out by members of the medical or paramedical professions under **Article 381 of the Penal Code**. Maximum penalties apply, and those found guilty may be prohibited from practising their profession for up to five years.

Regarding medical malpractice, **Article 132 of the Public Health Code 1994**⁸ penalises anyone who practises medical or surgical acts without a medical licence.

Cross-Border FGM

In some countries where FGM has become illegal, the practice has been pushed underground and across borders to avoid prosecution. Burkina Faso shares borders with six other countries, all of which have laws against FGM except Mali.

To date, it appears that the anti-FGM laws of Burkina Faso have been more strongly enforced than those of some of its neighbours, raising concerns that families are taking their daughters across borders to avoid prosecution in countries where laws do not exist or are weakly enforced (including Mali, Niger, Ghana and Cote d'Ivoire).⁹

Cross-border FGM remains a challenge across the whole of West Africa. While the Penal Code in Burkina Faso does not yet specifically address FGM carried out on or by their citizens in other countries, it does refer to cross-border crimes in general. **Article 4 of the Penal Code** states that the criminal law applies to any crimes committed by or against a national while abroad, provided that the act is also criminalised in the country where it has been committed. In these cases, the prosecution must be preceded by a complaint from the victim or by an official denunciation from the authority of that country where the crime was committed. A victim cannot use Article 4 if the accused has already been definitively judged in the other country for the same facts and, in the case of a conviction, if the sentence has already been served.

Penalties

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

- **Article 380** – the performance of FGM carries a punishment of imprisonment for six months to three years and a fine ranging from 150,000 to 900,000 CFA francs (US\$265–1,592¹⁰).
- **Article 380** – if the FGM procedure results in death, punishment is increased to between five and ten years' imprisonment.
- **Article 381** – if FGM is carried out by members of the medical or paramedical profession, the maximum punishment applies, and those found guilty may be prohibited from practising their profession for up to five years.
- **Article 382** – failure to report knowledge of FGM to the relevant authorities is punishable with a fine of between 50,000 and 100,000 CFA francs (US\$88–177¹¹).

Implementation of The Law

Cases

Since 2008 it appears that considerable efforts have been made in Burkina Faso to keep more reliable records on the enforcement of the law. Burkina Faso has generally enforced its anti-FGM law more thoroughly than most other African countries, and the number of prosecutions is variably reported across international publications and the media. Some of those documented are set out below.

Up to 2010: It appears that, leading up to 2010, there was a gradual increase in the number of prosecutions for FGM in Burkina Faso; a UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation (*UNJP*) report states, for instance, that

between 1997 and 2005, a total of 94 individuals (excisors and parents) were sentenced for violating the law. From 2005 through 2009, the number increased to 686 – 40 excisors and 646 parents. In 2009 alone, the authorities responded to 230 individual cases of FGM/C and halted three planned excisions. Eight circumcisers and 54 accomplices were arrested in 2009 and received sentences ranging from three months (with parole) to five years.¹²

2011: The periodic report for Burkina Faso on the implementation of the African Charter on Human & Peoples' Rights (the *Banjul Charter*) in January 2015 subsequently recorded a decrease in prosecutions: 'According to the 2011 statistical yearbook of the Ministry of Justice, the number of persons sentenced and detained in prisons for female genital mutilation decreased from 76 in 2008 to 16 on 31 December 2011.'¹³

2012–2013: The UNJP reported that, during 2012, seven cases involving 33 girls under 15 years of age, including newborns, were recorded. Four of these resulted in death, and three cutters were arrested, together with their nine assistants. The cutters and five of their accomplices were subsequently sentenced to between one month and a year of imprisonment, plus two months of parole. Seven more convictions were also recorded in 2013 under the Penal Code.¹⁴ It is not known if the sentences were completed.

2015–2016: Analysis in the UNJP Annual Report for 2015 shows that the number of successful convictions in Burkina Faso had risen from one-third of reported cases in 2009 (10 out of 30) up to nearly two-thirds in 2015 (19 out of 30).¹⁵ The most recent report published by the UNJP listed 65 arrests during 2016, of which 47 resulted in convictions. In total, from 2009 to 2016, 223 prosecutions were recorded, resulting in the conviction of 384 perpetrators and their accomplices for FGM.¹⁶

Details of isolated cases are periodically reported to the public, including one in Zoundweogo in 2015, where a practitioner was found guilty of mutilating eight girls aged 8–17 and sentenced to one year's imprisonment.¹⁷ However, it is not known if the sentence was followed through and completed. The Human Rights Report for 2017 stated that, of four perpetrators arrested in Orodara, Bobo Dioulasso, Tenkodogo and Leo, two were tried and convicted, one was awaiting trial and one was at large. Twenty-nine accomplices were also sentenced to pay fines or given suspended fines.¹⁸

2017: Through regular monitoring at the national level in Burkina Faso, the following case details were collected for the period January–June 2017:

- 10 cases of FGM were reported in Bobo Dioulasso, Orodara, Banfora and other localities.
- Three girls escaped FGM in the province of Passore in the municipality of Gomponsom following the intervention of a catechist (religious teacher) who is a member of the Network of Religious and Traditional Leaders against FGM in this province.
- Data collected from the high court shows that, over the six-month period, 51 people (perpetrators and accomplices) were prosecuted for performing FGM on 49 girls; a total of 32 people were sentenced to either firm or conditional sentences. Some were sentenced to imprisonment for a period of six months to one year, with conditional sentences and a fine of 500,000 CFA francs (US\$883), and others received sentences ranging from two months to one year and a fine of between 200,000 and 250,000 CFA francs (US\$353–442).¹⁹
- FGM cases recorded in Tiéssourou and Barani were judged in community court hearings.²⁰

An innovative approach to legal proceedings undertaken in Burkina Faso is the use of **mobile community courts** (*audiences foraines*), which take the enforcement of the law directly to the practising communities. These have been highly successful in raising awareness of the law and involving all members of the community and local media in the sentencing process of FGM cases.

For further analysis on court cases, sentences and details of public hearings in Burkina Faso, see **Analysis of Legal Frameworks on Female Genital Mutilation (2017)** by the UNFPA Regional Office for West and Central Africa.²¹ This report also states (at **section 4.7, page 56**) that the proposed update to **Articles 380–382 of the Penal Code** will increase sentences from the current six months to three years' imprisonment to one to five years' imprisonment, and the fine of 150,000–900,000 CFA francs CFA to 300,000–1,500,000 francs CFA.

Relevant Government Authorities and Strategies

The main government authority responsible for implementing policy to end FGM in Burkina Faso is the **Ministry of Women, National Solidarity and Family**. In May 1990, the Government of Burkina Faso established the **Permanent Secretariat of the National Council for the Fight against the Practice of Excision** (*le Comité National de Lutte contre la Pratique de l'Excision*) (CNLPE) and mandated it with the purpose of preparing, implementing, coordinating and evaluating all strategies aimed at the abolition of FGM. The Committee is made up of a General Assembly, including representatives from various government ministries, members of the NGO community, religious and community leaders, and the judiciary.

In 1997 the National Committee was restructured to also include a **Permanent Secretariat** to oversee all actions against FGM, including work to implement the law and national plans of action. It is affiliated with the **Ministry of Social Action** and has a presence in all regions of Burkina Faso, including 45 provincial, departmental and village-level committees. Since 1992 three National Action Plans to eliminate FGM have been developed and implemented; in 2016, parliament adopted the Government's four-year **National Strategic Plan (2016–2020)**, which incorporated

ending FGM. The CNLPE oversees its implementation and the coordination of all relevant parties, including 13 ministries.²²

The CNLPE also runs a 24-hour free telephone hotline, known as 'SOS Excision', to report girls at risk of FGM and alert the local police. The law has also been translated into some local languages.

In 2009 Burkina Faso became part of the **UNJP**. The UNJP has supported a wide range of projects and works in close partnership with the CNLPE to conduct research, monitoring, awareness-raising campaigns and training for traditional and religious leaders, women's organisations and village community groups, medical staff, law enforcement officers and youth movements. It also works alongside many local community and faith-based organisations.

Civil Society Observations

FGM is practised across all regions, ethnic groups and religions in Burkina Faso. Much work has been done with the support of the Government to end the practice, and available data suggests a clear trend towards lower prevalence among younger women (for further information, see <https://www.28toomany.org/burkina-faso/>).

Burkina Faso is regularly showcased as leading the way in implementing and enforcing its anti-FGM legislation, and civil society in general has noticed improved awareness of the law and its meaning across practising communities. This has been particularly helped by the use of the mobile courts: civil society notes that the public hearings provide judges with an opportunity not only to sensitise the perpetrators and their communities on the harmful effects of this practice, but also to issue penalties against perpetrators and accomplices in the presence of the local population. This is a key opportunity to demonstrate that enforcement of the law against FGM is a reality and build collaboration between communities and the justice system. There is huge stigma attached to receiving a prison sentence, and this acts as a deterrent. An increasing number of calls to the telephone helpline has also been reported, with guaranteed anonymity for callers being critical to its success.

However, some challenges remain, including:

- continued support for FGM and resistance to change from some community and religious leaders;
- a move away from group ceremonies to individual cutting in private, and at younger ages, to avoid prosecution;
- despite efforts by the UNJP and partners targeting border communities, a reported increase in cross-border FGM into Mali and Côte d'Ivoire;
- the difficulty for NGOs of accessing remote rural communities;
- funding shortages that limit the work and coverage of community awareness-raising activities around the law and the number of public court hearings held; and
- despite widespread support to end FGM from the medical community, a need to clearly document cases of FGM to improve law enforcement.

Conclusions and Suggestions for Improvement

Conclusions

- Burkina Faso was one of the first African countries to implement a national law criminalising FGM, and **Articles 380–382 of the Penal Code** punish all perpetrators, including medical professionals, who perform FGM or fail to report the practice.
- Although the law does not explicitly criminalise and punish the procurement and aiding and abetting of FGM, prosecutions to date in Burkina Faso have routinely punished accomplices to the crime.
- There has been much collaborative working in Burkina Faso to end FGM, including from the Government through the CNLPE. Awareness-raising around the law has been successfully incorporated into anti-FGM programmes, and initiatives such as the mobile community courts and telephone helpline have contributed to the decline in FGM prevalence in Burkina Faso.
- Cross-border FGM remains a challenge, and the law does not currently address the issue.

Suggestions for Improvement

National Legislation

- The Government is urged to fully implement the revised Penal Code to tighten Articles 380–382 and increase penalties for FGM.
- The law could be reviewed and tightened to explicitly punish and set out penalties for anyone procuring, aiding or abetting the practice of FGM.
- The law urgently needs to address the issue of cross-border FGM.
- The law should continue to be translated and made available in all local languages.

Implementation of the Law

- Continued support and funding for the monitoring and reporting of FGM cases will 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 continue to 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 high and illegal activity continues to take place.
- Judges and local law enforcers need continued 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.

- Continued funding for community court hearings should be a priority to build on their success to date. Alternatively, tribunals should be encouraged to make sure any prosecutions and sentences relating to FGM are clearly reported to the public, including through local media such as community radio, and made available in local languages where required.
- 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 safe spaces) should be put in place for girls at risk of FGM.

Appendix I: International and Regional Treaties

BURKINA FASO	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (<i>ICCPR</i>)			✓ 1999	
International Covenant on Economic, Social & Cultural Rights (1966) (<i>ICESCR</i>)			✓ 1999	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (<i>CEDAW</i>)			✓ 1987	
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (<i>CTOCIDTP</i>)		✓ 2010		
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)	✓ 1984	✓ 1984		
African Charter on the Rights and Welfare of the Child (1990) (<i>ACRWC</i>)	✓ 1992	✓ 1992		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (<i>ACHPRRWA</i>) (Maputo Protocol)	✓ 2004	✓ 2006		

'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 *The Constitution of Burkina Faso* (1991) [French] Available at <http://www.wipo.int/edocs/lexdocs/laws/fr/bf/bf017fr.pdf>. (English translation available at https://www.constituteproject.org/constitution/Burkina_Faso_2012.pdf.)
- 2 Sawadogo Lamoussa Carol (2017) 'Innovations in the draft Constitution of Burkina Faso', *ConstitutionNet*, 2 March. Available at <http://www.constitutionnet.org/news/innovations-draft-constitution-burkina-faso>.
- 3 *Burkina Faso: Code Pénal* (1996). Available at: <http://www.refworld.org/docid/3ae6b5cc0.html>.
- 4 Milaine Goretti Tiendrebeogo (2018) 'Projet de loi portant code pénal : Le Burkina Faso abolit la peine de mort' ('Draft law on penal code: Burkina Faso abolishes the death penalty'), *Lefaso.net*, 31 May. Available at <http://lefaso.net/spip.php?article83745>.
- 5 **Note: The original text of the Penal Code in Article 382 cross-refers to Article 377; government sources have confirmed, however, that this is a typographical error and should read Article 380.**
- 6 *Loi no. 049-2005 Portant Sante de la Reproduction* (2005). Available at https://srhr.org/abortion-policies/documents/countries/03_Burkina%20Faso-Reproductive-Health-Law-National-Assembly-2005.pdf.

- 7 *Family Code of Burkina Faso* (1989). Available at <http://lactionsociale.ivoire-blog.com/media/01/00/310663984.pdf>.
- 8 *Loi no. 23/94/ADP portant Code de la Santé publique* (1994). Available at https://www.unodc.org/res/cld/document/bfa/loi-n-23-94-adp-portant-code-de-la-sante-publique_html/Burkina_Faso_Loi_N_2394ADP_portant_Code_de_la_Sante_Publique.pdf.
- 9 UNIFEM cited in Mercedes Sayagues (2009) 'Female Genital Mutilation Knows No Borders', *Inter Press Service*, 6 February. Available at <http://www.ipsnews.net/2009/02/west-africa-female-genital-mutilation-knows-no-borders/>.
- 10 *Currency conversion (Francs CFA to US Dollars) as at 27 June 2018* (www.xe.com/currencyconverter).
- 11 *Currency conversion (Francs CFA to US Dollars) as at 27 June 2018* (www.xe.com/currencyconverter).
- 12 UNFPA-UNICEF Joint Programme on FGM/C: Accelerating Change (undated) *Burkina Faso has a Strong Law against FGM/C, but Winning Hearts and Minds Remains Crucial*. Available at <https://www.unfpa.org/sites/default/files/resource-pdf/burkinafaso.pdf>.
- 13 Burkina Faso (2015) *Periodic Report of Burkina Faso Within the Framework of the Implementation of Article 62 of the African Charter on Human and Peoples' Rights*, p.52. Available at <http://www.achpr.org/files/sessions/57th/state-reports/3-2011-2015/staterep3.pdf>.
- 14 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change (2014) *Summary Report of Phase I 2008 – 2013*, p.12. Available at <http://www.unfpa.org/publications/unfpa-unicef-joint-programme-female-genital-mutilationcutting-accelerating-change>.
- 15 UNFPA and UNICEF (2015) *2015 Annual Report UNJP: Accelerating Change: Metrics of Progress; Moments of Change*, p.22. Available at https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_FGM_WEB_FINAL_ENGLISH.pdf.
- 16 UNFPA and UNICEF (2016) *2016 Annual Report of the UNFPA-UNICEF Joint Programme on FGM/C: Accelerating Change*, p.26. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
- 17 Ivan Broadhead (2015) 'Activists Fear Rise of FGM Cases in Burkina Faso', *Voice of America*, 15 October. Available at <http://reliefweb.int/report/burkina-faso/activists-fear-rise-fgm-cases-burkina-faso>.
- 18 US Department of State (2017) *Burkina Faso 2017 Human Rights Report*, p.17. Available at <https://www.state.gov/documents/organization/277217.pdf>.
- 19 *Currency conversion (Francs CFA to US Dollars) as at 27 June 2018* (www.xe.com/currencyconverter).
- 20 Information supplied by the Girl Generation Burkina Faso, 2017.
- 21 UNFPA Regional Office for West and Central Africa (2017) *Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa*, pp.57–58 & 61–62. Available at <http://wcaro.unfpa.org/sites/default/files/pub-pdf/EN-UNFPA-ANALYSIS-ON-FGM.pdf>.
- 22 UNFPA and UNICEF (2017) *17 Ways to end FGM/C: Lessons from the Field*, p.39. Available at <https://www.unfpa.org/sites/default/files/pub-pdf/17ways-web.pdf>.

Cover image: Marco Fumasoni (2013) *Cusriosa': Bobo Dioulasso* [cropped]. Available at <https://flic.kr/p/dSZwpo>. CCL: <https://creativecommons.org/licenses/by/2.0/>.

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.

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