Prevalence and legal status of FGM in the MENA region

In the year 2020 the Sudanese Transitional Council issued new legal reforms broadening the rights and freedoms of Sudanese women in Sudan.1 The most notable reforms came with The Miscellaneous Amendments (Fundamental Rights and Freedoms) Act of 2020 which included the banning of female genital mutilation (FGM) attached to a penalty of a maximum of three years imprisonment.2

The United Nations Children’s Fund (UNICEF) defined FGM as a practice involving the cutting, removing or sewing closed the healthy and normal external tissue of female genital organs.3 This practice is considered to be a violation of human rights and a very serious risk to the health and well-being of women. Genital mutilation affecting girls and women violates their right to autonomy and physical integrity, the right to health, freedom from violence and cruel, inhuman and degrading treatment as well as their right to non-discrimination.4 FGM is an irreversible and unnecessary medical procedure carrying health implications affecting women’s physical, sexual and mental health.5 The physical consequences of FGM include short-term health complications like severe bleeding, shock from the pain associated with the procedure, and a risk of infection attached to unsterilized cutting instruments.6 As for the long-term physical and sexual health implications, they include Anemia, menstrual disorders, recurrent infections, pain during

4 Q&A on Female Genital Mutilation’, Human Rights Watch, (16 June 2010)
5 ibid
6 ibid
intercourse, prolonged labour and even infertility. In addition to that, in communities where childbirth is perceived as a major part of a woman’s role, failure to produce children is most often seen as the woman’s fault, resulting in the rejection of the infertile woman by her husband and community. Other mental and psychosexual implications are also attached to the practice of FGM. These implications include a number of mental health disorders such as depression, anxiety and post-traumatic stress disorder, as well as psychosexual implications as a result of the recurrent lack of enjoyment during intercourse. Further to that, collective cutting, where multiple girls are cut at the same time, increases the risk of infection of HIV, exposing the victim of FGM to more life-threatening complications.

The practice of FGM stems from a mixture of sociocultural and religious beliefs including a wrongful belief that the procedure reduces sexual arousal in girls and women and so prevents extramarital sex and ensures premarital virginity, thus making it essential for girls ’reputation and marriage prospects. Mainly, the preservation of cultural identity is the main reason underlying the practice. Alongside cultural beliefs, a lack of coverage of FGM in Arabic-speaking media resulted in little public awareness perpetuating a perception that FGM is not an issue of great concern.

According to a UNICEF study, cases of FGM in the Middle East and North Africa account for 25% of all FGM cases in the world. Somalia has the world’s highest percentage of girls and women

7 ibid
8 ibid
9 ibid
12 Q&A on Female Genital Mutilation, Human Rights Watch, (16 June 2010)
14 Female Genital Mutilation in the Middle East and North Africa: Facts and Figures, UNICEF (February 2020)
affected by FGM where 98% of Somalia’s female population had undergone the procedure.\textsuperscript{15} Egypt has the second highest number of FGM procedures in the world, affecting 91% of Egyptian girls and women.\textsuperscript{16} In Sudan, 88% of the female population have undergone the procedure prior to the criminalisation of FGM in 2020.\textsuperscript{17} Other parts of the Arab world where FGM is still an occurring practice include Mauritania, where approximately 66% of women have undergone the procedure,\textsuperscript{18} Yemen with 23% of the female population affected, Iraq with 8%, and Djibouti with 93% of females were affected.\textsuperscript{19} The number of females who have undergone FGM in the Arab world adds up to over fifty million (50,000,000) girls and women.\textsuperscript{20} The study suggests that even if the trends of FGM continue to improve at the current rate, 1 out of 3 of all girls will undergo the procedure by the year 2030. To eliminate FGM by 2030, the progress rate in the Arab world needs to be 15 times faster.\textsuperscript{21} However, the ongoing COVID-19 pandemic is presumed to have a far-reaching impact on the efforts to end FGM.\textsuperscript{22} The United Nations Population Fund (UNFPA) reported the potential for a 1/3 reduction in the progress of ending FGM by 2030 due to the COVID-19 disruptions.\textsuperscript{23} The COVID-19-related disruptions in the progress to end FGM may result in 2 million new FGM cases over the next decade which would otherwise have been prevented.\textsuperscript{24}

\textbf{Somalia:}

\textsuperscript{15} Statistical Country Profile on Female Genital Mutilation/Cutting: Somalia’, UNICEF (December 2013)
\textsuperscript{16} Amounts to 31 million girls and women ‘Female Genital Mutilation in the Middle East and North Africa: Facts and Figures’, UNICEF (February 2020)
\textsuperscript{17} Ibid amounts to 14 million girls and women
\textsuperscript{18} ‘Mauritania: The Law and FGM’, 28 Too Many (September 2018)
\textsuperscript{19} Female Genital Mutilation in the Middle East and North Africa: Facts and Figures’, UNICEF (February 2020)
\textsuperscript{20} amounts to 2 million girls and women in Yemen, 1 million in Iraq, and 400,00 in Djibouti
\textsuperscript{21} Ibid
\textsuperscript{22} ‘Impact of the COVID-19 Pandemic on Family Planning and Ending Gender-Based Violence, Female Genital Mutilation and Child Marriage’, UNFPA (27 April 2020)
\textsuperscript{23} ibid
\textsuperscript{24} ibid
For the purposes of this article, the Federal Republic of Somalia comprises five federal states, including Puntland, Galmudug, Hirshabelle, Koonfur Galbeed and Jubaland but excluding Somaliland.  

The Constitution of Somalia (2012) states at Article 4: “After the Shari’ah, the Constitution of the Federal Republic of Somalia is the supreme law of the country”. In relation to FGM, the Somali Constitution sets out under Article 15(4) that: “Circumcision of girls is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited”. However, there is no specific national law in Somalia that provides for a penalty for the perpetrators of FGM. Although the law does not provide for a specific penalty for performing FGM, Article 440(3) of the Penal Code makes it a criminal offence to cause ‘hurt ’to another. 

The penalty attached to that criminal offence is set out in Article 440(1) of the Penal Code: imprisonment for three months to three years. If the ‘hurt ’is grievous, the penalty is imprisonment for three to seven years, and six to twelve years if the ‘hurt ’is very grievous. However, these provisions have never been used to prosecute perpetrators of FGM.

In November 2013, prominent religious leaders signed a Fatwa (Islamic law ruling) against FGM, and justified the abandonment of all forms of FGM on health and religious grounds. In March 2014, the president of Puntland approved an official government paper outlawing FGM, but no formal implementation plan or parliamentary legislation to support the work has yet been issued.

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Somaliland has its own government and is a self-declared independent state but is unrecognised by the United Nations. Somalia also considers Somaliland a federal member state.


Ibid


Ibid

Ibid hurt is deemed very grievous if it results in loss of a sense, loss of limb or a mutilation that renders the limb useless, the loss of the use of an organ or loss of the capacity to procreate.


Ibid

Ibid
In 2015 it was reported that Somalia was issuing a nation-wide ban on FGM after a consensus had been reached between the government, civil society and religious organisations, but no further information was reported. More recently, the COVID-19 pandemic has been reported to negatively affect the girls in Somalia in respect of FGM procedures. The lockdown resulting in school closures has left girls at risk of FGM being carried out at home, with cutters knocking 'door to door 'to perform the procedure.

**Egypt:**

FGM was outlawed in Egypt on the 16th of June 2008. However, many girls died between the years 2007 and 2013 as a result of FGM, causing public concern that laws were insufficient and must be strengthened and enforced properly. In September 2016 an amendment was made to the Egyptian Penal Code, replacing Article 242-bis and adding Article 242-bis (A):

Article 242-bis: “With consideration to Article (61) of the Penal Code, and without prejudice to any harsher penalty stated by any other law, any person who committed acts of female genital mutilation, by removing any of the external female genital organs, whether in part or in whole, or by inflicting any injuries to these organs without medical justification, shall be punished by imprisonment for a period not less than five years and not exceeding seven years. The penalty shall be Aggravated Imprisonment [minimum three years and maximum fifteen years], if such act has resulted in a permanent disability or death”.

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37. ibid
40. Penal Code amended by Law No. 126 of 2016
Article 242-bis (A): “Any person who requested a female genital mutilation and the female has been mutilated accordingly and in the manner mentioned in Article 242-bis of this law, shall be jailed for a minimum period of one year and a maximum period of three years”.41

This amendment redefined FGM as a felony rather than a misdemeanor and increased the penalty for performing FGM reaching five to seven years ‘imprisonment and up to fifteen years if the child dies.’42 The amendment also provides for a penalty between one and three years ’imprisonment for individuals who request FGM to be performed.43 However, courts have been criticised in 2017 for the lenient sentences given to perpetrators prosecuted for the death of 17-year-old Mayar Mohammad Moussa after undergoing FGM.44 In more recent news, it has been reported by Egyptian prosecution that the ongoing COVID-19 pandemic has been used to trick Egyptian girls into FGM.45 3 underaged girls have been told a doctor was providing vaccination against COVID-19, but instead were drugged and their genitals cut.46 The father has been reportedly charged with an offence along with the complicit doctor.47

Sudan:
Sudan has issued a country-wide ban on FGM on the 22nd of April 2020 with a penalty of three years imprisonment. FGM was already illegal in some states in Sudan but the state bans have been widely ignored.48 The six states that banned FGM within their boundaries prior to the

41 ibid
42 ibid
46 ibid
47 ibid
national ban were South Kordofan, Gadarif, South Darfur, Red Sea, North Kordofan and Northern.\textsuperscript{49}

It is important to note that Sudan was the first country in Africa to criminalise a type of FGM called ‘infibulation’ in 1946,\textsuperscript{50} but the Article was removed from the Sudanese Penal Code after the introduction of Sharia law in 1983.\textsuperscript{51}

Prior to the nation-wide criminalisation of FGM in 2020, Sudan had national legislation in relation to causing harm to other people and the protection of children contained under section 138 of the Criminal Act 1991 and Article 5 of Chapter II of the Child Act 2010. During the drafting of these laws, it was proposed that an Article be inserted to explicitly criminalise FGM, however, the president at the time ordered the article’s removal following objections from religious leaders claiming that the article was against Sharia law.\textsuperscript{52}

Despite the declining numbers of girls undergoing FGM and the recent ban on FGM in Sudan, it is feared that the consequences of the COVID-19 pandemic could risk an increase in FGM cases, as the lockdown measures have led to an increase in child marriages and gender-based violence.\textsuperscript{53}

**Mauritania:**

FGM is prevalent between women aged 15-49 across all Mauritanian states but in varying degrees. The states with FGM prevalence over 90% are Tagant with 91.8%, Hodh El Chargi with 92.3%, Guidimakha with 97.4%, Assaba with 97.9% and Hodh el Gharbi with 98.9%.\textsuperscript{54} It has been

\textsuperscript{49} See 'Country Profile: FGM in Sudan', 28 Too Many, (November 2019)

\textsuperscript{50} Infibulation is defined by the World Health Organisation as Narrowing of the vaginal opening with the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora. The covering of the vaginal opening is done with or without removal of the clitoral prepuce/clitoral hood and glans. See 'Types of Female Genital Mutilation', World Health Organisation available at https://www.who.int/sexual-and-reproductive-health/types-of-female-genital-mutilation accessed 16 July 2020

\textsuperscript{51} See 'Country Profile: FGM in Sudan', 28 Too Many, (November 2019)


\textsuperscript{54} ‘Mauritania: The Law and FGM’, 28 Too Many (September 2018)
reported that FGM prevalence in Mauritania is inversely correlated with women’s level of education and wealth.\textsuperscript{55}

According to Girls Not Brides organisation, FGM in Mauritania is seen as a marker of adulthood and readiness for marriage, allowing underage girls to get married,\textsuperscript{56} opening the discussion to another violation of the human rights of girls that is child marriages.

In 2005 Mauritania criminalised and penalised performing FGM only on children under the age of 18 under Article 12 of Law No. 2005-015 on the Criminal Protection of the Child (2005).\textsuperscript{57} Where the procedure results in 'harm' to the child, the person who performed the procedure can receive a punishment of one to three years 'imprisonment and a fine of one hundred and twenty thousand (120,000) to three hundred thousand (300,000) Ouguiyas.\textsuperscript{58} The penalty can rise to four years imprisonment and a fine of one hundred and sixty thousand (160,000) to three hundred thousand (300,000) Ouguiyas when the person performing the procedure was a health professional.\textsuperscript{59} However, it has been reported that law enforcement in Mauritania is weak and information is lacking in regards of FGM cases brought to court.\textsuperscript{60}

Yemen:

FGM occurs across all Yemeni cities but is especially predominant in four: Aden, Al-Hodeidah, Al Mahrah, and Hadramout.\textsuperscript{61} A mixture of cultural, religious and social factors have been cited as


\textsuperscript{58} ibid

\textsuperscript{59} ibid

\textsuperscript{60} ‘FGM in Mauritania: Short Report’, 28 Too Many (February 2020)

the reason the Yemeni community in the 4 mentioned cities support FGM. 62 86% of women believe that FGM ensures cleanliness and purity for genitals. 63 In addition to that, the warm climate of the four cities where FGM predominates is perceived by the communities to increase sexual desire resulting in many believing that FGM protects girls from premarital sex and supresses sexual desire. 64

The Minister of Public Health has issued a ministerial decree effective 9th January 2001, forbidding the practice in both public and private institutions. 65 However, there has been no application of the ministerial decree. 66 A draft law banning FGM was proposed to parliament in 2009, yet no approval has been given. 67 It has been assumed that the lack of progression in parliament was because of strong social, cultural and religious pressure that made many members of parliament abandon the proposed legislation. 68

In 2014, the Guardian reported that a comprehensive law, indorsed by the Yemeni Human Rights Minister, banning child marriage and FGM was due to be approved by the Yemeni prime minister and government. 69 However, no legislation in the context of criminal law banning FGM has been passed till this day. 70

Iraq:

62 ibid
63 ibid
64 ibid
65 A Alosaimi & Others, ‘Factors Associated with Female Genital Cutting in Yemen and its Policy Implications ’ (2019) 74 Midwifery 99-106
66 ibid
67 ‘Yemen: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)’, United States Department of State, (1 June 2001) available at https://www.refworld.org/docid/46d5787ec.html accessed 25 July 2020
68 A Alosaimi & Others, ‘Factors Associated with Female Genital Cutting in Yemen and its Policy Implications ’ (2019) 74 Midwifery 99-106
70 A Alosaimi & Others, ‘Factors Associated with Female Genital Cutting in Yemen and its Policy Implications ’ (2019) 74 Midwifery 99-106
FGM is a popular practice in northern Iraq,\textsuperscript{71} the region of Kurdistan under the Kurdish Regional Government. According to a 2013 UNICEF study published on 28 Too Many, the practice affects 51%-80% of girls and women in Arbil and Al-Sulaymaniyah, and 10%-25% of girls and women in Kirkuk.\textsuperscript{72} The women in Iraq justified the practice by religion, tradition or medical reasons, unaware of the medical and psychological consequences of FGM.\textsuperscript{73}

In June 2011, Law No. 8 2011 against domestic violence, including a ban on FGM,\textsuperscript{74} was passed by the Parliament of the Kurdish Autonomous Region.\textsuperscript{75} A penalty of up to three years imprisonment and a fine ranging from one million (1,000,000) dinars to five million (5,000,000) dinars was attached to the FGM ban.\textsuperscript{76} However, FGM remained legal in central Iraq.\textsuperscript{77} On 6\textsuperscript{th} February 2013, International Day of Zero Tolerance Against FGM, the Iraqi Parliament was handed a draft law for the banning of FGM in Iraq.\textsuperscript{78} While a 2019 report by the Geneva International Centre for Justice stated that there is no specific national law criminalising FGM outside of Kurdistan,\textsuperscript{79} it has been reported by the Network of Iraqi Reporters for Investigative Journalism that Article 412 of the Iraqi Penal Code penalises any person who “mutilate[s] human organs for the purpose of inducing damage and distortion.”\textsuperscript{80} Article 214 also criminalises “human

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\textsuperscript{71} Country Profile and Information Note: Iraq: Female Genital Mutilation (FGM)’, Home Office, 2 (February 2020) referring to Andistahl, ‘The Campaign Against Female Genital Mutilation’, WADI (6 March 2017) available at https://wadi-online.org/2017/03/06/the-campaign-against-female-genital-mutilation/ accessed 26 July 2020
\textsuperscript{72} Iraq: Statistical Profile on Female Genital Mutilation/C’, 28 Too Many (December 2013)
\textsuperscript{73} Andistahl, ‘The Campaign Against Female Genital Mutilation’, WADI (6 March 2017) available at https://wadi-online.org/2017/03/06/the-campaign-against-female-genital-mutilation/ accessed 26 July 2020
\textsuperscript{74} Country Profile and Information Note: Iraq: Female Genital Mutilation (FGM)’, Home Office, 2 (February 2020)
\textsuperscript{75} Andistahl, ‘The Campaign Against Female Genital Mutilation’, WADI (6 March 2017) available at https://wadi-online.org/2017/03/06/the-campaign-against-female-genital-mutilation/ accessed 26 July 2020
\textsuperscript{77} ibid
\textsuperscript{78} ibid
\textsuperscript{79} Shadow Report on Iraq’, Geneva International Centre for Justice (GICJ) (21 October 2019)
\textsuperscript{80} Female Genital Mutilation In Kurdistan Painful Stories In Search For Happy Endings’, NIRIJ (15 May 2012) available at http://www.nirij.org/?p=418 accessed 26 July 2020
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mutilation for the purpose of abuse and distortion”, however, the Article has not been applied against any person who has practiced FGM.81

Djibouti: 
Djibouti has 5 districts: Djibouti (the capital), Arta, Ali Sabieh, Delhi, Tadjourah, and Obock.82 The rate of prevalence of FGM in the capital is 92.2% compared to the prevalence throughout the rest of the districts which is 94.9%.83

The Penal Code of Djibouti came into effect in 1995 and was the first principal legislation criminalising and punishing FGM in Djibouti.84 FGM was initially criminalised and punished under Article 333 of the Penal Code addressing violence resulting in ‘genital mutilation’. However, neither Article 333 nor the rest of the articles in the 1995 Penal Code provided a definition of genital mutilation or FGM, nor did it criminalise and penalise the procurement or aiding of FGM.85

Article 7 of the Criminal Procedure Code provides for organisations whose statutory objective for at least the previous 5 years has been the fight against FGM may exercise, on behalf of victims, their rights regarding violence resulting in genital mutilation as set out in Article 333 of the Penal Code.86

The 1995 Penal Code was complemented by the Law No.55 in 2009 dealing with violence against women including FGM.87 Article 1 of Law No.55 introduced two amendments to Article 333 of the 1995 Penal Code:

1. The law provides a legal definition of FGM as ‘any non-therapeutic operation which involves total or partial removal and/or wounds performed on the female genital organs, for cultural or
other reasons. It does not, however, provide a definition of ‘non-therapeutic operation’ in this context.\textsuperscript{88}

2. It criminalises and punishes anyone with knowledge of FGM, whether planned or already performed, who does not immediately notify the public authorities.\textsuperscript{89} The law also tightens penalties for the ‘instigators and accomplices’ of FGM.\textsuperscript{90}

Article 2 of Law No.55 also amended Article 7 of the Criminal Procedure Code making organisations with at least three years ‘experience working against FGM able to exercise on behalf of victims their rights regarding violence resulting in genital mutilation following Article 333 of the Penal Code.\textsuperscript{91}

Under Article 333 of the 1995 Penal Code, a person found guilty of performing FGM will receive a prison sentence of five years imprisonment as well as a fine of one million (1,000,000) Djiboutian Francs.\textsuperscript{92}

The failure to report FGM is punishable with 1 month - 1 year imprisonment as well as a fine of fifty thousand (50,000) to a hundred thousand (100,000) Djiboutian Francs.\textsuperscript{93} Those who aid and abet the practice of FGM receive the same penalties as the main offender under Articles 25 and 26 of the Penal Code.\textsuperscript{94}

FGM continues to be a widely performed procedure in 29 countries in Africa and the Middle East despite being banned through some type of legislation in 24 of these countries.\textsuperscript{95} Girls and women in the Arab World are still falling victim to FGM even when the practice is banned in 6 of


\textsuperscript{89} ibid

\textsuperscript{90} ibid

\textsuperscript{91} ibid


\textsuperscript{93} ibid

\textsuperscript{94} Djibouti: The Law and FGM’, 28 Too Many, (July 2018) also see Le Code Penal

\textsuperscript{95} Sudan Criminalises Female Genital Mutilation (FGM)’,BBC, (1 May 2020) available at https://www.bbc.com/news/world-africa-52502489 accessed 16 July 2020
the top 7 countries with the highest prevalence of FGM, and penalised in 5 of those 7 countries. Over 50 million girls and women have undergone the procedure in the Middle East and North Africa, and the numbers could be rising due to the pandemic-related disruptions affecting programs advocating for women’s rights and social services providing help to vulnerable women. Ending FGM is not only reliant on changes in the legal arena and the sociocultural and religious beliefs of the population, but also the Arabic-speaking media coverage of the severe consequences of FGM on girls and women. Providing the relevant appropriate education aiming to end the control over women’s bodies under the mask of ‘honour ’is essential to the fight against FGM. It is hoped that the bans on FGM are not just law on paper that does very little in practice to improve the health and lives of millions of girls and women in the Middle East and North Africa.

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