



THOMSON REUTERS
FOUNDATION



FGM...
let's end it.

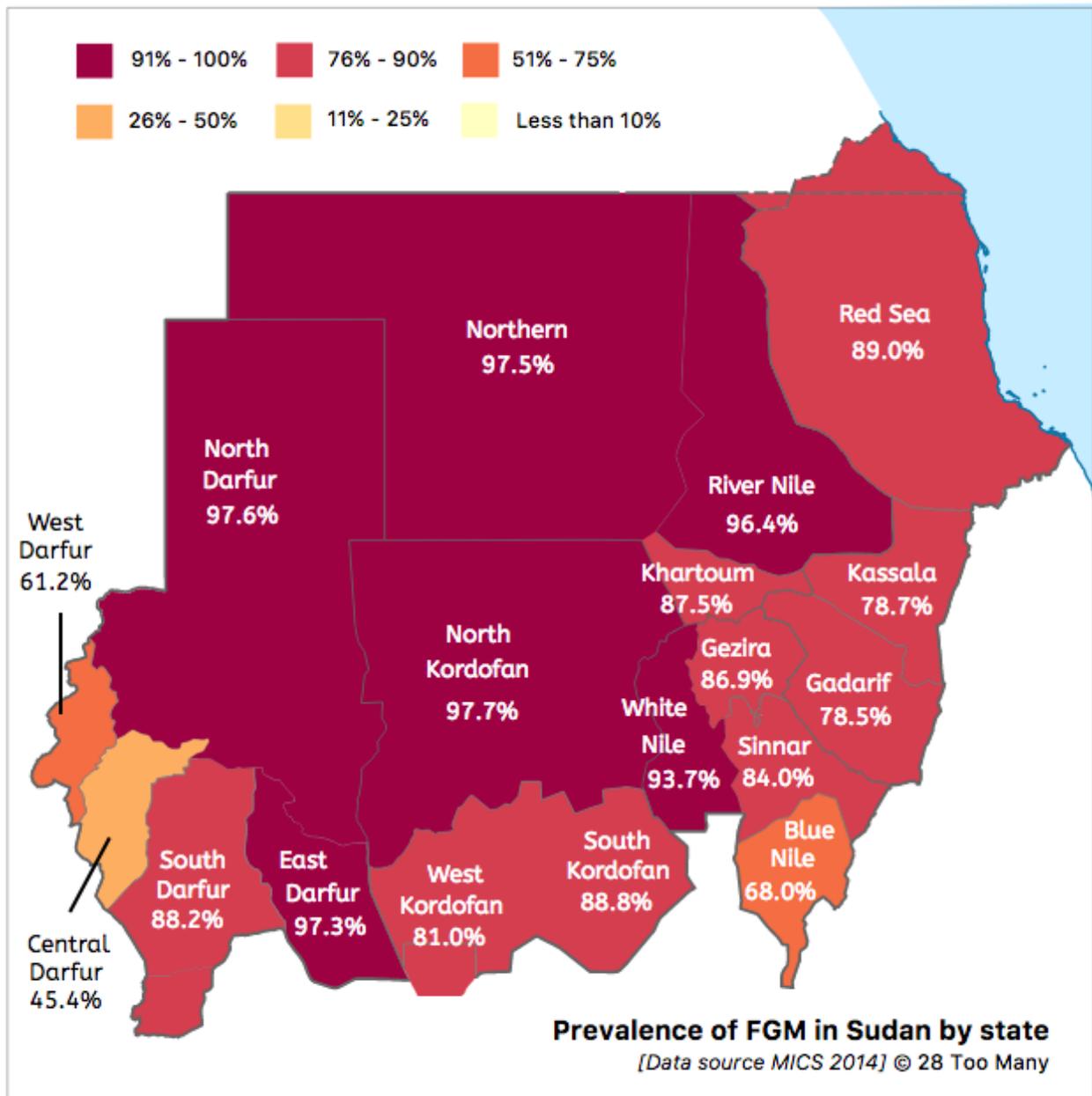


SUDAN: THE LAW AND FGM

July 2018

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

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



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

Source of data: Central Bureau of Statistics (CBS), UNICEF Sudan (2016) *Multiple Indicator Cluster Survey 2014 of Sudan, Final Report*. Khartoum, Sudan: UNICEF and Central Bureau of Statistics (CBS), February 2016, pp.214-219. Available at https://mics-surveys-prod.s3.amazonaws.com/MICS5/Middle%20East%20and%20North%20Africa/Sudan/2014/Final/Sudan%202014%20MICS_English.pdf.

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

Domestic Legal Framework

Overview of Domestic Legal Framework in Sudan	
<i>The Constitution explicitly prohibits:</i>	
X	Violence against women and girls
✓	Harmful practices
X	Female genital mutilation (FGM)
<i>National legislation:</i>	
X	Provides a clear definition of FGM
X	Criminalises the performance of FGM
X	Criminalises the procurement, arrangement and/or assistance of acts of FGM
X	Criminalises the failure to report incidents of FGM
X	Criminalises the participation of medical professionals in acts of FGM
X	Criminalises the practice of cross-border FGM
✓	Government has a strategy in place to end FGM

What is The Law Against FGM?

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

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

The Constitution of the Republic of Sudan 2005 (amended 2007)¹ places various obligations on the State to protect women and children. **Article 15(2)** says that the State shall protect ‘women from injustice, promote gender equality and the role of women in family, and empower them in public life.’ **Articles 28 and 33** state that everyone has ‘the inherent right to life, dignity and the integrity of his person’ and that ‘[n]o person shall be subjected to torture or to cruel, inhuman or degrading treatment.’ Although the Constitution does not specifically mention FGM, **Article 32** refers to harmful practices in relation to the ‘Rights of Women and Children’: The State is obliged to **(2)** ‘promote women’s rights through affirmative action’, **(3)** ‘combat harmful customs and traditions which undermine the dignity and status of women’ and **(5)** ‘protect the rights of the child as provided in the international and regional conventions ratified by Sudan’ (see Appendix I).

There is currently no national law against FGM covering the whole of Sudan. Various states have put laws in place that only apply to FGM undertaken within the boundaries of those states, including Gedaref, South Darfur, South Kordofan and Red Sea.

Although in 1946 Sudan was the first country in Africa to criminalise Type III FGM ('infibulation'), the article was subsequently removed from the **Penal Code** following the introduction of Sharia law in 1983. More recently, in September 2016, an amendment to the **Criminal Act (1991)** was approved by the Council of Ministers to criminalise FGM under a new **Article 141**; at the time of writing it is still pending endorsement by parliament.²

What The Law Covers

In the absence of national legislation prohibiting all forms of FGM, there are laws that refer to causing harm to another person and the protection of children that are applicable across Sudan:

- **Criminal Act (1991)**³ – **Section 138** defines 'wounds' inflicted on another person (both 'intentional' or 'semi-intentional') to include the loss of an organ or any of the senses and sets out the penalties for committing the offence. **Section 142** defines 'hurt' as causing pain to another person and is punishable accordingly.
- **Child Act (2010)**⁴ – **Chapter II, Article 5** protects children (under 18 years of age) from all forms of violence, harm and physical and psychological abuse; **sub-section (2)(k)** specifically states, 'This Act ensures the protection of a male, or female Child, against all types and forms of violence, injury, inhuman treatment, or bodily, ethical or sexual abuse, or neglect or exploitation.' The drafting of this law was started in 2007, and in 2009 it was proposed to include an **Article 13** that would explicitly criminalise all forms of FGM. However, following subsequent representations by religious leaders, claiming this article was against Sharia, the president ordered its removal.⁵

The following four states have attempted to criminalise FGM:

- **South Kordofan** (FGM prevalence 88.8%) – the first Sudanese state to adopt legislation. The **Prevention of Female Genital Mutilation Act (2008)**⁶ places responsibility on parents and guardians to protect females (up to 18 years of age) from FGM. Reporting incidents of FGM is the responsibility of all. This law also provides for the payment of compensation to the victim of FGM by the person who performed the act.
- **Gadaref** (FGM prevalence 78.5%) – the second state to introduce a law. Under **Article 13 of the Child Law 2009**, all harmful traditional practices (including FGM) are prohibited. This is applicable to all forms of FGM.⁷
- **South Darfur** (FGM prevalence 88.2%) – under **Article 11 of the South Darfur State Child Act 2013**, all forms of FGM are prohibited.⁸
- **Red Sea** (FGM prevalence 89.0%) – the Red Sea succeeded in introducing a law in 2007 prohibiting all forms of FGM, only for it to be repealed following protests from the Beja ethnic group.⁹ Following the death of an infant girl from FGM in 2009, pressure to criminalise the practice increased again and the **Child Act 2011** reportedly included the potential under **Article 10** for FGM prohibition, although only for the most severe type (infibulation, also known as

‘Pharaonic Circumcision’ in Sudan). The Ministry of Health, however, has yet to issue a decree; hence, to date, the law has still not been fully enacted.¹⁰

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

While there are no **customary laws** surrounding FGM in Sudan, some religious leaders support *Sunna* circumcision (which includes partial or total removal of the clitoris) and claim that criminalising it would be against Sharia. This has been a clear obstacle to the passing of comprehensive legislation in Sudan.

Medicalised FGM

Medicalised FGM is significant in Sudan; according to a secondary analysis of 2014 data, 77.9% of women in urban areas and 56.7% of women in rural areas (aged 15–49) have been cut by ‘trained midwives’. The rate of medicalisation also varies by state, and the analysis shows that it has increased significantly over time.¹¹

National legislation does not effectively uphold professional ethics for medical personnel in Sudan. **Medical Council Resolution Number 366 from 2002** prohibits doctors and midwives from performing all forms of FGM.¹² All involved, including the hospital or healthcare facility, will be subject to punishment if caught performing FGM. The sanctions, however, are only administrative in nature rather than criminal. Punishment for doctors and midwives under this resolution is at the discretion of the Medical Council and can result in the annulment of practicing licences and dismissal from the profession.

In South Kordofan, the Ministry of Health has issued a **code of conduct for midwives**, instructing them not to perform FGM.¹³ The Ministry of Health is also conducting reproductive health programmes to raise awareness of the effects of FGM and why it should not be practised. Furthermore, South Kordofan’s **Prevention of Female Genital Mutilation Act** calls for life imprisonment, cancellation of medical licences for doctors and nurses, and confiscation of property for repeat offenders.

Cross-Border FGM

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

It is not known to what extent the movement across national borders for FGM is an issue in Sudan. In the absence of national legislation prohibiting FGM, it is possible that families from other countries are crossing borders into Sudan to avoid prosecution.

Penalties

National

There are no penalties at the national level for practising FGM.

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

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

State

- **South Kordofan – The Prevention of Female Genital Mutilation Act (2008)** includes a range of penalties from three years’ imprisonment and compensation payable to the victim, up to ten years’ imprisonment and compensation payable to the victim’s family in the case of the victim’s death.
- **Gadaref – The Child Law 2009** stipulates a maximum of 6 months’ imprisonment or a fine of not less than 100 SDG (approximately US\$5.50)¹⁴, or both, but without prejudice to any civil compensation that may be available. It also stipulates that the court concerned may give part of the fine to the victim.
- **South Darfur – The Child Act 2013** does not include a provision for penalties.
- **Red Sea – The Child Act 2011** does not include a provision for penalties.

Implementation of The Law

Cases

In the absence of national legislation on FGM, there are no reported cases of arrests or court proceedings. There is also no evidence of the **Criminal Act (1991)** being used to prosecute perpetrators of FGM.

It has not been possible to establish if any prosecutions have taken place within the four states that have attempted to criminalise FGM. In 2009, local media reported that a 40-day-old girl died after being cut in the Red Sea state. Although the case was reported to the police, the family refused to give the name of the midwife responsible for the act.¹⁵

Relevant Government Authorities and Strategies

Various government departments and professional bodies are responsible for implementing the national campaign to end FGM in Sudan, including the **Ministries of Welfare and Social Services, Health, Guidance and Endowment and the Medical Council**. The **National Council for Child Welfare** is the government authority that co-ordinates work in collaboration with the **UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (UNJP)**, which has been working in Sudan since 2008. The **National Strategy to Combat Female Genital Mutilation 2008–2018** was launched as a partnership between government and civil-society organisations to address the

religious, health, social and cultural aspects of FGM.¹⁶ At state level there are also local government departments, councils and steering committees for anti-FGM-advocacy work.

A national communications campaign was launched in 2008 focused around the idea of the uncut woman or *Saleema* (the Arabic word for 'whole, undamaged, unharmed, and complete'). This positioned FGM within the broader frameworks of child protection and gender equality.¹⁷ Government departments have partnered with the UNJP and local non-governmental organisations (NGOs) to develop advocacy campaigns with religious leaders and the media, implement reproductive-health services and midwife training, provide information and counselling to parents of new-born girls and incorporate awareness education into the school curriculum. An online dialogue platform to address FGM has also been developed and a comprehensive mapping exercise of the communities practising FGM undertaken.¹⁸

Civil Society Observations

There is a wide network of NGOs in Sudan working to mobilise communities and implement the different strategies of the national campaign to end the practice. These efforts, however, are not being supported by national legislation. Many civil-society organisations, for instance, petitioned the president in 2009 against the removal of Article 13 from the Child Act and also to include the prohibition in other acts and byelaws, as necessary, to ensure the success of the national campaign to eliminate FGM. Their efforts to tighten the law were unsuccessful.¹⁹

Civil society also reports that, even in states where laws have been passed criminalising FGM, there are many challenges to implementing them, including a lack of knowledge around the meaning and content of the law, even among the police and judiciary. It is suggested that, unless FGM has caused life-threatening loss of blood or actual death, cases are not usually pursued. There is also the challenge that the midwives performing FGM are also well-respected practitioners, particularly in rural areas, in terms of maternal healthcare and attending difficult births, and hence there is a reluctance to bring charges against them. The resistance of religious and community leaders to the anti-FGM campaign also restricts victims' access to justice.

Conclusions and Suggestions for Improvement

Conclusions

- FGM prevalence in Sudan remains one of the highest in Africa, and an increasing number of women and girls are being cut by medical professionals.
- The continuing lack of national legislation criminalising and punishing all forms of FGM undermines the efforts of all parties working to uphold the National Strategy to end the practice in Sudan.
- There are some states where laws have been introduced, but their enforcement appears to be poor and it is not known if any prosecutions have taken place.

Suggestions for Improvement

National Legislation

- There is an urgent need to ratify **Article 141 of the Criminal Act** and include provisions in all relevant federal laws for the prohibition of all forms of FGM. Laws should criminalise and punish all perpetrators of the practice (including those who perform, procure, aid or abet FGM) and protect women and girls of all ages.
- The law requires clear definitions of FGM and should strictly punish any member of the medical profession who performs, attempts to perform or assists in the performance of FGM in any location or premises.
- The law should address cross-border FGM, in cases where this occurs, and should punish the failure to report FGM that is planned or has taken place.
- The same provisions should also be adopted in laws across all states of Sudan.
- Laws need to be made accessible to all members of society and easy to understand in all local languages.

Implementation of the Law

Once national laws are in place prohibiting FGM, the following key actions will contribute to efforts to end the practice in Sudan. In states with laws, these actions could be implemented with immediate effect.

- Anti-FGM programmes should disseminate clear, easy-to-understand and accurate information around the law.
- Judges and local law enforcers need adequate support and training around the law and should be encouraged to fully apply the sentences provided for by legislation.
- Increased involvement of local and religious leaders in education around the law, including their responsibilities and the importance of the law in protecting women and girls in their communities, would also be beneficial.

- Adequate monitoring and reporting of FGM cases would improve efficiency and inform policy makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- All professionals (including those in health and education) need training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM.
- Increased support and protection for victims and witnesses in FGM cases is essential.
- Tribunals could be encouraged to make sure any prosecutions relating to FGM are clearly reported, including through local media such as community radio, and made available in local languages.
- Where literacy rates are low, information around the law needs to be made available through different media channels and resources.
- Mandatory reporting of instances of FGM by medical staff in hospitals and health centres could be considered.
- Where these are currently unavailable and a need is identified, appropriate protection measures (for example, the provision of safe spaces) should be put in place for girls at risk of FGM.

Appendix I: International and Regional Treaties

SUDAN	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (<i>ICCPR</i>)			✓ 1986	
International Covenant on Economic, Social & Cultural Rights (1966) (<i>ICESCR</i>)			✓ 1986	
Convention on the Elimination of All forms of Discrimination Against Women (1979) (<i>CEDAW</i>)				Not signed
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (<i>CTOCIDTP</i>)	✓ 1986			
Convention on the Rights of the Child (1989) (<i>CRC</i>)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (<i>ACHPR</i>) (Banjul Charter)	✓ 1982	✓ 1986		
African Charter on the Rights and Welfare of the Child (1990) (<i>ACRWC</i>)				Not signed
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (<i>ACHPRRWA</i>) (Maputo Protocol)	✓ 2008			

'Signed': a treaty is signed by countries following negotiation and agreement of its contents.

'Ratified': once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.

'Acceded': when a country ratifies a treaty that has already been negotiated by other states.

- Sudan's Constitution of 2005* (2005) Available at https://www.constituteproject.org/constitution/Sudan_2005.pdf?lang=en.
- UNFPA-UNICEF (2017) *2016 Annual Report of the UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change*, p.66. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/UNFPA_UNICEF_FGM_16_Report_web.pdf.
- The Criminal Act 1991* (1991) Available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80450/118284/F-1325877900/SDN80450%20Eng.pdf>.
- The Child Act 2010* (2010) Available at http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Sudan/sudan_children_2010_en.pdf.

- 5 Liv Tønnessen, Samia El-Nagar and Sharifa Bamkar (2017) 'Paper tiger law forbidding FGM in Sudan', *CMI Brief* 16(7). Available at <https://www.cmi.no/publications/6327-paper-tiger-law-forbidding-fgm-in-sudan>.
- 6 UNICEF (2011) *Sudan Mena Gender Equality Profile Status of Girls and Women in the Middle East and North Africa*. Available at <https://www.unicef.org/gender/files/Sudan-Gender-Eqaulity-Profile-2011.pdf>.
- 7 Ahfad University for Women (2013) *Evidence based advocacy for ending FGM/C in Sudan*, 3 May. The Free Library. Available at <https://www.thefreelibrary.com/Evidence+based+advocacy+for+ending+FGM%2fC+in+Sudan.-a0414006443>.
- 8 United Nations, UNAMID, African Union and United Nations Human Rights Office of the High Commissioner (undated) *Human Rights Situation in Darfur in 2013*, paragraph 27. Available at http://www.ohchr.org/Documents/Countries/SD/UNAMID_OHCHR_situation_Darfur2013.pdf.
- 9 Liv Tønnessen, Samia El-Nagar and Sharifa Bamkar, *op. cit.*
- 10 *For further analysis on the Red Sea Child Act see <https://www.cmi.no/publications/file/6229-weak-law-forbidding-female-genital-mutilation-in.pdf>.*
- 11 Mr Macoumba Thiam, PhD for UNICEF/Sudan Free of FGC (2016) *Female Genital Mutilation/Cutting (FGM/C) and Child Marriage in Sudan – Are There Any Changes Taking Place?*, pp.24–26. Available at https://www.unicef.org/sudan/MICS_Secondary_Analysis_FGMC_CM_English_Version_FINAL_FINAL.pdf.
- 12 United Nations Economic Commission for Africa (2012) *African Women's Rights Observatory: Sudan*. Available at <http://www1.uneca.org/awro/CountrySpecificInformationSudan.aspx>.
- 13 Jeni Klugman and Asbjorn Wee (2008) *South Kordofan: A Growth Diagnostic*. Available at <http://documents.worldbank.org/curated/en/495381468123578487/pdf/484190WP0South10Box338903B01PUBLIC1.pdf>.
- 14 *As at 10 April 2018 (<https://www.xe.com/currencyconverter/convert/?Amount=100&From=SDG&To=USD>).*
- 15 Liv Tønnessen, Samia El-Nagar and Sharifa Bamkar, *op. cit.*
- 16 United Nations (2009) *General Assembly Report A/HRC/10/NGO/77*, 26 February. Available at https://www.ecoi.net/en/file/local/1073132/1227_1244999980_sudan.pdf.
- 17 The Girl Generation (undated) 'In Sudan, FGM crosses religious and ethnic lines. It is practiced by both Muslims and Christians', *Sudan*. Available at <https://www.thegirlgeneration.org/regions/sudan>.
- 18 UNFPA and UNICEF, *op. cit.*
- 19 The Female Genital Cutting Education and Networking Project (2009) *SUDAN: Letter To Sudan President On Female Genital Cutting*, 26 March. Available at <http://fgmnetwork.org/gonews.php?subaction=showfull&id=1238088339&>.

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

Please note that the use of a photograph of any girl or woman in this report does not imply that she has, nor has not, undergone FGM.

This report was prepared in collaboration with TrustLaw, the Thomson Reuters Foundation's global, legal pro bono service that connects law firms and legal teams to NGOs and social enterprises that are working to create social and environmental change.

The information in this report has been compiled in cooperation with Latham & Watkins from documents that are publicly available and is for general information purposes only. It has been prepared as a work of legal research only and does not represent legal advice in respect of any of the laws of Sudan. It does not purport to be complete or to apply to any particular factual or legal circumstances. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with any person or entity. Neither 28 Too Many, Latham & Watkins, the Thomson Reuters Foundation nor any other contributor to this report accepts responsibility for losses that may arise from reliance upon the information contained herein, or any inaccuracies, including changes in the law since the research was completed in July 2018. No contributor to this report holds himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in this project or contribution to this report. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction/s when dealing with specific circumstances. It should be noted, furthermore, that in many countries there is a lack of legal precedent for the penalties laid out in the law, meaning that, in practice, lesser penalties may be applied.

Acknowledgements:

Latham & Watkins

Omer Abdelati Law Firm

Nagwa Salih, Unit for Combating Violence Against Women and Children

Awatif Abdelkarim Abdelrahman

