



COUNTRY PROFILE

The Constitution of the Republic of Sudan makes no mention of the right to family. It does, however, protect women's rights including the equal right to enjoy all civil, political, social, cultural, and economic rights.²⁸⁰ Further, the Constitution obliges the State to work to combat harmful customs and traditions that reduce the dignity and status of women.²⁸¹

Treaty	Date of ratification	Reservations/Declarations
CEDAW	Sudan is not a State party to CEDAW	-
African Charter	18 February 1986	None
Maputo Protocol	Not ratified Signed: 30 June 2008	-

MAIN TRENDS ON FAMILY LAW

Family law in Sudan is among the most conservative in North Africa and has been resistant to reform.²⁸² Family law in Sudan is largely governed by a particularly conservative version of Islamic law, codified in the Muslims (Personal Status) Act.²⁸³ Non-Muslims are governed by customary law or the religious law and customs of their community.²⁸⁴ These legal systems are deeply patriarchal. Progress in law reform has been hampered by the state of perpetual conflict in the country stretching long before its independence in 1956.²⁸⁵ Critics have claimed that the country is stuck in a cycle of never-ending law review, amounting to no tangible change.

The Criminal Act prohibits rape, though marital rape is not prohibited and women in Muslim marriages are expected to obey their husbands.²⁸⁶ The Penal Code prohibits female genital mutilation.²⁸⁷

KEY GAPS AND CONTESTATIONS

(i) Harmful cultural practices:

In spite of the Constitutional imperative to combat harmful customs and traditions that reduce the dignity and status of women,²⁸⁸ these practices persist. There are a great number of gaps in Sudanese family law, stemming from oppressive religious and cultural beliefs.

(ii) Forced marriage:

A woman does not enter into marriage of her own accord. Instead, a male, mature, and sane Muslim man must conclude marriage on her behalf, with her express or implicit consent.²⁸⁹ This provision leaves room for forced marriage, without true consent of the woman. The guardian system also deprives women of autonomy in their personal relationships.

(iii) Child marriage:

Child marriage is endemic and permitted under the Muslims (Personal Status) Act, provided that the girl has reached puberty and that her guardian obtains permission from a court after proving that the marriage will benefit the minor girl, that the husband is suitable and the husband pays the dowry usually paid to women of her status.²⁹⁰ The Marriage of Non-Muslims Act sets the age of marriage at 13 for non-Muslim girls, and 15 for non-Muslim boys.²⁹¹

²⁸⁰ Section 49(2) of the Constitution of the Republic of the Sudan 2019. Available at https://adsdatabase.ohchr.org/IssueLibrary/SUDAN_Constitution.pdf (accessed 17 April 2024)

²⁸¹ Section 49(3) of the Constitution of the Republic of the Sudan 2019

²⁸² S al-Nagar and L Tønnessen “#Justice for Noura” CMI Brief (2018) 3-4. Available at <https://www.cmi.no/publications/6581-family-law-reform-in-sudan-a-never-ending-story> (accessed 17 April 2024)

²⁸³ <https://sgbv-ihrda.uwazi.io/en/document/jzyl9rrxnbr> (accessed 17 April 2024)

²⁸⁴ OECD Development Centre “Social Institutions and Gender Index Sudan” (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/SD.pdf>

²⁸⁵ <https://www.cmi.no/publications/5303-family-law-reform-in-sudan>

²⁸⁶ Section 149 of the Criminal Act 1991, amended 2009. Available at <https://redress.org/wp-content/uploads/2021/09/Criminal-Act-1991-English.pdf> (accessed 17 April 2024)

²⁸⁷ Section 284(a) of the Penal Code 2003. Available at <https://www.refworld.org/legal/legislation/natlegbod/2003/en/63604>

²⁸⁸ Section 49(4) of the Constitution of the Republic of the Sudan 2019

²⁸⁹ Section 25(c) read with Section 33 of the Muslims Personal Status Act 1991. Available at <https://sgbv-ihrda.uwazi.io/en/document/jzyl9rrxnbr> (accessed 17 April 2024)

²⁹⁰ Section 40(3) of the Muslims (Personal Status) Act 1991

²⁹¹ <https://www.cmi.no/publications/file/6438-community-views-on-child-marriage-in-kassala.pdf> (accessed 17 April 2024)

(iv) Inheritance:

Women's rights to inheritance, to matrimonial property, divorce and custody are unequal. The Muslims (Personal Status) Act provides that women have unequal rights to inheritance.²⁹² A woman inherits half of the property of her brother/s. Christian women and men have equal rights in regard to inheritance.²⁹³

(v) Divorce:

Divorce laws in Sudan are discriminatory in that a woman cannot obtain a judgment of divorce in the same way as a man²⁹⁴ as provided in Articles 132 and 174 of The Muslims (Personal Status) Act. Catholics may divorce in instances of regular abuse and mistreatment, while Protestants and Coptic Christians may only divorce in cases of adultery.²⁹⁵

(vi) Custody:

The Muslims (Personal Status) Act grants mothers custody for girl children until age nine and boys until age seven. After which, the best interests of the child are determinative. If women remarry, fathers of the children will automatically get custody. In the Coptic Church daughters also stay with the mother until 9 and sons until 7, after which the father obtains custody.²⁹⁶

(vii) Polygamy:

Polygamy is permitted. The Muslims (Personal Status) Act 1991 provides that a man is allowed to marry up to four wives provided that he treats all his wives justly.²⁹⁷

RECOMMENDATIONS

Legal reform:

- ▶ Family law in Sudan is in need of comprehensive legal reform.
- ▶ Sudan must legislate for civil, religious and customary marriages. The application of customary and religious law must be made subject to constitutional provisions requiring equality in marriage, matrimonial property, divorce, custody and inheritance.
- ▶ 18 must be prescribed as the minimum age of marriage without exceptions.
- ▶ Marital rape must be criminalised.
- ▶ Guardianship and wife obedience must be abolished.

Ratification of international instruments: Sudan should ratify CEDAW and the Maputo Protocol, without any reservations.

Sensitisation: Widespread awareness and sensitisation campaigns must be rolled out to change mindsets.

²⁹² Sections 356, 357 and 359 of the Muslims (Personal Status) Act 1991

²⁹³ OECD Development Centre "Social Institutions and Gender Index Sudan" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/SD.pdf>

²⁹⁴ <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/Sudan.pdf> (accessed 17 April 2024)

²⁹⁵ OECD Development Centre "Social Institutions and Gender Index Sudan" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/SD.pdf>

²⁹⁶ OECD Development Centre "Social Institutions and Gender Index Sudan" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/SD.pdf>

²⁹⁷ Section 51 of the Muslims (Personal Status) Act 1991