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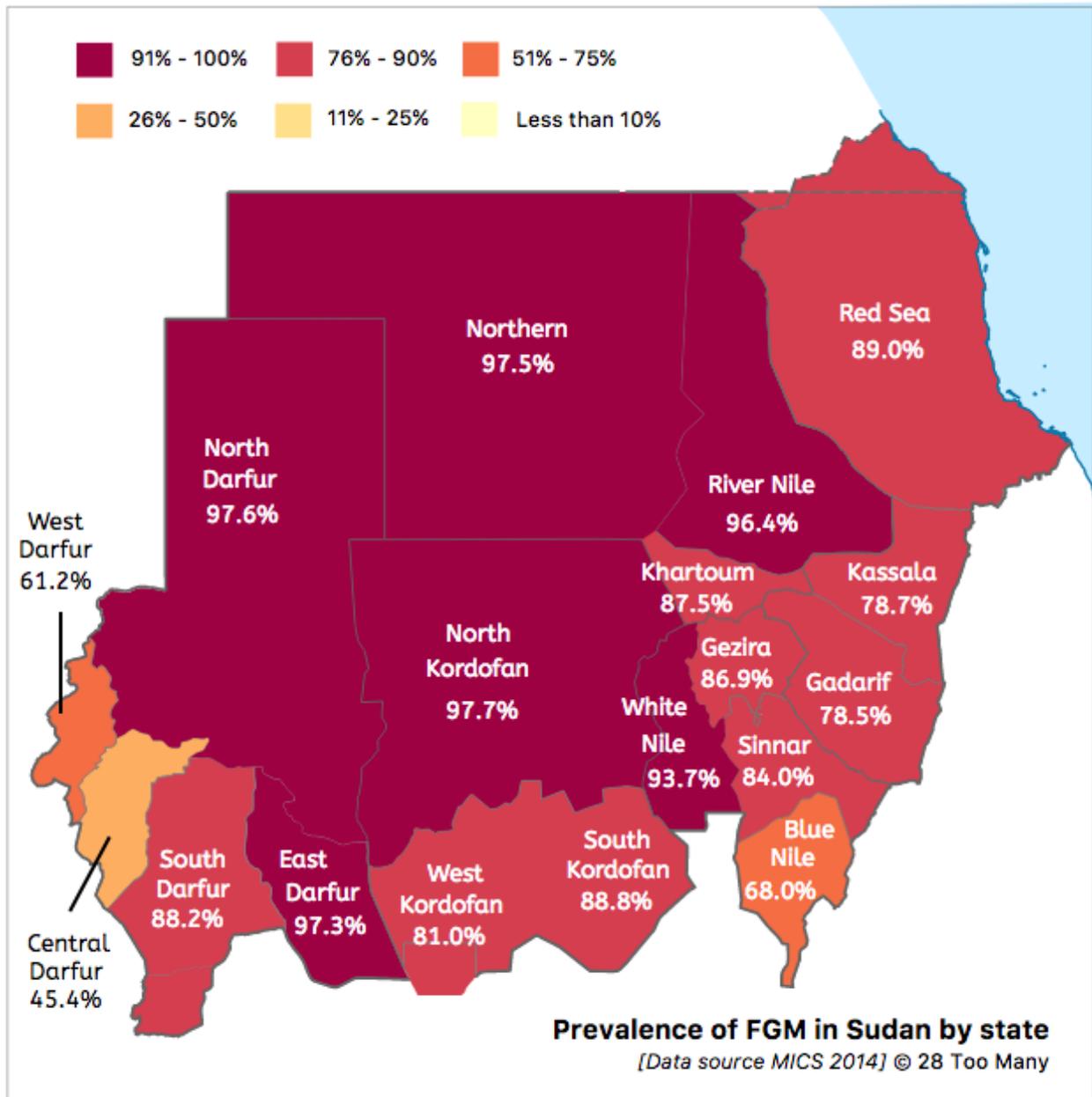


# **SUDAN: THE LAW AND FGM**

July 2018  
*Updated March 2022*

**In Sudan, the prevalence of FGM in women aged 15–49 is 86.6%.**

The states with the highest prevalence are in the north-west; North Kordofan is the highest at 97.7%.



- Most women have been cut between the ages of five and nine.
- Type III ('sewn closed') is the most common type of FGM practised.
- More than three-quarters of FGM cases are carried out by nurses, midwives or other medical personnel.
- 52.8% of women aged 15–49 who have heard of FGM believe it should be discontinued.

Source of data: Central Bureau of Statistics (CBS), UNICEF Sudan (2016) *Multiple Indicator Cluster Survey 2014 of Sudan, Final Report*. Khartoum, Sudan: UNICEF and Central Bureau of Statistics (CBS), February 2016, pp.214–219.

Available at [https://mics-surveys-prod.s3.amazonaws.com/MICS5/Middle%20East%20and%20North%20Africa/Sudan/2014/Final/Sudan%202014%20MICS\\_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS5/Middle%20East%20and%20North%20Africa/Sudan/2014/Final/Sudan%202014%20MICS_English.pdf).

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

# Domestic Legal Framework

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

## What is The Law Against FGM?

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

Sudan has a federal system of government, and, following the separation and independence of ten southern states in 2011 to become South Sudan, the country of Sudan now comprises the remaining 18 states, which are grouped into five provinces. It has a mixed legal system of Islamic law and English common law.

**The Constitutional Charter for the Transitional Period of 2019 (subsequently amended)**<sup>1</sup> places various obligations on the State to protect women and children. **Article 8** imposes certain commitments on state agencies during the transitional period, such as requiring state agencies to **(2)** repeal laws and provisions that restrict freedoms or that discriminate between citizens on the basis of gender; **(7)** guarantee and promote women’s rights in Sudan and combat all forms of discrimination against women; and **(8)** strengthen the role of young people of both sexes and expand their opportunities. Although the Constitution does not specifically mention FGM, **Article 49** is dedicated to women’s rights and requires the State to **(1)** protect women’s rights as provided under international and regional agreements that are ratified by Sudan (see Appendix I); **(4)** work to combat harmful customs and traditions that reduce the dignity and status of women; and **(5)** provide free healthcare during motherhood and

childhood and for pregnant women. Furthermore, **Article 50** requires the State to protect the rights of the child as provided in international and regional agreements ratified by Sudan (see Appendix I). Finally, **Article 51** states that no one may be subjected to torture or harsh, inhumane or degrading treatment or punishment, or have their dignity debased.

As of July 2020, a **national law against FGM** covering the whole of Sudan was implemented. Sudan's Ministry of Justice Official Gazette issue no. 1904, issued on 13 July 2020, published **Law No. 12 of 2020, which amends certain provisions of the Criminal Act (1991)**.

According to Justice Minister Nasredeen Abdulbari, the new laws are part of Sudan's efforts to eliminate all laws that violate human rights and 'demolish any kind of discrimination that was enacted by the old regime' to enable the country to 'move toward equality of citizenship and a democratic transformation'.

Under the new **Article 141A, Law No. 12 of 2020** introduces an amendment to the Criminal Act that criminalises FGM for the first time in Sudan's history.<sup>2</sup>

Various states have put laws in place that only apply to FGM undertaken within the boundaries of those states, including Gedaref, South Darfur, South Kordofan and Red Sea.

## What The Law Covers

**Article 141A of the amendment to the Criminal Act (1991)** defines the offence of FGM as the 'removal or mutilation of the female genitalia by cutting, mutilating or modifying any natural part of it leading to the full or partial loss of its functions, whether it is inside a hospital, health centre, dispensary or clinic or other places'.<sup>3</sup>

In addition to the 2020 amendment to the Criminal Act, there are other laws that refer to causing harm to another person and the protection of children that are applicable across Sudan:

- **Criminal Act (1991)**<sup>4</sup> – **Section 138** defines 'wounds' inflicted on another person (both 'intentional' or 'semi-intentional') to include the loss of an organ or any of the senses and **Sections 139 and 140** set out the penalties for committing the offence. **Section 142** defines 'hurt' as causing pain to another person and is punishable accordingly.
- **Child Act (2010)**<sup>5</sup> – **Chapter II, Article 5** protects children (under 18 years of age) from all forms of violence, harm and physical and psychological abuse; **sub-section (2)(k)** specifically states, 'This Act ensures the protection of a male, or female Child, against all types and forms of violence, injury, inhuman treatment, or bodily, ethical or sexual abuse, or neglect or exploitation.' The drafting of this law was started in 2007, and in 2009 it was proposed to include an **Article 13** that would explicitly criminalise all forms of FGM. However, following subsequent representations by religious leaders, claiming that this article would be against Sharia, the president ordered its removal.<sup>6</sup>

The following four states have attempted to criminalise FGM:

- **South Kordofan** (FGM prevalence 88.8%) – the first Sudanese state to adopt legislation. The **Prevention of Female Genital Mutilation Act (2008)**<sup>7</sup> places responsibility on parents and guardians to protect females (up to 18 years of age) from FGM. Reporting incidents of FGM is the responsibility of all. This law also provides for the payment of compensation to the victim of FGM by the person who performed the act.

- **Gadarif** (FGM prevalence 78.5%) – the second state to introduce a law. Under **Article 13 of the Child Law 2009**, all harmful traditional practices (including FGM) are prohibited. This is applicable to all forms of FGM.<sup>8</sup>
- **South Darfur** (FGM prevalence 88.2%) – under **Article 11 of the South Darfur State Child Act 2013**, all forms of FGM are prohibited.<sup>9</sup>
- **Red Sea** (FGM prevalence 89.0%) – the Red Sea succeeded in introducing a law in 2007 prohibiting all forms of FGM, only for it to be repealed following protests from the Beja ethnic group.<sup>10</sup> Following the death of an infant girl from FGM in 2009, pressure to criminalise the practice increased again and the **Child Act 2011** reportedly included the potential under **Article 10** for FGM prohibition, although only for the most severe type (infibulation, also known as ‘pharaonic circumcision’ in Sudan). The Ministry of Health, however, has yet to issue a decree; hence, to date, the law has still not been fully enacted.<sup>11</sup>

The remaining states of Sudan currently have no specific laws prohibiting FGM.

While there are no **customary laws** surrounding FGM in Sudan, some religious leaders support *Sunna* circumcision (which includes partial or total removal of the clitoris) and claim that criminalising it would be against Sharia law. Police Chief Lt Gen Ezzeldin El Sheikh has stated that religious leaders in the largely Muslim country would play a key role in ending the practice.<sup>12</sup>

### **Medicalised FGM**

Medicalised FGM is significant in Sudan; according to a secondary analysis of 2014 data, 77.9% of women in urban areas and 56.7% of women in rural areas (aged 15–49) have been cut by ‘trained midwives’. The rate of medicalisation also varies by state, and the analysis shows that it has increased significantly over time.<sup>13</sup>

**Medical Council Resolution Number 366 from 2002** prohibits doctors and midwives from performing all forms of FGM.<sup>14</sup> All involved, including the hospital or healthcare facility, will be subject to punishment if caught performing FGM. The sanctions, however, are only administrative in nature rather than criminal. Punishment for doctors and midwives under this resolution is at the discretion of the Medical Council and can result in the annulment of practising licences and dismissal from the profession.

The Resolution is demonstrated in an **oath** that midwives must take upon graduation from their training. Part of that oath is that they will not perform FGM. Unfortunately, some midwives get around this by not saying those particular words or by lowering their hands as they say them.<sup>15</sup>

With the introduction of the **2020 amendment to the Criminal Act (1991)**, FGM that occurs inside a hospital health centre, dispensary or clinic or other places has been criminalised.

The Ministry of Health is also conducting reproductive health programmes to raise awareness of the effects of FGM and why it should not be practised. Furthermore, South Kordofan’s **Prevention of Female Genital Mutilation Act** calls for life imprisonment, cancellation of medical licences for doctors and nurses, and confiscation of property for repeat offenders.

### *Cross-Border FGM*

In some countries where FGM has become illegal, the practice has been pushed underground and across borders to avoid prosecution. Sudan shares borders with other countries where the prevalence of FGM and the existence and enforcement of anti-FGM laws vary, including Egypt, Eritrea, Ethiopia and South Sudan.

It is not known to what extent the movement across national borders for FGM is an issue in Sudan. However, **Article 141A of the Criminal Act (1991)** penalises anyone who travels into Sudan to perform FGM.

## Penalties

### *National*

Under the **2020 amendment to the Criminal Act (1991)**, anyone found guilty of committing the crime of FGM shall be punished with three years' imprisonment and a fine or closing of the premises where the FGM took place. The fine is not prescribed by law and is to be determined by judicial discretion.

**The Criminal Act (1991)** sets out the following penalties for causing 'wounds' or 'hurt':

- **Section 139** – anyone causing 'intentional wounds' to another person is subject to punishment of up to five years' imprisonment, or a fine, or both;
- **Section 140** – anyone causing 'semi-intentional wounds' to another person is subject to punishment of up to three years' imprisonment, or a fine, or both; and
- **Section 142** – anyone causing 'hurt' to another person is subject to punishment of up to six months' imprisonment, or a fine, or both.

### *State*

- **South Kordofan – The Prevention of Female Genital Mutilation Act (2008)** includes a range of penalties from three years' imprisonment and compensation payable to the victim, up to ten years' imprisonment and compensation payable to the victim's family in the case of the victim's death.
- **Gadarif – The Child Law 2009** stipulates a maximum of 6 months' imprisonment or a fine of not less than 100 SDG (approximately US\$0.23)<sup>16</sup>, or both, but without prejudice to any civil compensation that may be available. It also stipulates that the court concerned may give part of the fine to the victim.
- **South Darfur – The Child Act 2013** does not include a provision for penalties.
- **Red Sea – The Child Act 2011** does not include a provision for penalties.

# Implementation of The Law

## Cases

It has not been possible to establish whether any prosecutions have taken place in Sudan since the national legislation prohibiting FGM was passed. There is also no evidence of the other articles of the Criminal Act (1991) being used to prosecute perpetrators of FGM.

It has not been possible to establish if any prosecutions have taken place within the four states that have attempted to criminalise FGM. In 2009, local media reported that a 40-day-old girl died after being cut in the Red Sea state. Although the case was reported to the police, the family refused to give the name of the midwife responsible for the act.<sup>17</sup>

## Relevant Government Authorities and Strategies

Various government departments and professional bodies are responsible for implementing the national campaign to end FGM in Sudan, including the **Ministries of Welfare and Social Services, Health, Guidance and Endowment and the Medical Council**.

**The National Council for Child Welfare (NCCW)** is the government authority that coordinates work in collaboration with the **UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (UNJFP)**, which has been working in Sudan since 2008. The NCCW has established a roadmap for training community leaders and health providers on law enforcement. This roadmap will be aligned with national strategies such as the National Health Sector Strategy, the National Girls Education Sector Strategy, the National Social Protection Strategy and the Gender-Based Violence Strategy. Furthermore, a Memorandum of Understanding will be established with the media for the purpose of running a communications campaign on the law against FGM.<sup>18</sup> It is not yet clear when that Memorandum will be established.

**The National Strategy to Combat Female Genital Mutilation 2008–2018** was launched as a partnership between government and civil-society organisations to address the religious, health, social and cultural aspects of FGM.<sup>19</sup> At state level there are also local government departments, councils and steering committees for anti-FGM advocacy.

A national communications campaign was launched in 2008 focused around the idea of the uncut woman or **Saleema** (the Arabic word for ‘whole, undamaged, unharmed, and complete’). This positioned FGM within the broader frameworks of child protection and gender equality.<sup>20</sup> UNICEF continues to implement the Saleema social norms marketing campaign to promote long-term abandonment of FGM. This included the development of promotional products, radio programmes, billboards and a campaign song, and the engagement of local singers, comedians, artists and religious scholars as Saleema ‘ambassadors’.<sup>21</sup> A study completed in 2019 demonstrated that the Saleema initiative is effective in reducing social norms that sustain FGM.<sup>22</sup>

Government departments have partnered with the UNJFP and local non-governmental organisations (NGOs) to develop advocacy campaigns with religious leaders and the media, implement reproductive-health services and midwife training, provide information and

counselling to parents of new-born girls and incorporate awareness education into the school curriculum. An online dialogue platform to address FGM has also been developed and a comprehensive mapping exercise of the communities practising FGM has been undertaken.<sup>23</sup>

Moreover, in November 2020, police forces nationwide were instructed to enforce the criminalisation of FGM. At a seminar on the incrimination of FGM organised by the National Council for Child Care, Police Chief Lt Gen Ezzeldin El Sheikh stated that the police will pay special attention to the practice of FGM. The police chief proposed addressing various communities in their local languages 'until they reach the stage of conviction' and emphasised the role of religious leaders and institutions in the enforcement of the new laws.<sup>24</sup>

## Civil Society Observations

While many civil society organisations welcomed the legislation prohibiting FGM, some organisations have observed that the practice remains deeply entrenched in the region's conservative society and that enforcement poses a steep challenge.

In addition, some activists have pointed out that the coronavirus pandemic has limited them from mobilising awareness campaigns or police training during lockdown periods.<sup>25</sup> Following the economic fallout, rising poverty levels and school closures associated with the pandemic, girls are reportedly at an increased risk of undergoing FGM as a precursor to child marriage. Additionally, as law enforcement and front-line workers are redeployed to respond to the coronavirus pandemic, formal protection systems are weakened.<sup>26</sup>

Civil society also reports that, despite national legislation prohibiting FGM, as FGM is highly intertwined with religion and culture in Sudan, the stigma attached to girls who have not been cut may remain. Moreover, in rural communities, there might be a lack of knowledge around the meaning and content of the law. There is also the challenge that the prohibition may drive FGM practices underground, subjecting girls to even more dangerous health conditions.<sup>27</sup>

# Conclusions and Suggestions for Improvement

## Conclusions

- FGM prevalence in Sudan remains one of the highest in Africa, and an increasing number of women and girls are being cut by medical professionals.
- Since national legislation prohibiting FGM was passed, there is a lack of statistics on the prevalence of FGM and whether prosecutions have taken place.
- There are some states where laws have been introduced, but their enforcement appears to be poor and it is not known if any prosecutions have taken place.
- The coronavirus pandemic has brought more challenges to ending FGM.

## Suggestions for Improvement

### *National Legislation*

- There is an urgent need to include provisions in all relevant federal laws for the prohibition of *all forms* of FGM. Laws should criminalise and punish all perpetrators of FGM (including anyone who performs, procures, aids or abets the crime) and protect women and girls of all ages.
- The law should further address cross-border FGM and punish the failure to report FGM that is planned or has taken place.
- The same provisions should also be adopted in laws across all states of Sudan.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

### *Implementation of the Law*

The following actions will contribute to efforts to enforce the legislation against FGM. These actions could be implemented with immediate effect.

- Anti-FGM programmes should disseminate clear, easy-to-understand and accurate information around the law.
- 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 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.
- Adequate monitoring and reporting of FGM cases would improve efficiency and inform policy makers, the judiciary, the police, civil society and all those working to implement and enforce the law.

- All professionals (including those in 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.
- Increased support and protection for victims and witnesses in FGM cases is essential.
- Tribunals could be encouraged to make sure any prosecutions relating to FGM are clearly reported, including through local media such as community radio, and made available in local languages.
- 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 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.
- Additional reforms to repeal other laws that discriminate against Sudanese women should be implemented, to capitalise on the successful passing of the anti-FGM law.

# Appendix I: International and Regional Treaties

SUDAN	Signed	Ratified	Acceded	Reservations on reporting?
<b>International</b>				
International Covenant on Civil & Political Rights (1966) ( <i>ICCPR</i> )			✓ 1986	
International Covenant on Economic, Social & Cultural Rights (1966) ( <i>ICESCR</i> )			✓ 1986	
Convention on the Elimination of All forms of Discrimination Against Women (1979) ( <i>CEDAW</i> )		✓ 2021		
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) ( <i>CTOCIDTP</i> )	✓ 1986			
Convention on the Rights of the Child (1989) ( <i>CRC</i> )	✓ 1990	✓ 1990		
<b>Regional</b>				
African Charter on Human & Peoples' Rights (1981) ( <i>ACHPR</i> ) (Banjul Charter)	✓ 1982	✓ 1986		
African Charter on the Rights and Welfare of the Child (1990) ( <i>ACRWC</i> )		✓ 2005		
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.

- 1 *The Constitutional Charter for the Transitional Period of 2019 (subsequently amended)* (2009) Available at [https://www.constituteproject.org/constitution/Sudan\\_2019?lang=en](https://www.constituteproject.org/constitution/Sudan_2019?lang=en).
- 2 Library of Congress (2020) *Sudan: New Law Amending Penal Code Takes Effect*, 23 July. Available at <https://www.loc.gov/item/global-legal-monitor/2020-07-23/sudan-new-law-amending-penal-code-takes-effect/#:~:text=Article%20Sudan%3A%20New%20Law%20Amending,the%20Penal%20Code%20of%201991.&text=The%20Sudanese%20minister%20of%20justice,views%20them%20as%20necessary%20reforms.>
- 3 UNFPA (2020) *The first country in Africa to outlaw the practice of female-genital mutilation (FGM)*, 13 September. Available at <https://sudan.unfpa.org/en/news/first-country-africa-outlaw-practice-female-genital-mutilation-fgm>.
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- 9 United Nations, UNAMID, African Union and United Nations Human Rights Office of the High Commissioner (undated) *Human Rights Situation in Darfur in 2013*, paragraph 27. Available at [http://www.ohchr.org/Documents/Countries/SD/UNAMID\\_OHCHR\\_situation\\_Darfur2013.pdf](http://www.ohchr.org/Documents/Countries/SD/UNAMID_OHCHR_situation_Darfur2013.pdf).
- 10 Liv Tønnessen, Samia El-Nagar and Sharifa Bamkar, *op. cit.*
- 11 *For further analysis on the Red Sea Child Act see* <https://www.cmi.no/publications/file/6229-weak-law-forbidding-female-genital-mutilation-in.pdf>.
- 12 Emmanuel Akinwotu (2020) 'Sudan says it will stamp out child marriage and enforce ban on FGM', *The Guardian*, 27 November. Available at <https://www.theguardian.com/global-development/2020/nov/27/sudan-says-it-will-stamp-out-child-marriage-and-enforce-ban-on-fgm>.
- 13 Mr Macoumba Thiam, PhD for UNICEF/Sudan Free of FGC (2016) *Female Genital Mutilation/Cutting (FGM/C) and Child Marriage in Sudan – Are There Any Changes Taking Place?*, pp.24–26. Available at [https://www.unicef.org/sudan/MICS\\_Secondary\\_Analysis\\_FGMC\\_CM\\_English\\_Version\\_FINAL\\_FINAL.pdf](https://www.unicef.org/sudan/MICS_Secondary_Analysis_FGMC_CM_English_Version_FINAL_FINAL.pdf).
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- 17 Liv Tønnessen, Samia El-Nagar and Sharifa Bamkar, *op. cit.*
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- 23 UNFPA-UNICEF (2017) *2016 Annual Report of the UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change*, p.66. Available at [https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA\\_UNICEF\\_FGM\\_16\\_Report\\_web.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf).
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25 ABC News (2020) *Sudan ratifies law criminalising female genital mutilation*, 11 July. Available at <https://www.abc.net.au/news/2020-07-11/sudan-ratifies-law-criminalising-female-genital-mutilation-fgm/12445686>.

26 UNICEF (2020), *op. cit.*

27 Michela Lugiai, Yasir Shalabi, Vincenzo Racalbuto, Damiano Pizzol and Lee Smith, *op. cit.*

**Cover image:** Kertu (2015) *Young Sudanese school girls posing for a photo. Meroe, Sudan*. Shutterstock photo ID: 433404892.

*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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**Email: [info@28toomany.org](mailto:info@28toomany.org)**