



Sudan

Gender Justice & The Law

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Sudan

Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
ESCWA	Economic and Social Commission for West Asia
FGM/C	female genital mutilation / cutting
GBV	Gender-based violence
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-government organization
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UNESCWA	United Nations Economic and Social Commission for West Asia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees (UN Refugee Agency)
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization
Arabic terms	
fatwa	Ruling or pronouncement on a point of Islamic law
'idda	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
khalwa	Social mingling of men and women who are unrelated
khul'a	Divorce process initiated by the wife requiring return of her mahr
mahr	Mandatory payment by the groom or his father to the bride which then becomes her property
talaq	Repudiation; divorce process whereby the husband repudiates his wife
'urf	Custom
wali	Guardian
wilaya	Guardianship
zina	Unlawful sex, including adultery and sex between two persons neither of whom are married

INTRODUCTION

Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Sudan. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

Drafts of the Sudan country profile were reviewed by Iman Mohammed Elbashir Mufarrih, Legal Counsel, Legislation Department, Ministry of Justice (Sudan); Judge Haitham Suleiman Ahmad, Training Department, Sudan Judiciary; Dr. Omima Abdelwhab, legal expert and consultant; Zeinab Himaidan, EAW /Humanitarian Officer, UN Women Country Office; ILO Country Office; and Mr. Yousif Ahmed, Programme Officer, Good Governance and Rule of Law, UNDP Country Office; all of whose contributions are gratefully acknowledged.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.

SUDAN



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The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Sudan has not acceded to CEDAW. In 2018, Sudan announced its intention to ratify CEDAW with reservations to some articles.

Constitution

Article 31 of the Sudan Interim Constitution as amended in 2017 states that all persons are equal before the law and are entitled to equal protection of law without discrimination as to sex (and other listed categories).

NATIONALITY LAW

NATIONALITY

The Interim Constitution provides that a child born to a Sudanese mother or father has an inalienable right to citizenship and nationality. Amendments to the nationality law have been approved for consideration of Parliament.

CRIMINAL LAWS

Domestic violence

Sudan does not have domestic violence legislation.

Marital rape

Marital rape is not specifically criminalized. The wife owes a duty of obedience to her husband and is required to fulfil conjugal duties in the marriage.

Rape (other than of a spouse)

Rape is criminalized by Article 149 of the Criminal Act 1991. The death penalty applies in some circumstances.

Exoneration by marriage

There is no marry-your-rapist law in Sudan.

Abortion for rape survivors

Under Article 135 of the Criminal Act 1991, abortion is legal if the pregnancy is the result of a rape which occurred not more than 90 days before the pregnant woman has desired to have the abortion.

Sexual harassment

Article 151 of the Criminal Act was amended in 2015 to criminalize acts of sexual harassment.

Honour crimes: Mitigation of penalty

There is no specific provision in the Criminal Act allowing for reduction in penalty for perpetrators of 'honour' crimes.

Adultery

Adultery is an offence under Articles 145 and 146 of the Criminal Act.

Female Genital Mutilation / Cutting (FGM/C)

A proposed amendment to the Criminal Act to criminalize FGM/C was adopted by the Council of Ministers in 2016.

Human trafficking

The Combating of Human Trafficking Act of 2014 provides comprehensive measures against trafficking.

Sex work and anti-prostitution laws

Prostitution is prohibited by Articles 154–156 of the Criminal Act.

PERSONAL STATUS LAWS

Minimum age of marriage

Article 15 of the Interim Constitution protects children from early marriage. The Personal Status Law is unclear regarding the age of legal marriage. Article 215 of the Personal Status Law states that the age of majority is 18. However, other articles allow underage marriages in some cases.

Male guardianship over women

A woman requires permission of a guardian to marry. The woman's consent is also required, but the guardian can conclude the marriage contract first and seek the woman's consent later.

Marriage and divorce

The Personal Status Law requires the husband to maintain the wife. The wife owes obedience to the husband. A husband can divorce by repudiation (talaq). A wife has the right to divorce on specified grounds. She can also apply for a khul'a divorce without grounds if she forgoes financial rights.

Polygamy

Polygamy is permitted by the Personal Status Law.

Guardianship of children

The father is the guardian and is responsible for providing financial support.

Custody of children

After divorce, a mother's custody of her children continues till boys reach seven years and girls reach nine years. A mother may lose custody if she remarries unless a court permits her to retain custody in the best interest of the child.

Inheritance

The Personal Status Law defines the rules of inheritance for Muslims, which follow Sharia principles. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

LABOUR LAWS

Right to equal pay for the same work as men

The Labour Act of 1997 recognises the principle of equal pay for equal work.

Dismissal for pregnancy

There is no specific prohibition against dismissing women because of pregnancy in the Labour Act. However, the Interim Constitution provides that the State shall protect motherhood and women from injustice and promote gender equality. Civil servants have rights under the Civil Service Law.

Paid maternity leave

Article 46 of the Labour Act states that a female worker is entitled to 8 weeks of maternity leave with full pay. This is less than the ILO standard of 14 weeks.

Legal restrictions on women's work

Article 19 of the Labour Act prohibits women from working in occupations that are hazardous, arduous, or harmful to their health.

Domestic workers

Domestic workers are not covered by the Labour Act. Some protections are provided by the Domestic Servants Act of 1955 in terms of contracts of employment, wages, holidays, and gratuity on termination of service.

OVERVIEW

Legal Framework

International law

Sudan has signed, but has not ratified, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol). The Ministry of Justice and the Ministry of Welfare and Social Security are conducting a study on the Protocol to be submitted for approval to the Council of Ministers.

Sudan is a signatory to the Universal Declaration of Human Rights and has ratified the two international covenants on human rights (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights).

In 2013, Sudan ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Sudan has ratified the Convention on the Rights of the Child, including its Optional Protocol on the involvement of children in armed conflict and its Optional Protocol on the sale of children, child prostitution, and child pornography. Sudan has also ratified the African Charter on the Rights and Welfare of the Child.

Sudan recognizes the international obligations, principles, and standards on gender equality and the human rights of women and girls arising from the above treaties, as well as from the Platform for Action of the 4th World Conference on Women, Beijing, 1995.

Sudan has not yet signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Domestic law

The main domestic laws relevant to gender justice are:

1. Non-Muslims Marriage Law of 1926
2. Domestic Workers Law of 1955
3. Civil Procedure Act of 1983
4. Personal Status Law for Muslims of 1991
5. Criminal Act of 1991
6. Criminal Procedures Act of 1991
7. Sudanese Nationality Act of 1994
8. Evidence Act of 1994
9. Labour Act of 1997
10. Sudan Interim Constitution of 2005
11. National Civil Service Act of 2007
12. National Commission for Human Rights Act of 2009
13. Child Act of 2010
14. Asylum Regulation Act of 2014
15. Combating of Human Trafficking Act of 2014

Constitution

The Sudan Interim Constitution of 2005 is the primary source of Sudanese laws.¹ Under the Interim Constitution, nationally enacted legislation having effect in respect of the Northern states of Sudan shall have as its sources of legislation Islamic Sharia and the consensus of the people.²

¹ Interim Constitution of the Republic of Sudan 2005, Art. 3.

² Ibid., Art. 5.

The Interim Constitution was amended in 2017. The new version of Article 15 states:

- (1) The family is the natural and fundamental unit of the society and is entitled to the protection of the law; upon reaching legal acknowledged age a man and woman may marry, with consent. The family shall follow the parties' religion, or customs in case of lacking religion. The property, wills, hereditaments, and other related matters shall be considered after death by virtue of the relevant laws.
- (2) The State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower women in public life.

The Interim Constitution includes a bill of rights.³ The State is committed to respect and promote human dignity, and is founded on justice, equality, and the advancement of human rights and fundamental freedoms.⁴ The bill of rights covers fundamental rights and freedoms, and civil and political liberties, including: the right to personal liberty (Article 29); the right to equality before the law (Article 31); the right to a fair trial (Article 34); the right to litigation (Article 35); the right to freedom of expression and media (Article 39); the right to freedom of assembly and association (Article 40); the right to vote (Article 41); the right to freedom of movement and residence (Article 42); and the rights of persons with special needs and the elderly (Article 45).

Article 31 on Equality Before the Law was updated in 2017. It now states:

- (1) All persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of law.
- (2) All persons are equal in rights to hold elected or public positions, in litigations, and judicial or general humanitarian actions, legal or national dealings without discrimination provided that they be eligible.

Article 32 on Rights of Women and Children states:

- (1) The State shall guarantee equal rights of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits.
- (2) The State shall promote women rights through positive discrimination actions.
- (3) The State shall combat harmful customs and traditions, which undermine the dignity and the status of women.
- (4) The State shall provide maternity, childcare and medical care for pregnant women.
- (5) The State shall protect the rights of the child as provided in the international and regional conventions ratified by Sudan.

Article 32 requires positive discrimination to promote women's rights. The National Elections Act 2008 provides for a quota system by requiring 25 percent of seats to be allocated to women in the national and state parliamentary assemblies. Women's participation in public and political spheres is increasing. For example, the number of seats held by women in parliament has increased from 4.9 percent in 1980 to 28 percent in 2010.

Policy framework

The State takes steps to protect and safeguard women, and grants women rights equal to those of men in many areas of life, without discrimination, particularly as regards civil, political, and cultural rights and freedoms and the rights to health care, property, and education.

Important national policies relating to women and girls include:

- ☒ National Policy for Eradication of FGM/C in One Generation (2008–2018)
- ☒ National Quarter Century Strategy (2007–2031) focusing on gender issues, public work participation, and women empowerment
- ☒ National Policy for Women's Empowerment, adopted by the Council of Ministers in 2007
- ☒ National Plan for Combating Gender-Based Violence (2005)
- ☒ National Policy for Girls Education (2007)

A five-year national plan to combat violence against women (2012–2016) was adopted. A draft national policy to combat violence against women and children has been drawn up for the period 2016–2031.

Gender issues are also integrated into sectoral plans by the Ministries of Health, Justice, Foreign Affairs, Labour, Education, Agriculture, Finance and Industry as well as the Central Bureau of Statistics.

The General Directorate of Women and Family Affairs (GDWFA), affiliated to the Ministry of Welfare and Social Security, is entrusted with women's issues. GDWFA develops policies for women and families and holds annual activities. In each state, there are also women and family affairs departments established under each state's Ministry of Social Welfare.

The National Committee for Women's Advancement was formed as a consulting committee by Ministerial Decree Number 12 of 2003. Consisting of 45 members drawn from all sectors and institutions related to women and NGOs, it is chaired by the Minister of Welfare and Social Security, and its responsibilities include proposing general policies and drafting legislation for women's

³ Ibid., Part 2, Arts. 27–48.

⁴ Ibid., Art. 1.

advancement. The committee supervises the design and review of national policies for women's empowerment as an advisory mechanism and assesses achievements against national, regional, and international commitments. In 2006, the Minister of Welfare and Social Security established the National Committee for Review of Women's Status in Laws, which has continued to be active since then.

In 2005, the National Plan for Combating Gender-based Violence was launched by the Ministry of Justice. A national unit responsible for combating violence against women was established in the Ministry of Justice as a mechanism for coordination among ministries, states, NGOs, and UN bodies (Combating Violence Against Women Unit). Among its tasks are: designing policies and strategies for combating violence against women and children, establishing similar units at the state level, conducting research and studies, preparing reports, reviewing laws, and providing recommendations for amendments. The unit currently has branches in seven states.

Mechanisms for advancing women's economic welfare are being developed by some banks and financing bodies. Support is provided to poverty alleviation projects and credit ceilings are allocated for women projects. The General Directorate for banking system development and organization has adopted some economic programmes that respond to women's needs through a decree issued by the Central Bank of Sudan in 2007.

In 2009, the National Assembly passed the National Human Rights Commission Act, which commenced operation pursuant to a presidential decree in 2012. Gender issues and women's human rights are a high priority for the commission.

Legal and social services

The General Directorate of Women and Family Affairs develops national programmes in the field of childhood and motherhood social care. In 2006, the Women's Centre for Human Rights was established as a tool for GDWFA.

In 2007, the Ministry of Interior established Family and Child Protection Units in 17 states, and there are currently 63 such units providing psychological, social, health, and legal support services for children. However, these units do not offer services to women who experience violence. The Child Law of 2010 provides for child protection mechanisms, including specific prosecution offices and courts for children.

The National Policy for Women's Empowerment calls for the establishment of centres for the provision of legal, psychological, social, and health services to women and girls who are victims of violence, and for receiving complaints on gender-based violence from women and girls.

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

Sudanese laws lack a definition of domestic violence. The Criminal Act of 1991 does not specifically address domestic violence or marital rape, though Part XIV addresses crimes involving serious harm and injury.

Rape

The Criminal Act was amended in 2015 to clarify the definition of rape. The amendment removed the conflation of the crimes of rape and adultery (*Zina*) that existed under the previous rape offence. Previously, onerous evidence standards that apply in cases of adultery (*Zina*) were also applied in rape cases.

The new definition of the rape offence in Article 149 of the Criminal Act states:

There shall be deemed to commit the offence of rape, whoever makes sexual contact by way of penetrating a sexual organ or any object or part of the body into the victim's vagina or anus by way of using force, intimidation, or coercion by fear of the use of violence, detention, psychological persecution, temptation, or abuse of power against the person or another person, or when the crime is committed against a person incapable of expressing consent because of natural causes or luring-related or related to age.

There continues to be a lack of clarity about the age at which a person can legally consent to sex without it being considered a crime of statutory rape under Article 149. Specifically, it is unclear whether the legal age of consent is determined by the Criminal Act of 1991 or the Child Act of 2010. The definition of an adult under the Criminal Act of 1991 refers to puberty. The Child Act of 2010 defines a child as any person under 18 years.

Criminal Procedure Act of 1991

Many women who experience sexual violence are reluctant to initiate criminal cases. Rape and sexual crimes are associated with shame and disgrace, thus many women avoid reporting such crimes, particularly if the police and prosecution officer responsible for pursuing the case is a man.

The Criminal Procedure Act of 1991 provides some protections for women during court proceedings. It protects victims from being subjected to questions that include offensive phrases and comments, and prevents flagrant and emotionally harmful questions, unless focusing on essential facts related to a case.⁵

Sexual harassment

The Criminal Act of 1991 was amended in 2015 to criminalize sexual harassment. Article 151 on Gross Indecency and Sexual Harassment states:

There shall be deemed to commit the offence of sexual harassment whoever commits an act or speaks or behaves in a way that causes seduction or temptation for another person to engage in illegal sex, or to commit indecent or inappropriate behaviour of a sexual nature that psychologically harms the victim or makes the victim feel unsafe, shall be punished with imprisonment for a term not exceeding three years and whipping.

Women and armed conflict

The Criminal Act of 1991 was amended in 2009 to include a provision on special protection for women during armed conflicts. The Armed Forces Act of 2007 also includes an article on special protection of women during armed conflicts.

Vulnerability of women to prosecution for immorality

Article 152 of the Criminal Act of 1991 addresses 'Indecent and Immoral Acts'. The offence is broadly worded and is sometimes misused by police to intimidate women. The Article states:

Anyone who commits, in a public place, an act, conducts an indecent manner, or a manner contrary to public morality, or wears indecent or immoral clothes, which cause annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes and/or fine.

The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the customs of the country where the act occurs.

Protection of children

The Child Act of 2010 prohibits child rape and sexual harassment of a child.⁶ Penalty for child rape is death or imprisonment for a term not exceeding 20 years and a fine.⁷ Penalty for sexual harassment or sexual abuse of a child is imprisonment for a term not exceeding fifteen years and a fine.

5 Criminal Procedure Act of 1991, Art. 156.

6 Child Act of 2010, Art. 45.

7 Ibid., Art. 86.

HONOUR CRIMES

Part V of the Criminal Act of 1991 includes Crimes of Honour, Reputation, and Public Morality, which include crimes of adultery (*Zina*), homosexuality, rape, indecent acts, sex work, and immoral actions.

ADULTERY AND SEX OUTSIDE OF MARRIAGE

The Criminal Act of 1991 criminalizes adultery (*Zina*). The penalty for *Zina* is 100 lashes if the offender is unmarried (*Not Muhasan*) and execution by stoning if married (*Muhasan*).⁸

Penalty for adultery (*Zina*) shall be reduced for two reasons:⁹

- If the offender retracted his admission before the execution of penalty and the offence was proved by admission only;
- If witnesses retracted their evidence whereby the required number of witnesses becomes insufficient before the execution of penalty.

The Evidence Law of 1994 stipulates that *Zina* shall be proved by:¹⁰

- Sound admission before court unless retracted prior to judgment execution;
- Testimony of four just men;
- Pregnancy outside of wedlock, in cases of any doubt.

ABORTION FOR RAPE SURVIVORS

Under the Criminal Act 1991 abortion is legal if:

- the miscarriage is necessary to save the mother's life;
- the pregnancy is the result of rape that occurred not more than 90 days before the pregnant woman has desired to have the abortion; or
- it is proved that the unborn child has died in the mother's womb.

Penalty for the offence of abortion is imprisonment for a term not exceeding three years and/or a fine.¹¹

The National Public Health Act of 2008 provides that abortion surgeries may not be carried out except in hospitals for medical reasons and in accordance with controls identified by the Ministry of Health.¹²

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

According to Sudan Central Bureau of Statistics 2014 data, 86.6 per cent of women aged 15–49 years have been subjected to FGM/C. The states with the highest percentage of FGM/C are the Northern State (97.5 per cent) and North Kordofan state (97.7 per cent).

The Interim Constitution provides: "The State shall adopt policies and provide facilities for child and youth welfare and ensure that they develop morally and physically, and protect them from moral and physical abuse and abandonment."¹³

Constitution also provides: "The State shall combat harmful customs and traditions, which undermine the dignity and the status of women."¹⁴

The main government policy on FGM/C is the National Policy for the Eradication of FGM/C in One Generation (2008–2018).

⁸ Criminal Act of 1991, Arts. 145, 146.

⁹ Ibid., Art. 147.

¹⁰ Evidence Act of 1994, Art. 62.

¹¹ Criminal Act of 1991, Art. 135.

¹² National Public Health Act of 2008, Chapter Seven, Art. 32.

¹³ Interim Constitution of 2005, Article 14.

¹⁴ Ibid., Article 32(3).

Although government policy opposes FGM, it has not yet been criminalized.

Other policies that oppose FGM/C practices include:

National Assembly Recommendation Number 19/2007: Enact required legislations to prevent FGM and the necessity of combating all harmful practices with concerned bodies for the enhancement of relevant efforts;¹⁵

Medical Council Resolution Number 366/2002: Prevent any physician from conducting any type of FGM and hold the one doing such an action accountable;

The Five-Year Childhood Plan, 2007–2011;

Training Manual on Applying Articles 138–142 of Criminal Act on FGM.

A proposed amendment to the Criminal Act to criminalize FGM/C was adopted by the Council of Ministers in October 2016. The draft amendment states:

Article 141. Female Genital Mutilation

1. Anyone removing or mutilating female genital organ, by cutting, levelling, or adjusting any natural part thereof leading to such organ loss of function totally or partially, shall be committing a crime, whether inside any hospital, health centre, clinic, or any other place.
2. Anyone committing the crime of female genital mutilation shall be punished with imprisonment for a term not exceeding three years and/or fine payment, and the place may be closed.

FAMILY MATTERS

Personal Status Law

A unified Personal Status Law for Muslims was introduced in 1991, which refers to the *Hanafi* school of Islamic law for matters lacking provisions in legislation. There is also a Personal Status Law for Non-Muslims of 1926, which is for Christian denominations, such as Copts, Catholics, and Protestants.

Customary laws remain important for other sects. The Civil Procedure Act provides that personal status matters in Sudan are to be determined either through Islamic *Sharia* provisions or prevailing customs among litigants, provided that justice and sound conscience are not violated.¹⁶ Therefore, customary law applies to personal status matters for non-Muslims.

Marriage

Article 15 of the Interim Constitution as amended in 2017 provides:

- (1) The family is the natural and fundamental unit of the society and is entitled to the protection of the law; upon reaching legal acknowledged age a man and woman may marry, with consent. The family shall follow the parties' religion, or customs in case of lacking religion. The property, wills, hereditaments, and other related matters shall be considered after death by virtue of the relevant laws.
- (2) The State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower women in public life.

The Personal Status Law of 1991 defines marriage as a contract between a man and a woman with the intention of coming together in lawful marriage in which they may practice the pleasure of intercourse.¹⁷ Article 25 states that the woman's male guardian must approve the marriage. Article 34 states that the woman's consent is also required. A judge can provide consent if the guardian refuses consent without justification. The guardian can request the court to annul a marriage if the guardian considers the husband to be unsuitable on moral or religious grounds.

¹⁵ National Assembly Recommendation Number 19/2007, Fourth Session, para. 9.

¹⁶ Civil Procedure Act of 1983, Art. 5.

¹⁷ Personal Status Law of 1991, Art 11.

Child marriage

Article 15 of the Interim Constitution protects children from early marriage. The 2017 amendment to the Interim Constitution states that upon reaching legal age a man and woman may marry, with consent. The Interim Constitution also highlights that the State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower women in public life. Early marriage contravenes Article 15 if the marriage of a young female does not take place with voluntary consent.

The marriage contract requires that the parties enter marriage voluntarily. Under the Personal Status Law of 1991, the terms and conditions to be provided in the marriage contract must include that the husband and wife be willing.¹⁸ However, the Personal Status Law is unclear regarding the age of legal marriage. Article 215 states that the age of majority shall be 18 – the age at which a person has the legal capacity to conclude a marriage contract, pursuant to Article 11. Also, there is an apparent contradiction between Articles 11 and 40 of the Personal Status Law. Article 40 applies to “the insane, imbecile, or the special needs” persons, providing that such persons shall not marry except by authorization of their guardian and after proving a favourable interest. It is unclear whether this Article allows child marriage with authorization of their guardian after proving a favourable interest. Early marriage is not addressed in the Child Law of 2010.

Rights of wife and husband

Chapter 7 of the Personal Status Law defines the rights of spouses. The rights of the wife are:¹⁹

- a) Living expenses (maintenance/alimony);
- b) To be allowed to visit her parents and those relatives whom she is prohibited by Sharia law from marrying and receive the aforesaid in her home;
 - c) The husband must not:
 - i. Interfere with her private property;
 - ii. Harm her financially or morally.
- d) To be treated equally with her co-wives, in cases of polygamy.

The rights of the husband are:²⁰

- a) To be taken care of and amicably obeyed; and
- b) The wife is to preserve herself and his property.

Divorce

A husband can obtain divorce by repudiation (*talaq*), without the requirement of a court order.

A wife can obtain divorce by application to the court. Judicial divorce may be granted to the wife on the grounds of the husband’s cruelty or discord between the spouses, or the husband’s illness, impotence, ransom, absence for one year or more, or imprisonment. Grounds for a wife to seek divorce include harm.²¹

Article 162 provides:

1. The wife may request divorce on the ground of harm, which makes marital life impossible to continue for her and legally unpermitted.
2. The harm shall be proved by all legal means, including hearsay testimony.

Article 163 provides:

1. If harm is not proved and discord between the spouses continue while reconciliation cannot be achieved, and the wife returned after three months asking for divorce, the judge shall appoint two arbitrators from their respective relatives, if possible, or who are likely to have the ability to reconcile between the spouses.

The Court may appoint arbitrators to seek to resolve discord between the wife and husband. If arbitration is not successful, the Court may order a divorce based on the arbitration report.²²

¹⁸ Ibid., Art. 13.

¹⁹ Ibid., Art. 51.

²⁰ Ibid.

²¹ Ibid., Art. 162.

²² Ibid., Arts. 163–165.

A woman may also divorce through *khul'a*, in exchange for returning the dowry to the husband.²³

Guardianship and custody of children

The father maintains oversight of the welfare of children and is responsible for financial support of the children. According to Articles 234 and 235 of the Personal Status Law the father is the natural legal guardian. Custody is maintaining, rearing, educating, and taking care of the child in a manner consistent with the custodian's rights and the child's interests.²⁴

The right to custody is established for the mother.²⁵ A mother's custody of her children continues till the son is seven years old and the girl is nine years old. A judge may grant the mother the custody of her son from the age of seven years until puberty. A judge may grant the mother the custody of her daughter from the age of nine years until marriage, if it has been proved that it is in the interest of the child for the mother to have custody.

INHERITANCE

According to the Personal Status Law, inheritance is subject to the provisions of Islamic law (*Sharia*), in which women have a right to an inheritance, but receive half the share that an equivalent male heir receives. The rationale for men's right to inherit a larger share than women is that men bear legal responsibility for providing financial support to women and children.

NATIONALITY

The Interim Constitution of 2005 states: "Every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship."²⁶

The Sudanese Nationality Act of 1994 grants citizenship to children born to a father who is a Sudanese national. The law was amended in 2005 to allow a child born to a Sudanese mother to acquire Sudanese nationality by birth by following an application process. Under the 2005 amendment, nationality is either naturally obtained, known as nationality by birth, or acquired through the process of applying for naturalization. Article 4 provides the following conditions for acquiring nationality:

1. A person born after the coming into force of this Act shall be Sudanese by birth if his father is Sudanese by birth at the time of his birth.
2. A person born to a mother who is Sudanese by birth shall be entitled to Sudanese nationality by birth whenever he applies for it.
3. A person born to a parent who is a Sudanese national by naturalization shall be Sudanese by birth if his parents acquired Sudanese nationality by naturalization before his birth.

If a parent's Sudanese nationality is revoked, their minor child shall not lose Sudanese nationality, unless he or she is or was the national of any country other than Sudan.²⁷ This prevents the revocation of the Sudanese nationality of minors, even if the parent's nationality has been revoked.

A foreign woman married to a Sudanese man may be granted Sudanese nationality by naturalization. However, the legislator has not accounted for the reverse case where the alien spouse is a man married to a Sudanese woman. The Sudanese Nationality Act of 1994 facilitates the naturalization of foreign women married to Sudanese men to a greater degree than under previous Nationality Acts of 1948, 1957, and 1993. Under this act, nationality is granted by the Minister of Interior, a responsibility which in many other countries falls within the remit of the Ministry of Justice.

²³ Ibid, Arts. 142, 143.

²⁴ Ibid., Art. 109.

²⁵ Ibid., Art 110.

²⁶ Interim Constitution of 2005, Art. 7.

²⁷ Sudanese Nationality Act of 2004, Art. 15.

LABOUR LAWS

The rate of female labour participation remains below that of men, according to the fifth census (2008). The census indicated that the percentage of female breadwinners has increased from 12 percent in 1993 to 28 percent in 2008. Women's economic participation in urban communities is higher than in rural areas. With the exception of some elite professional females working in urban societies, women are mainly seen in the informal economy, e.g., selling street food and tea.

Although some legal protections for female workers are provided by the Interim Constitution of 2005, Labour Act of 1997, and National Civil Service Act of 2007, many women work in sectors in which women lack social insurance or workplace protections, such as agricultural farms and domestic work.

National Civil Service Act of 2007

This act and relevant regulations stipulate equal pay for equal work, the right to selection and promotion based on qualifications and achievements, right to maternity leave, waiting period (*iddah*), decreased working hours for nursing mothers, and avoiding the use of women for dangerous work. The act also emphasizes open competition in selection of employees for civil service jobs.

The Labour Act of 1997

The Labour Act provides that women have rights regarding maternity leave and working mothers' have the right to nursing periods.

A female worker shall, after six months of service and for each further year of service, be entitled to maternity leave with full pay.²⁸ If a woman is absent from work because of a disease resulting from her pregnancy or confinement that prevents her from resuming her work, as certified by a doctor, she shall be considered to be on sick leave.²⁹

The principle of equal pay for equal work shall be given due regard in specifying wages on the basis of the nature of the work, the difficulty of its duties and responsibilities, and the conditions under which it is performed.³⁰

Article 19 of the Labour Act prohibits women from working in occupations that are hazardous, arduous or harmful to their health, such as carrying weights or assigning women to perform jobs under ground or under water or jobs which may expose them to poisonous material or to temperatures exceeding the normal limits borne by women.

Domestic workers

Article 3 of the Labour Act excludes domestic workers from the provisions of the Act. The Domestic Servants Act of 1955 provides the process by which domestic workers can apply for an identity certificate. The act also outlines their conditions of work in terms of contracts of employment, wages, holidays, and gratuity on termination of service.

28 Labour Act of 1997, Art. 46(1)(a)

29 Ibid., Art. 46(1)(c).

30 Ibid., Art 28.

SEX WORK AND ANTI-PROSTITUTION LAWS

Prostitution is illegal under the Criminal Act of 1991. Penalties for practicing prostitution are whipping, not exceeding 100 lashes, or imprisonment for a term not exceeding three years.³¹ Penalties for running a place of prostitution or renting premises or allowing the use of premises, knowing that it is to be used as a place of prostitution, are whipping, not exceeding 100 lashes, and imprisonment for a term not exceeding five years, and an order may be made for the closing or forfeiture of the premises.³²

Penalties for seducing a person for prostitution are whipping, not exceeding 100 lashes, or imprisonment for a term not exceeding five years. If the victim is a minor or of unsound mind, or if prostitution is intended to be committed outside Sudan, the offender shall be punished with whipping, not exceeding 100 lashes, and with imprisonment for a term not exceeding seven years.³³

HUMAN TRAFFICKING

The Combating of Human Trafficking Act of 2014 provides heavy penalties for human trafficking, which include imprisonment for 3–20 years, and the death penalty in the following cases:

- if the victim is female or a child under 18 years, or is disabled;
- if the offender is the victim's spouse or one of her ascendants, descendants, guardians, or having control over her;
- if a victim has been subjected to sexual abuse, removal of organs, or used in prostitution, or any act, as may by its nature degrade human dignity.

There are penalties for harbouring offenders and concealing money derived from criminal activities.³⁴ Human trafficking over the Internet is also criminalized.³⁵

Consent of the victim to the offences of human trafficking shall have no effect.³⁶ The act imposes legal safeguards for the protection of victims and witnesses, requiring "the Committee, the Public Prosecution and the competent court shall take such measures as may secure the provision of protection for the victims and witnesses, and prevent influence thereon; together with preserving the right to defence and requirements of the doctrine of confrontation of the parties."³⁷

Regarding alien victims, competent authorities in the State, in coordination with the authorities concerned in other States, are required to strive to facilitate repatriation of alien victims to their homeland, and take such measures as may be necessary for their safety.³⁸

To facilitate compensation, the act exempts victims from judicial fees pertaining to action for compensation of injury sustained as a result of their being subjected to trafficking offences.³⁹

Special prosecutors are required to be appointed to investigate human trafficking cases. The act does not create an offence for people smuggling, restricting its provisions to human trafficking.

The Child Law of 2010 prohibits abducting children and selling and transferring organs from children. Punishment includes the death penalty or imprisonment for a term not exceeding 20 years and a fine.⁴⁰

The Child Law also prohibits paid or unpaid employment of children for the purpose of sexual activities, using children in servitude, or exploiting children in serfdom. The penalty for such violations is imprisonment for a term not exceeding ten years and a fine.⁴¹

31 Sudan, Criminal Act of 1991, Art. 154.

32 Ibid., Art. 155.

33 Ibid., Art. 156.

34 Sudan, Combating of Human Trafficking Act of 2014, Art. 10.

35 Ibid., Art. 14.

36 Ibid., Art. 24.

37 Ibid., Art. 25.

38 Ibid., Art. 27.

39 Ibid.

40 Sudan, Child Act of 2010, Arts. 45 and 86.

41 Ibid.

REFUGEES AND ASYLUM SEEKERS

The Asylum Regulation Act of 2014 provides that no penalties apply to asylum seekers on account of their illegal entry or presence in Sudan if they are coming directly from a territory where their life or freedom was threatened, provided that they present themselves to the nearest official authority at the border within one month.⁴² In doing so they are to have a legitimate reason for illegal entry or presence.

The Act addresses the status of child refugees, classifying child refugees into “separated” and “unaccompanied” minors.⁴³ A “separated minor” is defined as a child under 18 years of age who is separated from both parents or from his previous legal or customary primary caregiver, which means that the definition may therefore include a child who is accompanied by other adult family members. An “unaccompanied minor” refers to a minor who is less than 18 years of age and is separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for providing care.

KEY RESOURCES

Legislation

Criminal Act of 1991. Available from <http://www.pclrs.com/downloads/bills/Criminal%20Law/Criminal%20Act%201991%20English.pdf>

Muslim Personal Status Law of 1991. Available from <http://www.pclrs.com/1405muslim-personal-status-law-1991.pdf>

Labour Act of 1997, Available from <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/49122/65103/E97SDN01.htm#>

Interim National Constitution of the Republic of the Sudan of 2005. Available from http://www.wipo.int/wipolex/en/text.jsp?file_id=241714

Child Act of 2010. Available from http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Sudan/sudan_children_2010_en.pdf

Anti-Trafficking Act of 2014. Available from <http://www.pclrs.com/english/bills-and-laws>

References

United Nations General Assembly, *Universal Periodic Review National Report of Sudan, 15 February 2016* (A/HRC/WG.6/25/SDN/1). Available from https://www.upr-info.org/sites/default/files/document/sudan/session_25_-_may_2016/a_hrc_wg.6_25_sdn_1_e.pdf

United Nations Population Fund and United Nations Children’s Fund, *Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change* (2008). Available from <http://www.unfpa.org/sites/default/files/pub-pdf/FGM-C%20Annual%20Report%202008.pdf>

⁴² Asylum Regulation Act of 2014, Art. 29.

⁴³ *Ibid.*, Art. 3.



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