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INTRODUCTION

This paper critically investigates the criminalization of female genital mutilation/cutting (FGM/C) in Red Sea, a state with one of the highest prevalence rates of FGM/C in Sudan (where 89% of females have undergone the procedure). Infibulation, also called “pharaonic circumcision” or “*kushabi*,” is the most severe type of FGM/C is widely practiced in Red Sea, especially among conservative tribal groups such as the Beja tribe and its subgroups Hadendawa and Beni Amer. These tribal groups played a key role in keeping criminalization of FGM/C out of the Red Sea State Child Act of 2007. Although the act was revised in 2011 to address FGM/C, it does so only weakly and does not clearly prohibit the most severe types of FGM/C. In essence, conservative political forces in Red Sea have been able to shape the legislative process.

International donors and women’s rights activists who advocate for the criminalization of FGM/C have celebrated the Red Sea State Child Act of 2011 as a major achievement (see, e.g., UNFPA and UNICEF 2011; 2015). However, while the act may appear to be a success story on the surface, extensive interviews with individuals in Red Sea collected in the summer and autumn of 2016 suggest that the sections of this act that address FGM/C are inherently flawed. A critical analysis of the law reveals the following: (1) the act only addresses pharaonic circumcision, which is not defined (so could be interpreted to mean anything); (2) to take effect, the act requires the state minister of health to issue a decree forbidding FGM/C, a decree which has not yet been issued; and (3) the act does not stipulate any penalties for offenders. In other words, the 2011 law has no practical effect on most FGM/C practices. Rather, the 2011 law is a political compromise that enables those who practice FGM/C to continue to do so, while at the same time allowing international donors who have supported anti-FGM/C legislation to believe they have received value for money. While this is a political compromise cleverly designed to please stakeholders, girls at risk of undergoing FGM/C remain unprotected by Red Sea’s law.

FGM/C is a harmful tradition practice that violates women’s and girl’s reproductive rights. FGM/C 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 200 million women and girls across the world have been subjected to FGM/C, and every year about three million more girls are at risk (UNICEF 2013; WHO 2008).¹ The practice is concentrated in 29 countries in Africa and the Middle East. Egypt, Ethiopia, Kenya, Nigeria, Somalia, and the Sudan account for 75% of all cases worldwide. Sudan is a country where FGM/C is especially widespread (in 2014, approximately 86.6% of all females had undergone the procedure). Furthermore, in Sudan, the most severe and harmful type of FGM/C is extensively practiced (infibulation) and has devastating health consequences. In Sudan, infibulation is commonly referred to as “pharaonic circumcision” and involves not only removing parts of the female genitalia, but also narrowing the vaginal orifice—often by stitching together the labia; it stands in contrast to “Sunna circumcision,” which generally involves partially or totally removing the clitoris and/or the prepuce (although there is no standardized definition of “Sunna” in Sudan) (Bedri 2012).²

Criminalization of FGM/C—in all its forms—emerged onto the Sudanese political agenda in 2007 as part of the process of drafting a new National Child Act. Legislative criminalization is considered as an important tool to eradicate FGM/C, a tool that complements awareness raising and other efforts, including the national abandonment

1 WHO (2008: 4) has classified FGM/C into four broad categories: (i) partial or total removal of the clitoris and/or the prepuce (Type I); (ii) partial or total removal of the clitoris and labia minora, with or without excision of the labia majora (Type II); (iii) narrowing of the vaginal orifice by cutting and bringing together the labia minora and/or the labia majora to create a seal (with or without excision of the clitoris)—usually, the cut edges of the labia are stitched together, which is referred to as “infibulation” (Type III); and (iv) all other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping, and cauterization (Type IV).

2 In reality, many types of FGM/C are practiced under the banner of “Sunna,” giving these practices religious legitimization (Gamal Eldin and Hussein 2014).

campaign Saleema.³ With funding from (in particular) the UNFPA and UNICEF joint program from 2007 to 2013, Female Genital Mutilation/Cutting (FGM/C): Accelerating Change, an initiative was taken to criminalize all forms of FGM/C as part of the drafting of a new National Child Act in Sudan (UNFPA and UNICEF 2013). The National Child Welfare Council, under the guidance of the Ministry of Social Welfare, took the lead in drafting a new law. Article 13 of the proposed law criminalized FGM/C in all its forms, using Islamic arguments that had support of some religious leaders like Abdel Galil Al Karruri. All the required committees approved the draft law before it was presented to the Council of Ministers. Nonetheless, prior to the Council of Ministers' meeting, Salafist leaders convinced President al-Bashir that article 13 was against Sharia, and he subsequently ordered its removal. Accordingly, when the National Child Act reached the National Assembly in 2010, it was without an article criminalizing FGM/C.

While the Salafists support the eradication of pharaonic circumcision, which they regard as backwards and un-Islamic, they simultaneously claim that the Sunna version is Islamic and that criminalizing it would be in opposition to Sharia. Nonetheless, despite limited progress made at the national level, several states in Sudan have managed to pass laws prohibiting all forms of FGM/C (Gruenbaum et al. 2013).

We have followed efforts to criminalize FGM/C at Sudan's national level for several years and have conducted fieldwork on multiple occasions. During numerous interviews over the years, representatives of UN agencies, the National Child Welfare Council, and other Sudanese government institutions, as well as women's rights activists in Khartoum have asserted that, despite failure at the national level, Sudan has succeeded in criminalizing FGM/C at the state level. Several reports state that six states have criminalized FGM/C (UNFPA and UNICEF 2015:18); nonetheless, our interview data suggest that the number is only four. Gedaref, Red Sea, South Kordofan, and South Darfur have all endorsed statewide child laws criminalizing FGM/C. South Kordofan was the first state to do this. Its state legislature passed an anti-FGM/C law in 2008, and that law is now being used as a model for other states.

Our goal for the current research was twofold: First, we sought to study a positive case of criminalization of FGM/C and document the victories of Sudanese women, especially at this time when most news coming from Sudan is negative and grim. Second, we sought to examine a "difficult case"—one where criminalization of FGM/C would be least expected. FGM/C prevalence in the eastern states is high. In addition the eastern states have bad reputation when it comes to women's rights more generally. It is therefore puzzling that two states in eastern Sudan—Red Sea and Gedaref—have criminalized FGM/C, seemingly against all odds. This paper takes a closer look at Red Sea.

³ Sudan's government, UNICEF, UNFPA, and WHO jointly launched the Saleema national awareness raising campaign in 2008. It has become one of the main pillars of Sudan's National Strategy for the Eradication of FGM/C in One Generation (2008–2018). The Saleema approach is to expose local populations to communication tools that support the protection of girls from genital cutting. The Arabic word "*saleema*" means "whole, undamaged, unharmed, and complete" and was chosen to describe the uncut female. You can read more about Saleema here <http://saleema.net/news.php>

Fieldwork and data collection

This paper draws upon information from legal documents (including the Red Sea State Child Acts of 2007 and 2011), official memorandums, and other relevant reports collected between May and September 2016. These documents were unusually difficult to access. Stakeholders in Khartoum indicated that they did not have access to these documents, and stakeholders in the Red Sea were reticent to provide them. Their unwillingness to share documents that in another jurisdiction might have been public knowledge suggests that certain Red Sea actors did not want us to critically read the documents.

In addition to reviewing written sources, we conducted 18 in-depth interviews in Red Sea between May and September 2016. Specifically, we met with relevant stakeholders from government institutions, including the Red Sea State Assembly and the Red Sea Child Welfare Council, civil society organizations and activists, the police, the judiciary, UN agencies, and international organizations. Some individuals were interviewed several times. Some interviews were conducted face-to-face, while others were reached by telephone or email.

Some actors closely involved in the legislative process that led to the 2007 and 2011 laws appeared reluctant to answer our questions at times. In addition, some interviewees insisted that the Red Sea State Child Act criminalizes *all* forms of FGM/C, even after they were confronted with the text of the final 2011 law. These facts, along with the nature of the legislative text itself, lead us to believe that we have not been able to reach a complete understanding of the legislative process behind the 2011 law. Nevertheless, given the dearth of research coming out of Red Sea in English (as well as Arabic)—and the importance of the FGM/C issue throughout the African continent—this paper contributes important insights into the anti-FGM/C legislative process.

Criminalization as a strategy to combat FGM/C: A background

FGM/C is recognized internationally as a harmful traditional practice that reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against women (Shell-Duncan 2008). A number of international and regional treaties and conventions condemn the practice. Article 25 of the Universal Declaration of Human Rights stipulates that FGM/C violates the right to health and bodily integrity. Similarly, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) regards FGM/C as violence against women. The Convention against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment (CAT) treats FGM/C as a form of torture, and the Convention on the Rights of the Child (CRC) considers FGM/C to be a traditional practice harmful to girls.

At the regional level, the African Charter on Human and Peoples' Rights (Banjul Charter) and its Protocol on the Rights of Women (Maputo Protocol), as well as the Charter on the Rights and Welfare of the Child, have emphasized the promotion and protection of women's rights, including a right not to be subject to FGM/C. Article 5 of the Maputo Protocol contains the clearest and most explicit language, requiring state parties to "prohibit[], through legislative measures backed by sanctions, all forms of female genital mutilation ... in order to eradicate them."

Sudan ratified the CAT in 1986 and the CRC in 1991 under the current Islamist government, but it has neither signed nor ratified CEDAW. Sudan signed the Maputo Protocol on 30 June 2008, but it also has not ratified this instrument. In past and on-going attempts to criminalize FGM/C in Sudan, the CRC has most frequently been employed in advocating for both abandonment and criminalization of FGM/C.

There has been an international push to criminalize FGM/C since the Beijing Declaration and Platform of Action of 1995, which called for governments to "[e]nact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation" (para. 124(i)). Notably, African feminists led the drive to include language specifically condemning FGM/C in the Platform. At the time of this report, 20 of the 29 African countries where FGM/C is practiced have enacted laws criminalizing FGM/C, compared to only three in 1995. In 2012, the United Nations General Assembly adopted a resolution to ban FGM/C worldwide and to intensify global efforts for the elimination of the practice. Despite the growing number of laws prohibiting FGM/C

in Africa, Sudan has failed to pass a national-level law condemning the practice, a fact that has been noted with concern at the international level (CRC 2010).

Interestingly, however, Sudan was the first African country to introduce legislation against female genital mutilation. This happened in 1946, when infibulation was prohibited through a supplement to the Criminal Act (although less severe FGM/C procedures were permitted). The law provided for a fine and/or imprisonment of up to seven years for practitioners of infibulation, and this law was upheld after Sudan gained its independence in 1956. Nonetheless, attempts to enforce the 1946 law were extremely rare. It was considered ineffective because it did not ban all forms of FGM/C and because it was not widely supported on a social level. In 1983, when Sharia law was introduced, the article prohibiting FGM/C was removed from the Criminal Act. The current Criminal Act of 1991 also does not cover genital mutilation, although its provisions on “physical injury” might potentially cover the practice. There have been several attempts to criminalize all forms of FGM/C at the national level, most recently in the draft National Child Act of 2009, but none has been successful. Nonetheless, successful criminalization at the state level is seen as a step in the right direction.

UNFPA and UNICEF’s joint program, Female Genital Mutilation/Cutting (FGM/C): Accelerating Change (which is funded by Austria, Iceland, Ireland, Italy, Luxembourg, Norway, Switzerland, and the United Kingdom) has been the predominant funder of efforts against FGM/C at both the national and state level in Sudan. The program operates in 15 countries in East, West, and North Africa. Its duration was originally planned to be five years (2008–2012), but in 2011 the program was extended for an additional year (until 2013). As of September 2012, donors had collectively contributed approximately US\$ 27 million to the program, and, as of 2013, Sudan had received US\$ 3,196,405 under the program. The program has funded a range of FGM/C abandonment efforts in Sudan, including efforts to criminalize the practice. UNFPA has primarily been concerned with the national initiative to criminalize FGM/C, while UNICEF has led efforts at the state level. International NGOs have also been active in these efforts at both the national and the state level. For example, Save the Children Sweden was particularly active in Red Sea, until it was expelled from Sudan for unknown reasons in 2012 (BBC News 2012).

Why focus on criminalizing FGM/C? The theory of change behind the push to criminalize is based on a handful of studies conducted on the effect of such legislation. For example, Shell Duncan’s work on Senegal suggests that FGM/C legislation can play a positive role in complementing other reform strategies (Shell-Duncan et al. 2013; see also Rahman and Toubia 2000). The criminalization of FGM/C is symbolic and communicates a new norm backed by the state; in this way, it acts as a catalyst for social change and provides an “enabling environment” for the abandonment of FGM/C (Shell-Duncan et al. 2013; Rahman and Toubia 2000). This is the theory of change behind UNICEF and UNFPA’s criminalization initiatives at the national and subnational level in Sudan and beyond. In the words of UNICEF, “legislation should be a supportive tool that strengthens the environment for the abandonment of FGM/C and an ‘avenue for forging consensus’ around a new social norm of ‘not cutting’” (Wahba 2010, 12; quoting Shell-Duncan 2008, 225).

This paper studies the practical effect of initiatives to criminalize FGM/C in Red Sea in 2007 and 2011. It does *not* look at potential effects of criminalization (although we do encourage more research within this field). A critical analysis of the Red Sea Child Act of 2011 suggests that it is likely to contribute little to protecting females from FGM/C and may even have a negative symbolic effect, since it only addresses pharaonic circumcision, rather than all types of FGM/C.

FGM/C in the Red Sea State

According to the UNICEF Multi-indicators Cluster Survey (MICS), 86.6% of females age 15-49 in Sudan have been subjected to FGM/C. In Red Sea, the percentage is a staggering 89%; 55.6% of girls 14 years old and under are circumcised, and 79.3% are at risk of being circumcised before age 15. The World Health Organization has indicated that the most severe form of FGM/C is infibulation, which is called “pharaonic circumcision” in Sudan; 86.6% of circumcised women in Red Sea have undergone this type of circumcision (UNICEF (MICS) 2015).

"Legislation should be a supportive tool that strengthens the environment for the abandonment of FGM/C"

Despite decades of awareness raising and several abandonment campaigns, change is slow. The 2014 household survey does suggest a decrease (14%) in the prevalence of the practice when comparing women born between 1984 and 1999 to those born between 2000 and 2014 (MICS 2015). Nonetheless, both women's rights activists and international donors are disappointed at the slow progress. There were particularly high hopes that the Saleema campaign would make a difference. This nationwide campaign is one of the main pillars of Sudan's national strategy to abandon FGM/C within one generation.

Abandonment efforts have come to the forefront of the political agenda under the UNICEF and UNFPA program Female Genital Mutilation/Cutting (FGM/C): Accelerating Change, but it is important to note that Sudanese organizations advocated for abandonment of FGM/C for decades before the influx of aid. Notably, the Babiker Badri Scientific Association for Women Studies was the first to raise awareness about the harmful effects of FGM/C. That association, under the auspices of Ahfad University for Women, was established in 1979. One of its major goals is to build capacity in the area of abandonment of FGM/C. Even locally in Red Sea, women's associations have been conducting awareness raising on FGM/C since 1978 (Pantuliano 2000). Abu Hadia, a knowledgeable and respected Beja leader, has advocated for girls' education and against FGM/C and child marriage since the early 1980s and has succeeded in establishing the organization Abuhadia Organization for Women and Community Development.⁴

The main reason change is slow is because FGM/C is deeply rooted in traditional Sudanese practices and customs, especially in Red Sea. It is widely believed that FGM/C is for the protection of girls, not violence against them. The practice protects a girl by ensuring her family and tribe's honor. "FGM/C is a tradition related to the honor of the family and tribe."⁵ Uncircumcised girls are often stigmatized or degraded as *ghalfa* which translates into unclean, impure, and hypersexual (that is, without the ability to control their sexuality). Controlling a girl's sexuality through FGM/C ensures her virginity, which is key to her marriageability (Boddy 1982; Gruenbaum 1982; 2001; Magied, Sulima, and Kawther 2001). In Red Sea, elderly women and tribal leaders ensure adherence to the practice of FGM/C; if it is not performed, families risk being stigmatized because their girls will not be in demand for marriage.

The predominant ethnic group in Red Sea is the Beja tribe, which is a Muslim tribe with several subtribes, the most prominent of which are Hadendawa, Beni Amer, Bishariyin, and Amrar. The Rashaida (also Muslim) constitute another significant ethnic group in the state.⁶ The Beja people have no central tribal authority. Divisions and major subdivisions consist of a group of patrilineal organized clans led by a sheikh with authority based on consent of the group. The Beja are regulated by customary law locally called *silif*. Sara Pantuliano (2002, 4–5) explains this law:

Silif guides access to resources for different people, is used for conflict resolution and major social events, and regulates access and control reciprocal use of environmental resources. The *silif* rules are flexible, and are negotiated between Beja alliances and agreements within or between different groups, clans, or lineages.

Silif governs all aspects of life for individuals, groups, and tribes of the Beja. Because *silif* "is considered as part of an individual's identity, respect and adherence to the *silif* system is not negotiable" (Sahl, Elkarib, and Mutalib, 2004). Community relations are largely tribe-based in the Red Sea (Sahl, Elkarib, and Mutalib 2004, 6–7):

[It is the] tribe that is accountable for the behaviors of its members and not the individuals them-selves. Each tribe is empowered to question its members regarding the different

4 Interview with Saeeda Abu Haia, Head of Abu Hadia Organization for Women and Community Development, Port Sudan, 8 November 2016.

5 Interview with a young male activist, 18 September 2016.

6 In recent years, Red Sea has also received an influx of people from the Northern Sudan and River Nile states, people who have primarily been attracted by economic opportunities created by Red Sea's commerce and ports. In addition, internally displaced people from South Sudan and the Nuba Mountains, who have been driven from their homes by conflicts and poverty, have fled to Red Sea.

aspects of the *silif* in case of any violation. The behavior of members of each tribe is blamed on their tribes and not the individuals who have broken the *silif*. The tribe then announces that the individual is no longer socially committed to it and, consequently, has no right to claim any further treatment under the *silif* system.

Silif is also important in determining women's rights and position within the tribe. For example, traditionally women are not allowed to participate in public decision-making and politics, and they are denied access to land and livestock (Pantuliano 2002, 4–5).

Because all Beja are Muslim, the *silif* is in many ways mixed up with the religious values. According to Pantuliano (2002, 67), the “combination of Islam and animist elements and the predominance of customary laws over Islamic code are common to all the different Beja groups.” Thus, although the practice of FGM/C is considered an obligatory *silif* under customary law, the Beja also simultaneously regard it as an Islamic practice. Beja leaders refer to FGM/C as “Sunna,” thereby giving it religious legitimacy.

The Beja most commonly practice the infibulation form of FGM/C, which they call “pharaonic circumcision” or *kushabi*. The procedure is traditionally carried out during the girl's first birth year. According to the Beja, an uncircumcised girl is vulnerable to evil spirits and diseases. Thus, newborn girls are closely monitored between their birth until they are circumcised. Sahl, Elkarib, and Mutalib (2004, 8) explain,

"The community believes that circumcision is a removal of an undesired part of the body and the presence of an uncircumcised girl herself represents a source of "evil" to her family."

The community believes that circumcision is a removal of an undesired part of the body and the presence of an uncircumcised girl herself represents a source of “evil” to her family. The community refers to the removable parts of the girls' genitalia as a *ewash*, loosely translated to mean squalor or dirt. They believe that the *ewash* must be mutilated at the earliest opportunity if a child is to grow up healthy.

However, infibulation is different from the type of FGM/C that Islamic typically refer to as Sunna. Thus, a change in the Beja *silif* on FGM/C is key to abandonment of the practice of infibulation.⁷ This necessarily requires consultation with and education of the Beja people—something has not occurred in connection with attempts to criminalize FGM/C in Red Sea. In fact, Beja tribal leaders have been largely excluded from the FGM/C criminalization process. Accordingly, their subsequent counter-mobilization to the 2007 law can be interpreted not only as opposition to a law that contradicted their *silif*, but also as a statement about their desire for a political voice.

The ability of the Beja to mobilize against criminalization of FGM/C in Red Sea is remarkable in light of attempts Sudan's current national regime has made to engage in divide and rule tactics to spur violence between local ethnic tribes. Islamists at Sudan's center have marginalized Sudan's regions (including eastern Sudan) politically, economically, and culturally, which eventually led to an armed rebellion in 1995.⁸ The mobilization against criminalization shows how important FGM/C is to the Beja identity, practice and *silif*.

Criminalization of FGM/C in the Red Sea

Criminalization of FGM/C initially emerged onto the political agenda as an important tool to combat the practice as part of enactment of a new National Child Act. The initiative started within the National Child Welfare Council, at that time headed by Amira al-Fadil, partly as a response to the Committee on the Rights of the Child's continuous recommendations to criminalize FGM/C. Article 13 of the National Child Act proposed in 2009 criminalized FGM/C in all its forms. However, in spite of the fact that President al-Bashir had signed the National Strategy for the Eradication of FGM/C in One Generation (2008-2018)⁹, he

⁷ While the Beja tribe and its subgroups in Red Sea practice FGM/C, the Fellata and Rashaida tribes do not practice it.

⁸ Although this marginalization has historical roots going back to before Sudan's independence in 1956, the Islamization policies of the current government are new. The current regime aims to Islamize tribal Muslims who believe and practice “un-Islamic” customs into “proper” Muslims. By constructing a divide between authentic Islam and un-Islamic customs, Islamists aimed to marginalize tribal authorities and customary law, uniting them under the umbrella of Sharia (as interpreted by central leaders) (Badri 2016).

⁹ Added to that, a chapter dedicated to eradicating FGM/C was included in the National Strategy for Reproductive Health (2006-2010), released by the Ministry of Health in 2006

ordered article 13 to be removed from the final version of the 2010 National Child Act, following pressure from religious leaders (Tønnessen and al-Nagar 2013).

During this national process, the National Child Welfare Council had also requested that all states child welfare councils start preparing state child acts in line with the proposed national act. Under Sudan's Decentralization System Act of 1995, all of the country's 18 states are required to have their own constitution, legislative assembly, governance structure, and laws, including child acts. The push to criminalize FGM/C in the Red Sea Child Act came from the National Child Welfare Council and was supported and funded primarily by UNICEF, the UN agency responsible for promoting the criminalization of FGM/C at the subnational level. In the process of preparing the 2007 Red Sea Child Act, an initiative was taken to criminalize all forms of FGM/C. However, because of the Beja tribe's strong counter-mobilization efforts, this article was taken out of the final law. In 2011, attempts were made to reform the 2007 law and criminalize FGM/C yet again. This process was successful, but only in addressing pharaonic circumcision.

The 2007 Red Sea Child Act

At the request of the National Child Welfare Council, the director of the Red Sea Child Welfare Council started the process of drafting a Red Sea Child Act in 2007. The initiative to include provisions to criminalize FGM/C in this and other state acts came from the national level, but several Red Sea state institutions welcomed it, especially because including such provisions would help secure financial resources from UN agencies. The legislative process was supported and funded by UNICEF (as part of the joint FGM/C program) and Save the Children Sweden.

The proposed article that would have criminalized all forms of FGM/C was regarded as complementing ongoing efforts to abandon the practice of FGM/C. In an interview in mid-2016, Afaf Hassan Mohamed, the current director of the Red Sea Child Welfare Council recalled,

At that time, I was assisting the ex-director of the Child Welfare Council, and the suggestion for a child law was great as it would give us framework for our work. As to FGM/C, we were engaged in raising awareness at [the] community level but that added to us an engagement at [the] decision-makers' level, specifically with parliamentarians [that is, state assembly members] and with lawyers.¹⁰

The text of the draft national law functioned as a framework for efforts at the state level, and national institutional structures influenced similar structures at the state level.¹¹ For example, the Director of National Council of Child Welfare, who was supportive of FGM/C abandonment, in 2007 required states to form child law committees (CLCs) to assist in drafting state laws. In Red Sea State, the CLC's main term of reference was to formulate a child act for the state, including an article banning FGM/C. The committee included 15 members who represented the Red Sea Ministry of Health, police, judiciary, attorney general, lawyers, civil society organizations, religious institutions, and representatives of the Red Sea State Assembly. The majority of CLC members were from the National Congress Party (NCP), since Islamists dominate the government nationally as well as the Red Sea State Assembly locally. While some religious leaders were included, the committee did not include any tribal leaders.

All members of the CLC welcomed the idea of a Red Sea State Child Act. However, religious leaders on the committee initially rejected the idea of criminalizing FGM/C in all its forms, claiming that Sunna circumcision was not against Islam and therefore should not be criminalized. Importantly, however, they viewed Sunna circumcision as involving actual cutting of the genitalia, and they conceded that more invasive forms of FGM/C are *makruh* (that is, "despicable" or "abominable").¹² Nonetheless, in the end, the CLC recommended

¹⁰ Interview with Afaf Hassan Mohanad, director of Red Sea Child Welfare Council, 14 May 2016.

¹¹ Interview with Samia Amin, former gender specialist for UNICEF, August 2016.

¹² This corresponds well with interviews with members of the conservative Salafi movement in other parts of Sudan. For example, Ansar al-Sunna in Khartoum suggested that scraping the clitoris is considered the "proper" version of Sunna circumcision (Tønnessen 2011).

that the law forbid all forms of FGM/C, on the grounds that FGM/C does severe harms to girls and women's health, and causing harm is against Islam.¹³

Specifically, Sharia provides that cutting any part of body is a criminal act that must be punished by *dia* ("bloodmoney"), as it interferes with God's creation. Furthermore, the CLC argued that the *hadiths* supporting circumcision are "weak" or have not been authenticated.¹⁴ Finally, the CLC argued that the fact that FGM/C is not practiced in the majority of Muslim countries suggests that the practice is not Islamic, but cultural. Some members of the CLC also argued more pragmatically that traditional midwives only know the cutting form of FGM/C and that if the law allowed an exception for Sunna circumcision, midwives would merely continue their cutting practices but call them "Sunna."¹⁵ Nonetheless, although the CLC agreed to forbid all forms of FGM/C, it did not recommend any specific penalties for those who violated the law.

The Red Sea Child Welfare Council, in collaboration with the heads of the Red Sea State Assembly Legislation and Justice Committee and Social and Cultural Welfare Committee, organized a workshop to orient the members of the state assembly with the new draft law. One state assembly member explained,

There was a heated debate on [the] religious perspective and some parliamentarians were against the criminalization of the practice. But at the end of the workshop participants agreed on the law with an article banning all forms of FGM/C.¹⁶

The state minister Social Affairs, Culture and Media presented the law to the state assembly, and it was approved by the majority of state assembly members. One female assembly member recalled "We were (8) women in the assembly and all of us were against the practice".¹⁷ A number of representatives from the state assembly interviewed for this study supported abandonment of all forms of FGM/C. For example, a member of the Legislation and Justice Committee said,

I [have been] committed to abandoning FGM/C since I was [a] student in my first year at the engineering college at the University of Khartoum. At that time a female student from the Red Sea State at the Faculty of Medicine used to mobilize the students to fight the practice. She convinced me and since that time I am committed to FGM/C abandonment and I have worked hard to generate consensus among parliamentarian[s] for eradication of all forms [of FGM/C].¹⁸

Similarly, a female assembly member noted,

The legislation for FGM/C is important to our communities. As [a] Beja, I experienced the FGM/C complications and women in my community are suffering. That is why I have been advocating against the practice before coming to the parliament and have a support from a notable religious leader.¹⁹

Aside from having personal commitments to eradicating the practice of FGM/C, these politicians were aware that the international community—including UN agencies that

¹³ The idea that causing harm is unlawful in Islam is a frequently cited argument against FGM/C. Sharia's guiding principles state, "Cause no harm and do not reciprocate harm." FGM/C is a clearly harmful practice that affects women and girls' sexual and reproductive health. If an action has both benefits and harms, it is only allowed under Islam if the benefits outweigh the harms (Tønnessen and al-Nagar 2016).

¹⁴ The Quran makes no mention of FGM/C, but Prophet Muhammad's actions and teachings, collectively known as "Sunna," discuss circumcision. There also are a range of *hadiths* justifying the practice, including the *hadith* of Ummu-Attiya, the *hadith* of al-Hajjaj ibnu Artā, the *hadith* of Abdalla ibnu Umar, the *hadith* of Aisha, and the *hadith* of Abu Hureira. The most authentic of these is the *hadith* of Aisha (authentic here refers to the process of determining whether a hadith is true or false. One criteria for authenticating a hadith is that it does not contradict what is stated in the Quran). (Tønnessen 2015).

¹⁵ Religious leaders in Red Sea State regularly use this argument. Interview with Afaf Hassan Mohanad, director of the Red Sea State Child Welfare Council, 17 September 2016.

¹⁶ Interview with a state assembly member, 18 September 2016.

¹⁷ Interview with a state assembly member, 19 September 2016.

¹⁸ Interview with a state assembly member, 18 September 2016.

¹⁹ Telephone interview with a female state assembly member, 18 September 2016.

contributed tremendously to the provision of services in the state—heavily supported the criminalization initiative in Sudan. Those state assembly members who advocated for criminalization of FGM/C were predominantly from NCP and were pressured to vote along the party line. One female representative explained that “there were some parliamentarians who were against the criminalization, but ... kept silent during the discussion of the law in the state assembly.”²⁰ Thus, it appears that state assembly members who were against criminalization may not have voted their conscious.

However, as soon as the Red Sea State Child Act of 2007 became publically known, critical voices surfaced against blanket criminalization of FGM/C. A religious leader who is not of Sudanese origin, but is well-known in the state, contacted tribal leaders in Port Sudan to inform them about the legislative decision to ban FGM/C and to warn them that “FGM/C is not forbidden in Islam and banning FGM/C is irreligious.”²¹ This news soon reached the tribal leaders in different parts of the state. One member of the state assembly explained, “Soon after the passage of the law was publically known there were loud voices and messages against criminalization of FGM/C.”²² Not only was the state assembly accused of neglecting many other state problems by “being busy with women’s issues,” but also some religious and tribal leaders argued that it was against Sharia (in the case of religious leaders) or the *silif* (in the case of tribal leaders) to criminalize Sunna circumcision. A female state assembly member who had supported and advocated for criminalization of FGM/C related that most opposition to the law came from tribal leaders, rather than religious leaders.²³ Tribal leaders claimed that criminalizing the practice opposed traditional norms. Some asked, “Why do you want to harm our daughters and risk our honor by criminalizing of FGM/C?” A female member of the state assembly confirmed that

“FGM/C is not forbidden in Islam and banning FGM/C is irreligious”

Tribal leaders resisted because they are concerned with tribe honor and the risks of non-circumcised girls as they perceive it; they know that their men accept/know sex only with circumcised women and they want to protect their women from being stigmatized as *ghalfa* and ensure their marriageability. The responses created a crisis situation for the State Assembly.²⁴

Another interviewee noted that

“The tribal leaders would not accept a change in their traditions to be imposed on them. FGM/C is a tradition related to the honor of the family and tribe. It cannot be criminalized without their engagement and their acceptance. (...) Tribal leaders have great powers based on tribal systems. Any challenge to the traditional systems and customary laws threaten their positions and thus they resist”.²⁵

The day after the 2007 Red Sea Child Act was approved by the Red Sea State Assembly, the state assembly speaker ordered the heads of the Legislation and Justice Committee and Social and Cultural Welfare Committee to find a solution that would calm opposing voices. The solution agreed upon was to criminalize pharaonic circumcision only. A member of the state assembly who were central to the legislative process, recalled;

“There were telephone calls from the tribal leaders from all over the state complaining that the law challenge their tradition and tribe honor. The second day the head of the legislative assembly called the head of the Social and Cultural Welfare Committee and the head of the Legislation and Justice Committee and asked them to resolve the problem, to stop attacks against the legislative assembly. The solution we proposed, which was very discouraging to us, is to criminalize the pharaonic type”.²⁶

20 Telephone interview with a female state assembly member, 18 September 2016.

21 Interview with an activist working as a social worker in government.

22 Interview with a state assembly member, 19 September 2016.

23 Interview with a female state assembly member, 18 September 2016;

24 Interview with a female state assembly member, 8 November 2015;

25 Interview with a young male activist, 18 September 2016.

26 Interview with a state assembly member, 19 September 2016.

However, the final version of law signed by the governor and the state assembly speaker did not criminalize *any* form of FGM/C. We were unsuccessful in getting a satisfactory answer from our interviewees as to why also pharaonic circumcision was taken out of the final version of the law. This suggests that tribal leaders succeeded in blocking the attempt to criminalize FGM/C. In the words of one interviewee, “The counter-mobilization in 2007 was led by the tribal leaders, and politicians cannot afford to lose their support.”²⁷

Another try: Reforming the Red Sea State Child Act

In 2009, a 40-day-old girl died after being subject to FGM/C. The case was reported to the police, but the girl’s family refused to give the name of the responsible midwife. This case fueled an initiative to reform the Red Sea State Child Act of 2007 and to attempt to criminalize FGM/C yet again. The Red Sea Child Welfare Council established a new committee to reform the 2007 law. The committee recommended the following reforms to the 2007 act:

1. the addition of a stipulation that a child has the right to protection from all forms of violence;
2. the addition of a stipulation that a child has the right to be protected from any discrimination based on sex, sickness, disability, color, or social status; and
3. the addition of provisions to article 7 (which deals with child health) that (a) ban all forms and types of FGM/C and (b) ban all other traditional practices that harm children.

The committee did not provide any recommendations about penalties for offenders. This was part of an intentional strategy. During an interview, a committee member explained,

“We discussed the diverse perspectives of the practice and realized that criminalization would be resisted by the tribes. Therefore, it was agreed that the process should start gradually with banning the practice without any penalties [and] emphasizing responsibilities of raising awareness and education of people on the harms of the practice. After some years when people are aware, then the environment would be enabling for criminalization.”²⁸

The Red Sea Child Welfare Council incorporated these recommendations into a memorandum that it submitted to the Red Sea State in 2009. A Red Sea state court judge also wrote a memorandum that suggested defining “harmful traditional practice” to include pharaonic circumcision only. No further discussion of the proposed reform was undertaken the 2010–2014 state assembly approved a reformed Red Sea Child Act in 2011. Article 10 of that new law includes procedures for regular medical investigations:

The Minister of the Red Sea State Ministry of Health should produce a decree for the following:

1. Regular medical check-up for all school children according to the school health procedures and by laws.
2. Forbidding the pharaonic circumcision for females
3. Forbidding the traditional practices harmful to the child health
4. The state should support the child prevention and protection and provide free treatment for HIV/AIDS.

All state assembly members interviewed for this study confirmed that the 2011 reform came in response to the 2009 memorandum from the Red Sea Child Welfare Council. The director of the Child Welfare Council noted, however, that this memorandum recommended criminalization of all forms of FGM/C, but the 2011 reform only included the phrase “forbidding the pharaonic circumcision for females.” This occurred in spite of the fact that the 2010–2014 state assembly included 25% women who claimed they worked hard for the criminalization of all forms of FGM/C. Some of the female state

27 Interview with a young male activist, 9 November, 2016.

28 Interview with former attorney general of the Red Sea State Police Family and Child Protection Unit, 9 November 2016.

assembly members interviewed for this study insisted that the law forbids all types of FGM/C, although they could not give any clear reasons for why the final text only addresses pharaonic circumcision. Other interviews with female representatives revealed that some state assembly members (including women) support the practice of Sunna circumcision. One explained,

“I was against FGM/C practice since my study in Ahfad University. But I voted for the law criminalizing only the pharaonic as this type destroys girls’ body which is creation of God. As the Islamist scholars have not given us a definite answer on Sunna we cannot criminalize it”.²⁹

"I voted for the law criminalizing only the pharaonic as this type destroys girls' body which is creation of God."

According to a young male activist, “There was heated debate in the parliament on condoms and FGM/C. Two decisions were taken: one was the banning of distribution of condoms in the state and the other decision to criminalize only the pharaonic circumcision.”³⁰ A compromise was made to both satisfy religious and tribal leaders and satisfy international funders’ quest for a law. An interviewee explained,

“When the child law was tabled, it included criminalization of the pharaonic type only. There were some supporters for criminalization of all types but they were not able to convince the session as many of the parliamentarian were there in 2007 during tribal opposition to the law. Forbidding the pharaonic is a compromise satisfying the international organizations who supported the initiatives and who are supporting the education and other services in the state and at the same it avoids provoking the tribal leaders”.³¹

The fact that the law does not ban all form of FGM/C enables tribal leaders to simply continue the practice of pharaonic circumcision, but simply call it “Sunna circumcision” in order to comply with the law (which does not define “pharaonic circumcision”). An interviewee explained, “Tribal leaders are for FGM/C and do not differentiate types ... The [pharaonic–Sunna] typology has been introduced recently in Port Sudan. When tribal leaders say ‘Sunna’ they do not refer to a particular type of FGM/C, they mean that it is supported by the sayings of the Prophet.”³²

In 2015, the National Council for Child Welfare established the Red Sea State Working Group for FGM/C Abandonment. The criminalization of all forms of FGM/C is on this group’s agenda. However, since the 2011 law was enacted, there has not been a public debate about FGM/C and no one has contested or critiqued the final, weak legal document, not even women’s rights activists or international actors. In fact, the National Council for Child Welfare as well as various UN agencies currently refer to Red Sea as a successful case for the criminalization of FGM/C. Either they are unaware of the law’s limitations or they do not care about the result, as they can check the box “new law accomplished” in their reports to donors. The fact that Save the Children Sweden was expelled from eastern Sudan in 2012 also may have affected advocacy work for criminalization, as this group was a major funding source in this area.

29 Interview with a female state assembly member who has served as member during the last two state assembly sessions, 4 September 2016.

30 Interview with a young male activist, 18 September 2016.

31 Interview with a young male activist, 19 September 2016.

32 Interview with a young male activist, 9 November, 2016.

CONCLUSION

When we first went to the field, we intended to investigate the process behind a law that has been celebrated as a victory for women's right activists and UN agencies working for the criminalization of FGM/C—in a Sudanese state renowned for its extensive practice of FGM/C and conservative culture when it comes to women's rights and freedoms. Attempts to criminalize all forms of FGM/C started in 2007. Early initiatives, which included sensitization of religious leaders, but largely excluded tribal leaders, eventually failed. Although the Red Sea State Assembly passed a 2007 criminalizing all forms of FGM/C without much visible opposition from assembly members, tribal leaders quickly mobilized to oppose the law and the article criminalizing FGM/C was taken out before the final law was signed by the governor and the assembly speaker.

A reformed 2011 law was enacted without any counter-mobilization by tribal leaders. However, although international donors initially told us that the law prohibits the practice of FGM/C, it is actually a weak legal document that donors must not have read properly. A close analysis reveals that the 2011 law only addresses pharaonic circumcision, something that sends a symbolic signal that Sunna circumcision is legal and legitimate. Furthermore, since the law does not describe what constitutes pharaonic circumcision, traditional midwives who customarily perform pharaonic circumcision need only change the label by which they call it to continue engaging in this harmful practice. Finally, the law leaves it to the state minister of health to issue a decree forbidding FGM/C and does not stipulate any penalty for offenders. As long as the decree has not been issued and offenders cannot be brought to justice, the law has no practical effect. It is therefore no wonder that tribal leaders did not mobilize against the 2011 law as they did against the 2007 law.

In conclusion, the 2011 Red Sea State Child Act is merely a political compromise to satisfy both external and internal actors. International donors who have put in tremendous effort for a law against FGM/C can celebrate it as a victory. Meanwhile, the law enables the continued practice of FGM/C in tribal communities. Achieving a law that de facto criminalizes FGM/C would be near impossible in Red Sea because of strong opposition from tribal leaders. Accordingly, the current weak legal document, which provides no real protection to girls in danger of undergoing FGM/C has been the ultimate result.

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This paper critically investigates the criminalization of female genital mutilation/cutting (FGM/C) in Red Sea, a state with one of the highest prevalence rates of FGM/C in Sudan (where 89% of females have undergone the procedure). Infibulation, also called “pharaonic circumcision” or “kushabi,” is the most severe type of FGM/C is widely practiced in Red Sea, especially among conservative tribal groups such as the Beja tribe and its subgroups Hadendawa and Beni Amer. These tribal groups played a key role in keeping criminalization of FGM/C out of the Red Sea State Child Act of 2007. Although the act was revised in 2011 to address FGM/C, it does so only weakly and does not clearly prohibit the most severe types of FGM/C. In essence, conservative political forces in Red Sea have been able to shape the legislative process.

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