

## Criminalizing Female Genital Mutilation in Sudan: A never ending story?<sup>1</sup>

Women inside and outside of the Sudanese government were deeply concerned about the high prevalence rates of Female Genital Mutilation (FGM) after decades of efforts to eradicate the practice. Criminalization of FGM emerged onto the political agenda in 2008 as an important tool to combat the practice. Despite the wide use of Islamic arguments against the practice, strong counter-mobilization from religious conservatives blocked a recent attempt to criminalize FGM in Sudan's National Child Act.

### Liv Tønnessen

Senior researcher at  
Chr. Michelsen Institute  
(CMI)

### Samia al-Nagar

Independent researcher,  
Sudan

### Prevalence and Criminalization of FGM<sup>2</sup>

Female Genital Mutilation (FGM) includes all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons. The World Health Organization (WHO) estimates that up to 140 million girls and women across the world have been subjected to FGM, and every year about three million girls are at risk (UNICEF 2013). The practice is concentrated in 29 countries in Africa and the Middle East. Egypt, Ethiopia, Kenya, Nigeria, Somalia, and the Sudan account for 75 percent of all cases worldwide.

Sudan is among the select few countries in the world where FGM is the most widespread and where the most severe and harmful type is extensively practiced, namely infibulation<sup>3</sup>, which has devastating health consequences and is a grave violation to the bodies of Sudanese women and girls. Infibulation is commonly referred to as Pharaonic circumcision in Sudan that stands in contrast to what is called Sunna circumcision, which typically involves partial or total removal of the clitoris and/or the prepuce. Although there is no standardized definition of Sunna in Sudan, it is considered to be a less severe type (Gamal Eldin et.al 2014). Most of the FGM in Sudan takes place from the age of five to 14 years, but

there is also a growing trend of re-circumcision of adult women after childbirth (Mageed et.al 2000). After decades of efforts to end FGM in Sudan, the prevalence of the practice is still staggering. A household survey conducted in 2010 shows that 88 percent of adult Sudanese women, 83.7 percent of girls between 15 and 19, and 72.2 percent of girls between 10 and 14 years have been circumcised.

While efforts to address FGM in the 1970's and 1980's mainly were motivated by health concerns, the practice is presently recognized internationally as a violation of the human rights of girls and women. It reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women (Shell-Duncan 2008)<sup>4</sup>. The UN Declaration on the Elimination of Violence against Women defines FGM as a form of violence against women (VAW). This has entailed an increased focus on criminalization of FGM. Since the Beijing platform of Action in 1995 which called for governments to "Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation (...)"<sup>5</sup>, 20 of the 29 FGM practicing countries in Africa have enacted laws criminalizing FGM; compared to three in 1995 (Shell Duncan et.al 2013; Rahman et. al 2000).

## Abandoning FGM in Sudan: Awareness Raising and Criminalization

The Sudanese government has taken a two-tiered approach to the abandonment of FGM. The first approach is through awareness raising. The Saleema campaign was launched in 2008 and is one of the main pillars of the Sudan National Strategy to abandon FGM in one generation (2008-2018). It is implemented jointly by the Government of Sudan, UNICEF, the UNFPA and the WTO. Saleema aims to stimulate new discussions about FGM at family and community levels. One step believed to be important to this end is to change the way that people talk about FGM and introduce new positive terminology to describe the natural bodies of girls and women. Saleema is promoting positive values associated with protecting girls and women from FGM.

*Tahur/Tahara*, the local Sudanese words used for FGM, have a connotation of purification, virginity and marriageability (See for example Boddy 1982, Gruenbaum 1982; 2001). Uncircumcised girls are often stigmatized and regarded as unclean and impure and without ability to control her sexuality. The term in Arabic is *ghalfa*. Controlling her sexuality through FGM and thus ensuring a girl's virginity is considered key to her marriageability. The main aim of the campaign is to replace the negative word *ghalfa* with a new term that gives positive associations, namely Saleema. Saleema is inspired and named after the Arabic word that means whole, healthy in body and mind, unharmed, intact, pristine, in a God-given condition and perfect. The term itself has an implicit religious element trying to de-link FGM from Islam.<sup>6</sup>

The second approach is through criminalizing FGM. There is a strong belief that awareness raising alone is not enough to abandon FGM in Sudan. According to an activist; "we cannot stop FGM by awareness raising alone. We also need the law".<sup>7</sup> Criminalization of FGM emerged on the political agenda following the adoption of the Interim National Constitution of 2005 and the government's comprehensive law review process in order to harmonize all Sudan's laws with the new constitution. The initiative to criminalize FGM came from the National Council for Child Welfare, under the Ministry of Welfare and Social Security (the ministry responsible for women's affairs) as part of the preparations for a national child act in 2008. The 2005 constitution included clauses on non-discrimination (article 31), gender equality (article 32 (1)) and affirmative action (article 32 (2)). In addition, it is stipulated under the section of Rights of Women and Children that the state "shall combat harmful customs and traditions which undermine the dignity and the status of women" (article 32 (3)) as well as "protect the rights of the child as provided in the international and regional conventions ratified by the Sudan" (article 32 (5)). While Sudan has not ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); the country ratified the Convention on the Rights of the Child (CRC) already in 1990 and all national legislation should thereby conform to CRC. In its concluding

observations, CRC committee repeatedly noted the high prevalence and the lack of legislation to prohibit FGM. International organizations (particularly save the children Sweden) and UN agencies (UNFPA, UNICEF and WHO) played a major role in the process. In addition, civil society actors, particularly Ahfad University for Women and Babiker Badri Scientific Association for Women's Studies, ushered FGM onto the legislative agenda. Babiker Badri has been working for the abandonment of FGM in Sudan since its establishment in 1979. A woman activist recalls;

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*"Regarding the national child act a lot of efforts were made (...). It was a great opportunity after the Comprehensive Peace Agreement and the Bill of Rights in the 2005 National Interim Constitution. It is clearly stated that all Sudanese laws should comply with*

*international standards (...). After many consultations, the national council for child welfare (...) decided to criminalize FGM (...). This was a consequence of hard work by civil society in cooperation with governmental bodies (...)"<sup>8</sup>*

## Criminalizing FGM in Sudan: Contestations about Islam

The British colonial rule was the first to confront FGM and criminalized pharaonic version, the most extreme form of FGM, in 1946. However, they did not criminalize the Sunna circumcision because they were afraid to upset the religious clergy. Ever since, there have been heated debates about the Islamicness of the Sunna circumcision. The discussions reached a climax in 2009, when the draft of the National Child Act was announced. Article 13 criminalized FGM in all its forms, and the arguments for criminalization were rooted in Islam.

At the forefront were arguments about the detrimental health effects of FGM and its impact on Sudan's high maternal mortality rates. In 2010, an estimated 730 deaths per 100 000 live births. Women inside and outside of the government were deeply concerned about the high prevalence rates of FGM after decades of efforts to eradicate the practice through awareness raising and other means. Also Islamic arguments played an important role in the process.

The main Islamic argument used against FGM was that the Quran prohibits human beings from changing the creation of God (*khalqulla*). According to interviewees conducted during, "Islam forbids to do harm and there is medical evidence of the extensive damage FGM causes to women's bodies and minds".<sup>9</sup> The practice is regarded as a custom, not Islam. And Islam condemns harmful practices, according to interviewees. It is furthermore noted by women inside and outside of government buildings that the Quran makes no mention of FGM, but Prophet Muhammad's actions and teachings, which is collectively known as Sunna, makes reference to it. This is also how the term Sunna circumcision emerged. The use of such a religious terms to refer to the practice has wrongfully

given it an Islamic identity and strengthened the belief that Islam requires FGM, they claim. While there is a range of hadiths justifying the practice, most of them are unreliable and have a weak chain of transmission.<sup>10</sup>

The draft law was met with a massive counter-mobilization, especially by the conservative Salafi movement in the country. They called for eradication of the pharaonic circumcision, which they regarded as backwards and un-Islamic, but claimed that the Sunna version is Islamic and that criminalizing it would be in opposition to Sharia. Those advocating for criminalization, including some Islamist women, were framed as blindly following the 'West' and a foreign agenda even among their peers in the Islamist ruling party (Tønnessen and al-Nagar 2013).<sup>11</sup> The Salafists obstructed the work of women, including women in the government, by intimidation and harassment. In the words of a woman rights activist;

*"The Salafists hijacked a workshop in parliament about FGM organized by the women human rights centre which belongs to the ministry of social welfare. They took the microphones, took the lights off and harassed the organizers. They talked about al-qawama (male guardianship). They threatened a journalist and said: if you want to keep your life, then leave right now. As members of parliament, they have immunity themselves."*<sup>12</sup>

Despite the fact that the President signed a national strategy to eradicate FGM, he ordered article 13 to be removed from the final version of the law. According to Sudanese local employee at UNICEF;

*"We attempted to insert an article, article 13, in the National Child Law. But it was dropped by the President. He was under pressure from the International Criminal Court. He started to talk to the Salafists who advocate the Sunna circumcision. They say it is Islamic. Against this backdrop, the criminalization of FGM was portrayed as an intrusion from the West; That the National Council for Child Welfare, a government institution, was working for the UN. (...). The "no" came from the supreme leader himself"*<sup>13</sup>

Many pointed to the fact that the International Criminal Court's (ICC) charges against President Bashir have strengthened his ties with the religious conservatives.<sup>14</sup> This new alliance has devastating consequences for women's advocacy for legal reform on a range of issues, including criminalizing FGM (Tønnessen and al-Nagar 2013). In the words of a high ranking Islamist woman working for reform; "Even the president becomes worried, if they say it is against Islam."<sup>15</sup>

Still, women in civil society as well as within the government have not given up on the project to criminalize FGM. First, they

went to the state level and attempted to criminalize FGM in state child acts. They have been successful in the three Darfur states as well as in the two eastern states of Gedarif and Red Sea. South Kordofan, bordering South Sudan, even preceded the national center as it criminalized FGM in all its forms already in 2009.<sup>16</sup> Preliminary reports suggest that there is a lack of implementation partly because of the 'mixed signals' sent from the government on the question of FGM. There is therefore a need for a national law, according to several stakeholders.

Two strategies are considered; either a separate FGM law or inserting it as an article in the criminal law. The director of the National Council for Child Welfare stated in an interview that "we planned two strategies so if the separate FGM law is rejected/resisted, we may still succeed with amending the criminal law. We are now intensifying the advocacy and lobby to ensure political support for a national law criminalizing FGM".<sup>17</sup>

While the first initiative to criminalize FGM came from the National Council for Child Welfare backed by the Minister of Welfare Amira al-Fadil. The ongoing attempt is trying to work through Sudan's National Assembly and its women's caucus. The change of strategy can be explained by the fact that Amira al-Fadil, known to be a reformist, was replaced after the attempt to criminalize FGM, by a Minister who is known to be more conservative.

The new strategy also entails cooperation with the Ministry of Guidance and Endowment in an attempt to beat the counter-mobilizing actors at their own game. If the Islamic arguments against FGM come from male Sudanese religious scholars, then it will carry more weight with the President in the next round of criminalizing FGM, according to Islamist women interviewed.

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### Concluding remarks

Efforts to criminalize FGM is destined to meet counter-mobilization within the frame of Islam. There are many different and challenging interpretations of Islam at stake. The President ultimately opted for the conservative one stating that the Sunna circumcision is in accordance with Islam. Therefore, the attempt to criminalize FGM in the National Child Act of 2010 failed. However, conservative religious actors do not have the monopoly of Islamic interpretation. Women inside and outside of the Sudanese government who are actively using Islamic arguments against FGM are currently challenging them. Considering that Islam forbids harmful practices and the evidence for FGM's devastating health consequences for girls and women is indisputable, then Islam forbids FGM. In their opinion, the practice has more to do with men's control over women's reproductive rights than Islam. The religious conservatives managed to halt, but not stop the process of criminalizing FGM. Efforts are still on going to criminalize the practice in Sudan.

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## Endnotes

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<sup>2</sup> Fieldwork for this study was carried out in Khartoum, Sudan from the onset of the debate on criminalizing FGM in the National Child Act in 2008 and every year until 2015. We have conducted extensive interviews with representatives from civil society, including women's groups, government representatives, religious scholars and international organizations.

<sup>3</sup> This entails the narrowing of the vaginal orifice by cutting and bringing together the labia minora and/or the labia majora to create a type of seal, with or without excision of the clitoris. Then, the cut edges of the labia are stitched together.

<sup>4</sup> Convention on the Elimination of all forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child (CRC). It is even regarded as a form of torture in the Convention against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment. In addition, the African Charter on Human and Peoples' Rights and the Protocol on the Rights of Women (Maputo protocol) in its Article 5 prohibits "all forms of FGM" through legislative measures and sanctions.

<sup>5</sup> See Beijing Platform of Action: [bit.ly/1uKJWCZ](http://bit.ly/1uKJWCZ)

<sup>6</sup> Interview with one of the initiators of the campaign, former UNICEF (2015).

<sup>7</sup> Interview with a representative from Sudan National Committee on Traditional Practices.

<sup>8</sup> Interview with woman right activist (2009).

<sup>9</sup> Interview with Sudanese local staff at UNFPA (2015).

<sup>10</sup> For details on these hadiths, see Asmani and Sheikh Abdi (2008).

<sup>11</sup> Interview with a conservative member of parliament advocating FGM (2013).

<sup>12</sup> Interview with woman activist (2009).

<sup>13</sup> Interview with a Sudanese local employee at UNICEF 2012.

<sup>14</sup> Interview with woman activist (2009).

<sup>15</sup> Interview with a reformist Islamist woman (2013).

<sup>16</sup> It should be noted that the law in Red Sea in particular has limitations as it only criminalizes pharaonic circumcision and thus allows for Sunna circumcision.

<sup>17</sup> Interview with the director of National Council for Child Welfare (2015).



CMI (Chr. Michelsen Institute)  
Bergen - Norway  
Phone: (+47) 47 93 80 00  
E-mail: [cmi@cmi.no](mailto:cmi@cmi.no)  
[www.cmi.no](http://www.cmi.no)

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