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FGM... let's end it.

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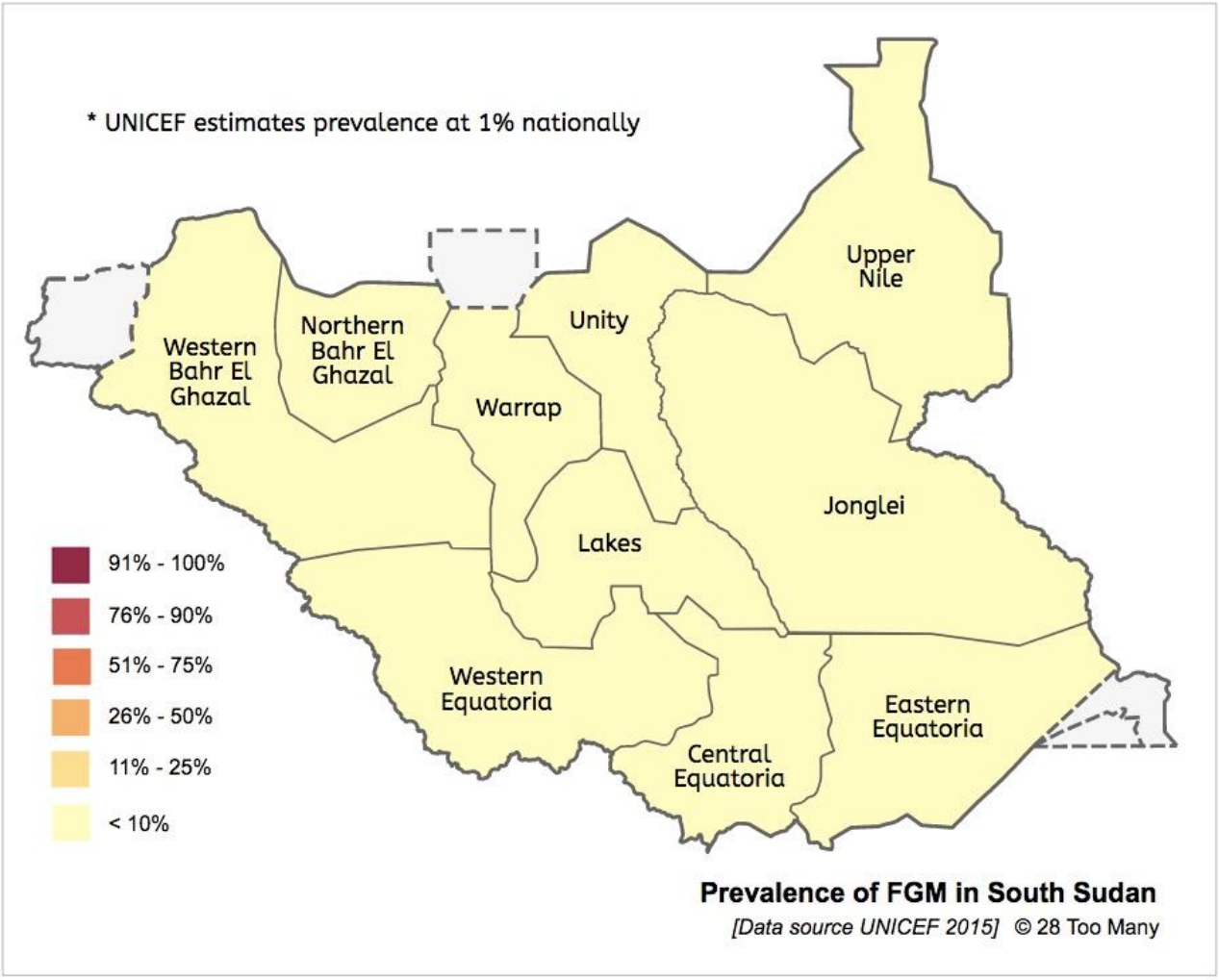


SOUTH SUDAN:

THE LAW AND FGM/C

May 2018

There is an absence of data on the prevalence and practice of FGM/C in South Sudan. UNICEF has previously reported a prevalence of 1% among women aged 15–49[1], but there are no recent surveys to confirm this figure.



FGM/C has been reported among both Christian and Muslim communities, particularly in the northern regions of the country, including Bahr el Ghazal and Upper Nile.

For further information on FGM/C in South Sudan, see ***https://www.fgmcri.org/country/south-sudan/****.*

Domestic Legal Framework

Overview of Domestic Legal Framework in South Sudan	
The Constitution explicitly prohibits:	
X	Violence against women and girls
✓	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***

** Failure to report infringement of a child's rights (i.e. only persons under 18 years of age).*

What is the Law Against FGM/C?

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

South Sudan gained independence in 2011 and was previously subject to the jurisdiction of Sudan, the legal system of which is based on a mix of Islamic and English law.

The Transitional Constitution of the Republic of South Sudan (2011)[2] protects the integrity of the person under **Article 11**, and **Article 18** provides that no person shall be subjected to torture or to cruel, inhuman or degrading treatment. The moral and physical development of children and youth is protected under **Article 40** and, most relevant to FGM/C, **Article 17** sets out the rights of the child and states at **(1)(g)** that every child has the right '[n]ot to be subjected to negative and harmful cultural practices which affect his or her health, welfare or dignity.'[3]

In addition, under the **Transitional Constitution**, laws that were applied in the ten states of Southern Sudan before it separated from Sudan in 2011 are still in force. **Article 198** states, 'All current Laws of Southern Sudan shall remain in force and all current institutions shall continue to

perform their functions and duties, unless new actions are taken in accordance with the provisions of this Constitution.'

In South Sudan, both the Penal Code Act 2008 (the *Penal Code*)[4] and the Child Act 2008 (the *Child Act*)[5] criminalise FGM/C and remain in force as per the Transitional Constitution. The Penal Code sets out the punishment for committing FGM/C.

What the Law Covers

Section 5 of the Child Act defines 'female circumcision' as:

> the cutting and removal of part or all of the female genitalia and includes the practices of clitoridectomy, excision, infibulations or other practice involving the removal of part, or of the entire clitoris or labia of a female child.[6]

Section 26(1), under 'Rights of the Female Child', states, 'Every female child has a right to be protected from sexual abuse and exploitation and gender-based violence, including rape, incest, early and forced marriage, female circumcision and female genital mutilation.' The Child Act therefore criminalises all forms of FGM/C on children under the age of 18 and states at **Section 34** that it is a duty to report the infringement of a child's rights to the police, judiciary, social workers or local government official. Failure to do so will be subject to punishment.

The Penal Code does not specifically define FGM/C, but it is an offence under **Section 259** and punishes anyone who 'makes or causes a Female Genital Mutilation to be performed' (at any age).

There are several other sections of the **Penal Code** that have relevance to the harm caused by FGM/C.

- **Section 230(1)** defines 'hurt' as causing bodily pain and states that **(2)** anyone who commits an act with the knowledge that it will cause such hurt, and does cause such hurt, to any person without provocation is subject to punishment under **Section 232**.
- **Section 233** punishes anyone causing hurt using any instrument for cutting.
- **Section 235(1)** defines 'grievous hurt' which includes deprivation or permanent disfiguration of any part of the body, as well as destruction or permanent impairing of the powers of any part of the body. It also includes any hurt that endangers life or causes the victim to be in severe bodily pain or unable to follow ordinary pursuits for at least twenty days. Causing grievous harm without provocation is subject to punishment under **Section 237**.
- **Section 244** punishes anyone who negligently causes serious bodily harm or injury to another.

Medicalised FGM/C

There is no recent data on whether medicalised FGM/C takes place in South Sudan. Neither the Child Act nor the Penal Code specifically refer to FGM/C carried out by health professionals or in a medical setting.

The **Penal Code** does, however, make it a criminal offence for anyone to carry out FGM/C and therefore should generally cover all members of the medical profession.

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. South Sudan shares borders with other countries where the prevalence of FGM/C and the existence and enforcement of anti-FGM/C laws vary, including Ethiopia, Kenya, Sudan, Central African Republic and Uganda.

It is not known to what extent movement across national borders for FGM/C is an issue for South Sudan. The Child Act and the Penal Code do not directly address FGM/C being carried out on or by a Southern Sudanese citizen in another country; more generally, **Section 7 of the Penal Code** makes it a criminal offence for anyone to perform or abet an illegal act outside the country.

Penalties

Under **Section 259 of the Penal Code**, anyone who 'makes or causes' FGM/C commits an offence and is subject upon conviction to a punishment of imprisonment of up to ten years, or a fine, or both.

In addition, the following penalties are set out in the **Penal Code** for causing harm to another:

- **Section 232** – whoever causes hurt, without provocation, is liable on conviction to imprisonment of up to one year, or a fine, or both;
- **Section 233** – causing hurt through the use of a cutting instrument is punishable by up to three years' imprisonment, or a fine, or both;
- **Section 237** – whoever causes grievous hurt, without provocation, is liable on conviction to imprisonment of up to seven years and may also be liable to a fine; and
- **Section 244** – whoever negligently causes bodily harm or injury to another is punishable with up to five years' imprisonment, or a fine, or both.

While the **Child Act** does not explicitly set out penalties for FGM/C, under **Section 34(2)** it gives powers to the Court to impose penalties or sanctions, and make orders or give directives, as considered appropriate, for the purpose of enforcing or securing a child's rights. **Section 35** also states that the failure to report the infringement of a child's rights is subject to punishment of up to six months' imprisonment, or a fine, or both.

Regional FGM/C Law

In 2016 the East Africa Community (including Kenya, South Sudan, Tanzania and Uganda) enacted the **East African Community Prohibition of Female Genital Mutilation Act** (the *EAC Act*)[7] to promote cooperation in the prosecution of perpetrators of FGM/C through the harmonisation of laws, policies and strategies to end FGM/C across the region. The EAC Act aims to raise awareness about the dangers of FGM/C and provide for the sharing of information, research and data.

The EAC Act defines FGM at **Article 2** as 'all procedures that involve partial or total removal of the external female genitalia, or other injury to the female organ for non-medical reasons' and sets out its objectives in **Article 3,** which include **(a)** prohibiting FGM/C as a 'trans-national crime' across member states, **(b)** setting minimum penalties for FGM/C, **(c)** establishing institutions to foster co-

operation and **(d)** developing and harmonising policies, laws, strategies and programmes to prosecute offenders, prevent FGM/C and provide services to victims and girls at risk of FGM/C.

The content of the regional law is similar to the FGM Act 2011 in Kenya and sets out the following penalties in **Part II (*Female Genital Mutilation and Related Offences*)**:

- **Article 4(1)** – performance of FGM/C carries a punishment of a minimum of three years' imprisonment;
- **Article 4(2) & (3)** – 'aggravated' FGM/C carries a punishment of imprisonment for life. 'Aggravated' FGM/C occurs if the procedure results in the death or disability of the victim, or if she is infected with HIV, or if the perpetrator is a parent, guardian or health worker;
- **Article 10** – anyone using derogatory or abusive language or ridiculing a woman (or her male partner) for undergoing or not undergoing FGM/C will be imprisoned for a minimum of six months;
- **Article 11** – imprisonment for a minimum of three years or a fine of not less than US$1,000, or both, applies to anyone procuring, aiding or abetting the practice of FGM/C (under **Article 5**), participating in cross-border FGM/C (under **Article 6**), using premises for FGM/C (under **Article 7**), possessing cutting tools or equipment (under **Article 8**) or failing to report FGM/C that has taken place, is taking place or is planned (under **Article 9**).

Further protective measures are set up in **Article 12**, which states that compensation may be sought from the perpetrator for the victim of FGM/C, and in **Article 13**, under which, if EAC state members are satisfied that a girl or woman is at risk of undergoing FGM/C, they may issue protection orders.

Part IV (*Miscellaneous Provisions*) of the EAC Act requires member states to adopt comprehensive FGM/C laws and include in their national budgets resources to protect women and girls from FGM/C, provide support services to victims, and undertake public-education and sensitisation programmes on the dangers of FGM/C. A regional database on cross-border FGM/C will be established, supported by an exchange of criminal intelligence, training of key personnel and strengthening of cross-border security. Finally, and of note for South Sudan, the law states at **Article 16,** 'This Act shall take precedence over other Partner State laws to which its provisions relate' (i.e. the penalties may be higher than those that currently exist in member states).

Implementation of the Law

Cases

It is not known to what extent the laws against FGM/C under the Child Act or Penal Code have been used in South Sudan. There is an absence of information on any cases brought to court and their outcomes.

Relevant Government Authorities and Strategies

The Ministry of Gender, Child and Social Welfare[8] is responsible for the promotion of gender equality and the protection and welfare of women and children in South Sudan. Within the Directorates of Gender and of Child Welfare there are a range of policies and programmes to tackle gender-based violence and to support women and girls' empowerment. Although a specific government strategy to end FGM/C has not been identified, as a harmful practice, FGM/C is currently addressed through the overall approach to cultural and religious practices that are harmful to women and girls, and the **National Action Plan 2015-2020**[9] sets out measures such as conducting research to inform community sensitisation campaigns.

If South Sudan fully adopts the regional EAC Act, it will be required to develop a comprehensive strategy and commit national budget resources to ending FGM/C.

Other relevant national authorities responsible for upholding the law include the Directorate of Public Prosecution and the South Sudan Police Service.

The United Nations Mission in South Sudan[10] also runs programmes to address harmful practices, including child and forced marriage and FGM/C.

Civil Society Observations

In 2015 the United Nations Population Fund estimated that almost 32,000 women in South Sudan had been affected by gender-based violence in the two years since conflict broke out.[11] As well as victims of sexual and physical violence, victims of FGM/C and child marriage were included in this estimate.

While there are laws in place criminalising FGM/C in South Sudan, there are challenges to enforcing the legislation. Civil society has urged national and regional governments to bring perpetrators to justice and communities to abandon harmful practices. However, many of those reportedly still practising FGM/C are internally displaced persons (*IDPs*) residing in UN protection-of-civilians sites throughout the country. The Danish Refugee Council reported in 2014[12] that FGM/C continues to be practised to varying degrees across camps in Upper Nile State, for instance, and this poses many challenges in terms of raising awareness and fully engaging communities and thus avoiding the practice being driven underground and performed in secret.

Conclusions and Suggestions for Improvement

Conclusions

- There is an absence of information and recent data on the prevalence and incidence of FGM/C in South Sudan.
- FGM/C is prohibited under two laws in South Sudan: the Child Act defines and criminalises all forms of FGM/C on children as well as the failure to report FGM/C, and the Penal Code criminalises and sets out the penalties for anyone causing FGM/C. They do not specifically address medicalised or cross-border FGM/C.
- Although gaps remain in the national legislation, the Government of South Sudan, as a member of the East African Community, can move forward by implementing in full the 2016 EAC Act. This takes precedence over national law and is a much more comprehensive piece of legislation to tackle FGM/C.

Suggestions for Improvement

National Legislation

- As a member of the East African Community, South Sudan should fully implement the EAC Act (as taking precedence over national law) to tackle FGM/C.
- The national law itself could also be strengthened by reflecting the detailed content of the EAC Act and ensuring protection for women and girls of all ages and punishment for all perpetrators, including health professionals.
- The national law needs to clearly address any incidences of cross-border FGM/C.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

- There is an urgent need for adequate research to understand where and to what extent FGM/C is practised in South Sudan, in particular among IDPs. This will then inform policy-makers, the judiciary, the police, civil society and all those NGOs working to end FGM/C and implement and enforce the law.
- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around the law.
- 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.
- 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.

- 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.
- Increased support and protection for victims and witnesses in FGM/C cases is needed.
- 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 by 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, the provision of safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

SOUTH SUDAN	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)				
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)				
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)			✓ 2015	
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 2015	
Convention on the Rights of the Child (1989) (*CRC*)			✓ 2015	
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)				
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)				
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)	✓ 2013			

'**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 UNICEF (2015) *Situation Assessment of Children and Women in South Sudan*, p.129. Available at https://www.unicef.org/appeals/files/UNICEF_South_Sudan_Situation_Assessment_of_Children_and_Women_2015.pdf.
2 Government of Southern Sudan (2011) *The Transitional Constitution of the Republic of South Sudan, 2011*. Available at http://www.sudantribune.com/IMG/pdf/The_Draft_Transitional_Constitution_of_the_ROSS2-2.pdf.
3 *The Transitional Constitution of the Republic of South Sudan is a product of the independence referendum held in January 2011.*
4 *The Penal Code Act, 2008* (2008) Available at http://www.wipo.int/edocs/lexdocs/laws/en/ss/ss014en.pdf.
5 *The Child Act, 2008* (2008) Available at http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83470/92194/F822057232/SDN83470.pdf.
6 *The age of majority in South Sudan is 18 years.*
7 Hon. Dora Christine Kanabahita Byamukam (2016) *The EAC prohibition of Female Genital Mutilation Bill, 2016*. Available at http://www.eala.org/documents/view/the-eac-prohibition-of-female-genital-mutilation-bill2016.
8 *See The Ministry of Gender, Child and Social Welfare website: http://mgcswss.org/.*
9 Republic of South Sudan (2015) *South Sudan National Action Plan 2015-2020 on UNSCR 1325 on Women, Peace and Security and Related Resolutions*. Available at http://www.ss.undp.org/content/dam/southsudan/library/Reports/southsudanotherdocuments/SS%20NAP%201325.pdf.
10 *See The United Nations Mission in South Sudan website: https://unmiss.unmissions.org/.*
11 United Nations Mission in South Sudan (2015) *South Sudan Observes Day for Elimination of Violence Against Women, 25 November*. Available at https://unmiss.unmissions.org/south-sudan-observes-day-elimination-violence-against-women.
12 Maria Vargas Simojoki (2014) *Female Genital Mutilation – Practices Amongst the Refugee Population in Upper Nile State, South Sudan*. Danish Refugee Council. Available at https://data2.unhcr.org/en/documents/download/29215.

Cover image: John Wollwerth (2013) *TORIT, SOUTH SUDAN – FEBRUARY 21 2013: An unidentified little girl responsible for carrying her baby sister in Torit, South Sudan.* Shutterstock photo ID: 214560649.

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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