

SUDAN¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at March 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects</i></p>	<p>Equality before the law is an explicit constitutional right stated in Article 48² of the Constitutional Charter of 2019 that "People are equal before the law, and have the right to the protection of the law without discrimination between them based on ethnicity, colour, gender, language, religious faith, political opinion, racial or ethnic origin, or any other reason." In addition to recognition of the protection of women's rights as stipulated by regional and international treaties ratified by Sudan, the Charter goes further to</p>		<p>There are no regulations or policies that directly address the issues of family laws; the State depends entirely and exclusively on the Personal Status for Muslims Act of 1991. However, there are two policies adopted by the State that aim to protect women's rights in accordance with international and regional agreements⁴:</p> <ul style="list-style-type: none"> • National Women Empowerment Policy 2007, amended 2017 • National Action Plan 		<p>Sudan is known for its cultural and social diversity and the large number of ethnic groups that differ in their lifestyle and traditions. However, despite ethnic and cultural differences, these groups have common customs and practices that negatively discriminate against girls and women and violate their rights, such as female genital mutilation, forced or underage marriage, and the narrowing of women's participation in decision-making and political life.</p> <p>Gender roles are highly</p>

¹ This country table was prepared by DirNour&Co. Team: Maysa Bashir, ElZahra Ali, Ayat Barsi, Lamis Jailani and Sarah Osama as a collaboration under the Campaign for Justice in Muslim Family Laws

² Article 48 of Sudan Constitutional Charter 2019 https://www.constituteproject.org/constitution/Sudan_2019?lang=en

⁴ DirNour&Co. interview with Consultant at the Ministry of Justice

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<p><i>within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p>	<p>add in Article 49 that “the State guarantees to both men and women the equal right to enjoy civil, political, social, cultural and economic rights.” However, that is not the case in many laws, particularly family laws.</p> <p>Family issues for Muslims are regulated in the Personal Status for Muslims Act 1991, applicable to Muslim nationals only. The Sudanese legislation is derived from the Sunni branch of Islam and does not give recognition to any sects. Where a particular issue is insufficiently addressed in legislation or case law, the Hanafi school of law is applicable.</p> <p>This law does not define marriage as a partnership of equals; on the contrary,</p>		<p>for Women, Peace and Security for the Resolution 1325, endorsed 2020.</p> <p>It is worth mentioning that these policies are instruments to be used by regulatory bodies in establishing gender-sensitive policies and strategies but do not directly speak to the needs of women in terms of family issues, as the Personal Status Act prevails in such situations.</p>		<p>patriarchal. Men are viewed as physically and psychologically superior and presumed to be the main income earners. Women are seen as emotional and requiring male protection, and therefore considered to be more suitable as homemakers and caretakers.⁵ Husbands are expected to provide economically for their wives and children throughout their lives. It is generally believed that a woman does not need to be financially independent, as her husband or father’s earning power will support her.⁶</p> <p>Gender inequalities exist in many respects. The pervasive perception of society in Sudanese culture is one that promotes “norms of a conservative</p>

⁵ Cultural Atlas – North Sudan Culture on Family <https://culturalatlas.sbs.com.au/north-sudanese-culture/north-sudanese-culture-family>

⁶ Ibid.

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	<p>it reinforces the differences in gender roles by stipulating different rights and obligations for each spouse, including gender-stereotypical roles of spouses.³ The husband is obligated to provide for the family, and the wife is obligated to be "obedient to her husband." Article 52 states it is the husband's right that his wife takes care of him, who in turn is obligated to "obey him in kindness".</p>				<p>society".⁷ Adding to that, any wrongdoing committed by girls and women are seen as the shortcomings of their fathers, brothers and/or male family members who are responsible for their propriety.</p> <p>Religion is very influential in the Sudanese culture and is used to provide a strict structure of gender roles. The attitudes of men towards women are generally governed by religious precepts.⁸ During the past 30 years, the State has also contributed enormously in this regard by the use of religion to enforce its regime and thus, enlarged the pre-existing gender gap.</p>

³ Articles 51-52 of the Personal Status for Muslims Act 1991

⁷ CMI Report 2017 - Traditional, but Changing, Cultural Norms: Rural Community Views on Child Marriage in Algadaref State
<https://www.cmi.no/publications/file/6398-traditional-but-changing-cultural-norms.pdf>

⁸ Cultural Atlas - North Sudan Culture on Religion <https://culturalatlas.sbs.com.au/north-sudanese-culture/north-sudanese-culture-religion>

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					The concept of gender-stereotypical roles is deeply entrenched in the Sudanese culture. In many instances, these customs and traditions are supported by both men and women. Many feel that women are naturally inclined to be caregivers and in submission to their husbands with little to no decision-making powers in the household. This proclivity is not derived from their adherence to the law but rather from their sense of upholding Sudanese norms and traditions.
<p>Minimum and equal age of marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions</i></p>	The Child Act 2010 recognizes any person below the age of 18 is a minor. ⁹ However, the Muslim Personal Status Act does not prohibit early marriage. The Act implicitly sets the minimum	In an unpublished case, a minor learned by chance that her uncle married her to an old man for two years. She applied to annul her		Although it is not expressly provided for by law, to conclude and register the marriage contract the legal Authorized Person (<i>Mathoun Shari'a</i>) requires the	Child marriage is prevalent in all parts of Sudan. 26.6% of girls are married before the age of 15, and 60.2% of girls are married before the age of 18. ¹⁴ Despite the explicit

⁹ Article (3), The Child Act 2010

¹⁴ UNICEF Sudan Annual Report on Gender 2020 <https://www.unicef.org/sudan/reports/gender>

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<p>to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage?</p> <ul style="list-style-type: none"> Is there a minimum age verification process before the marriage is concluded? 	<p>age for marriage at ten years for both genders. Children are mentioned in Article 40, along with the insane and those of special needs, as persons who require the Court's endorsement to their guardian's (<i>wali</i>) decision. The Court must be satisfied that there is sufficient interest in favour of the child, insane or those of special needs to approve their marriage.¹⁰</p> <p>There is no minimum age verification process required by law.</p>	<p>marriage contract before the Court, but the matter is still pending.¹¹</p> <p>A minor girl who has completed ten years of age may still be married with the courts' approval provided that there is a risk of moral delinquency, the husband is suitable, and she accepts him.¹²</p>		<p>legal guardian of the bride to provide him with her ID (whether passport or birth certificate) to verify that she is of legal age and capacity to enter into the marriage.¹³</p>	<p>provision in the Child Act that restricts the guardian's authority in marrying a minor without obtaining court approval, this condition is never fulfilled and does not pose any factual restrictions in concluding marriage contracts. Many people are actually unaware of this stipulation.</p> <p>The silence of the Muslim Personal Status Act on the minimum age of marriage has encouraged the conclusion of child marriages. Girls' education is often interrupted.¹⁵ Where a child's parents were divorced, many fathers abused their parental rights and married off their children either out of spite to the mothers or to</p>

¹⁰ The Personal Status for Muslims Act 1991, Article 40

¹¹ A case of one of the clients of the Sudanese Women Aid Organization.

¹² Judicial Circular No. (45) / 1960 – Section 8.

¹³ Personal Status for Muslims Act 1991

¹⁵ DirNour&Co. Law Firm interview with Dr. Asha Al-Karib, Strategic Advisor – SORD

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					<p>avoid the payment of child support. Even where the daughter was not a minor, she could be compelled to marry the man chosen by her father, subject only to the minimal restrictions of potency and freedom from an incurable disease. Further, a compelling guardian could secure the annulment of marriage he did not authorize even if the marriage was actually consummated.¹⁶</p> <p>Child marriages have led to many psychological and health problems, especially at childbirth.¹⁷</p>
<p>Consent to marriage / Forced marriage</p> <p><i>Is a marriage valid without the woman's Consent? Is the practice of forcing women to marry against</i></p>	<p>The Personal Status Act provides that a male guardian (<i>wali</i>) should only arrange the marriage of his ward with her permission and Consent (Article 34(1)). However, a</p>	<p>The Court of Appeal in the case 116/1991 held that consent during the engagement period does not constitute</p>		<p>Marriage is registered through a legal marriage contract issued by the Judiciary in Sudan through a legally Authorized Person (Mathoun</p>	<p>To a very high degree, the girl/woman's consent is viewed as secondary or almost insignificant to the marriage contract, especially in cases of early marriages. There is a norm</p>

¹⁶ Dina Elshiekh – The Legal Status of Muslim Women in Sudan JSTOR <https://www.jstor.org/stable/24325649>

¹⁷ Ibid.

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<p><i>their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p>	<p>subsequent section of the Article on Consent essentially gives the <i>wali</i> the power to contract a marriage without the permission of his ward, so long as she consents later on.¹⁸</p> <p>It is mandatory to register the marriage and there is usually a standard marriage contract. The contract is typically used to conclude the marriage and for registration purposes only. Hence, the standard contract does not lay down the rights and obligations of the spouses. The contract is merely used as a record, consisting of the name of the parties, the guardian of the wife who concluded the marriage,</p>	<p>consent for marriage.¹⁹</p> <p>The Court also held that a contract concluded by the guardian before securing his ward's consent might be termed voidable. But her refusal to consummate the marriage does not automatically void the contract.</p> <p>An adult woman may only be married after she gives her consent to the marriage and accepts the husband and the dower. If she is a virgin, her silence constitutes</p>		<p>Shari'e) that is also appointed by the Judiciary.</p> <p>The marriage contract includes the names and ID numbers of the spouses, the names of their legal guardians/person delegated and authorized to conclude the marriage on their behalf, as well as two witnesses.</p> <p>The legal, authorized person also indicates that the bride is of legal age and capacity to enter into the marriage and documents any conditions agreed upon by the spouses. The contract also includes the amount of</p>	<p>in many parts of the country where even women believe that they are not entitled to object once their guardian has made his decision on their marriage.²²</p> <p>This customary practice is also reflected in the formalities of the marriage contract, where a woman cannot be a party to the marriage contract, neither for herself nor for another.²³</p> <p>Many women may understand that the law grants them the right to terminate their marriage if they were forced into it; nevertheless, they refuse to pursue procedures of divorce and choose to stay in such marriages to avoid the social scandal of taking</p>

¹⁸ *ibid*, Art. 34

¹⁹ Sudanese Judicial Journals 1991 - Court of Appeal 116/1991 AD

²² CMI Report 2017 - Traditional, but Changing, Cultural Norms: Rural Community Views on Child Marriage in Algardaref State <https://www.cmi.no/publications/file/6398-traditional-but-changing-cultural-norms.pdf>

²³ Dina Elshiekh – The Legal Status of Muslim Women in Sudan JSTOR <https://www.jstor.org/stable/24325649>

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	the date and place of the marriage and the amount of the dower.	acceptance unless she is deemed to be feeble-minded. However, if she expresses her disapproval by words or conduct, the marriage should not be concluded. If it is, the marriage would be annulled even if she later approves it. Silence is not enough for a non-virgin woman; she must signify her consent expressly. ²⁰		the dower paid to the bride, whether paid fully upon signing the marriage contract, partially, or to be paid at a later stage. A wife might terminate the marriage contract in Court if her guardian had concluded her marriage when she was a minor. She can only do so at the age of 18 or above. ²¹	their fathers, brothers, or uncles to court. ²⁴
<p>Women's capacity to enter into marriage</p> <p><i>Is Consent of a guardian (Wali) required? Can the woman choose her own Wali? Can a woman go before a court or other</i></p>	As per the Personal Status Act, the <i>wali</i> of the woman is required to conclude the marriage contract. The <i>wali</i> must be the closest male relative to her unless the <i>wali</i> himself authorizes another male relative to	The Supreme Court, in case number 173/2001, decided to grant a marriage permit through public guardianship due to the father of the		Where a guardian refuses to consent to a woman's marriage (without any reasonable justification), the woman may file a petition to the	Women cannot choose their own <i>wali</i> . Although it is permitted by law for the woman to object if her <i>wali</i> does not make decisions in her best interest, this is not the norm in Sudan. Women are accustomed to

²⁰ Judicial Circular No. (45) – Section 6

²¹ The Personal Status for Muslims Act 1991, Article 38

²⁴ CMI Report 2017 - Family Law Reform in Sudan: Competing Claims for Gender Justice Between Sharia and Women's Human Rights
<https://www.cmi.no/publications/6401-family-law-reform-in-sudan>

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<p><i>competent authority to seek permission to marry if her Wali refuses to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage, and can these rights be changed during the marriage? If so, who can change these rights and under what circumstances, e.g. mutual Consent?</i></p>	<p>conclude the marriage on his behalf.²⁵</p> <p>Women cannot choose their <i>wali</i>; however, a woman may bring a claim to Court in objection to her <i>wali</i> if her <i>wali</i> does not act in her best interest. If the Court is satisfied, it revokes the authority of her <i>wali</i>; the Court will act as the <i>wali</i> for the woman. Article 37 of the Personal Status Act states that a woman may go before a judge to permit the marriage. The judge will grant the marriage where it is proved that her <i>wali</i> has barred the marriage without justification.²⁶</p> <p>Marriage rights can be negotiated just like any other contract; however, the Personal Status Act</p>	<p>spouse refusing to consent to her marriage.²⁸</p>		<p>competent Personal Status/Sharia Court requesting that the marriage is to be conducted by a judge if she can prove that her <i>wali</i> is not acting in her best interest.²⁹ If proven, the Court may marry the spouses without the legal guardian of the woman. In this process, witnesses will be required, and the guardian will be requested to appear before the Court for questioning. However, where the guardian does not appear before the Court after being duly summoned, the Court will take that as evidence of his</p>	<p>accepting whatever the <i>wali</i> decides on their behalf. It is perceived as taboo for a woman to be unagreeable towards her <i>wali</i>.</p> <p>By and large, women do not negotiate the terms of their marriage. They usually accept the terms and conditions set by law and society, as they consider these to reflect their background and culture.³¹</p> <p>Customarily, the conclusion of the marriage contract is strictly a male affair; the bride herself is very rarely present. Although the Mathoun is obligated by law to ascertain the bride's consent, custom prevents him from venturing into the women's quarters to look</p>

²⁵ The Personal Status for Muslims Act 1991, Articles (33 - 35)

²⁶ Ibid, Article 37

²⁸ The Sudanese Judicial Journal 2001, Supreme Court, in case number 173/2001

²⁹ Ibid, Article 36

³¹ Sudanese Organization for Research and Development - Paper on Women Rights and the Personal Status Act 1991

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	sets out prerequisite conditions to conclude a valid marriage contract, namely: proposal and acceptance, consent of the bride and her guardian (<i>wali</i>), competency of the parties, dower, and a statement that the parties are free from legal prohibition (affinity/consanguinity/fost erage). ²⁷			<p>unjust refusal and will marry the spouses.³⁰</p> <p>The whole process may take up to a month to be concluded, depending on the court schedule. If the guardian is situated outside Sudan, the period of notice for appearance before the Court shall be three months.</p>	<p>for the bride. Thus, he can only take the word of the nearby male relatives. An unwilling bride needs enormous courage to walk into a huge gathering of male relatives to declare her disapproval. Psychological and other pressures often discourage a girl or woman from refusing her father's or brother's choice.³² The conviction that marriage is ultimate security for a girl, who - for poverty, lack of skills and education, or other reasons - may be a burden on her family, plays an important role in family pressure and hasty acceptance of marriage. Any marriage seems a better alternative to girls grounded at home with no skills, no employment opportunities, and no</p>

²⁷ Ibid, Articles 19 – 25

³⁰ Ibid, Article 38

³² Dina Elshiekh – The Legal Status of Muslim Women in Sudan JSTOR <https://www.jstor.org/stable/24325649>

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					chance for continued education. ³³
<p>Polygamous marriage</p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice? Is the permission of the Court required for a polygamous marriage? If conditions are required, under what conditions is polygamy allowed? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to register a polygamous marriage? Are temporary marriages recognized?</i></p>	<p>The Personal Status Act allows a male to have up to four wives and even stipulates that all wives must be treated equally. Though there is a provision on equal treatment, there are no strict conditions imposed by the legislation.³⁴</p> <p>All marriages must be registered; however, there are no other conditions set out in legislation for polygamous marriages.</p>			<p>Polygamous marriage is registered similarly to a normal marriage before a legally authorized person (Mathoun Shari'e).</p> <p>The husband will have to disclose how many wives he has, as he may not marry more than four. No permission is required from an existing wife.</p>	<p>Polygamy is common in Sudan. There are no restrictions for men to marry more than one wife. There are no social or cultural conditions that need to be fulfilled for the man to practice his right in polygamy. Similarly, wives are expected to accept their husbands' decisions regarding marrying again.</p>
<p>Violence against women in the family</p> <p><i>Are there laws and practices that define what constitutes domestic violence, such as battery, female circumcision,</i></p>	<p>The Personal Status Act does not mention any forms of domestic violence or FGM.</p> <p>A recent reform to the Sudanese Criminal Act has criminalized the</p>	<p>The Supreme Court held in the case 5/1975 that the basis for estimating the damage or harm inflicted on the wife is customary,</p>		<p>A woman who is a victim of violence can file a complaint to the Family and Child Protection Unit, which is the competent authority to investigate such violent</p>	<p>In many parts of the country, there are different forms of violence that are very normalized; hence women do not seek legal action or support in such cases. This is particularly true when the violence is</p>

³³ Dina Elshiekh – The Legal Status of Muslim Women in Sudan JSTOR <https://www.jstor.org/stable/24325649>

³⁴ The Personal Status for Muslims Act 1991, Article 17

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<p><i>marital rape and other forms of sexual assault, mental and other forms of violence that affects a women's mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognizes domestic violence as a crime? Are there support services for women who are the victims of aggression or abuses?</i></p>	<p>practice of FGM, although as of late 2021, no crime has been recorded.³⁵</p> <p>Acts of violence against women are primarily dealt with under Sudan's Criminal Law of 1991, which was amended in 2009 to include sexual violence.</p> <p>There is no law criminalizing domestic violence; nor does there appear to be any legislation protecting women from sexual harassment.³⁶ Marital rape is not recognized by law; on the contrary, it is considered a demand by the husband that the wife must obey as part of her</p>	<p>depending on the environment and background that the spouses have come from, irrespective of its reoccurrence.³⁸</p>		<p>occurrences.³⁹</p> <p>If after the investigation the violence is proved by the unit, the wife can either proceed with criminal charges or choose to file for divorce. When she chooses to file for divorce, she may cite the reason of violence/harm and submit the Family and Child Protection Unit's report to the Court as supporting evidence to the occurrence of violence or harm.</p>	<p>committed by the husband, as many believe that the husband is entitled to do so if his wife commits any wrongdoing.</p> <p>There has been real progress over the past decade on the issue of FGM; nevertheless, it still exists in some rural areas. The rate of FGM has been declining due to the continuous awareness of civil society organizations for the past decades.⁴⁰</p> <p>There are a few support services; those that exist do so mainly through the efforts of civil society organizations.</p>

³⁵ DirNour&Co. interview with Consultant at the Ministry of Justice

³⁶ US Department of State (2013) 2012 Country Reports on Human Rights Practices: Sudan
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

³⁸ Sudanese Judicial Journals 1975, Supreme Court case 5/1975

³⁹ Sudanese Organization for Research and Development - Paper on Women Rights and the Personal Status Act 1991

⁴⁰ UNFPA Sudan FGM Data <https://www.unfpa.org/data/fgm/SD>

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	<p>obligations to be “obedient”.³⁷</p> <p>There is no specific legislation that recognizes domestic violence, and therefore it would have to be prosecuted under the umbrella of criminal battery/assault.</p>				
<p>Divorce</p> <p><i>Is there an equal right to divorce? Can the husband divorce at will and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure, e.g.</i></p>	<p>There are two types of divorce for the husband. These are revocable and irrevocable divorce as outlined in Article 136 of the Personal Status Act.</p> <p>The types of divorce available for the wife are: (1) Judicial Divorce (Tatleeq), which is filing for divorce grounded on legal justifications stipulated by law for which the Court must be satisfied with the wife’s claim; and (2)</p>	<p>The Court of Appeal in the case held that “if husband abandons his wife in bed for more than a year with no justification, which makes it impossible for her to stay with him and live on the same roof – if the husband turns his face away from his wife, or turns away from her in bed, it</p>		<p>Just like a marriage, a divorce must be registered through a certificate of divorce. It must be conducted before the Court if there is a conflict between the spouses, i.e. the husband refuses to divorce OR where the husband denies that he divorced his wife. Unilateral divorce is not prohibited. A husband may divorce</p>	<p>Although women are becoming more empowered to file for divorce than ever before, it is still viewed as a social taboo. Women are expected to uphold the traditional norm of being agreeable and obedient to their husbands.</p> <p>In court proceedings in divorce cases, the judge is required to attempt to settle/mediate the dispute of the spouses before</p>

³⁷ Alarab News Interview with Amal Habbani

<https://alarab.co.uk/%D8%A7%D9%84%D8%A7%D8%BA%D8%AA%D8%B5%D8%A7%D8%A8-%D8%A7%D9%84%D8%B2%D9%88%D8%AC%D9%8A-%D9%85%D8%A8%D8%A7%D8%AD-%D9%81%D9%8A-%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86>

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<p><i>are witnesses required, or does the spouse need to go to Court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register for a divorce? Are the procedures for divorce by women and men different?</i></p>	<p>Divorce for Consideration (Khula').⁴¹</p> <p>If divorce is initiated by the wife, it must be granted by a judge, whereas the husband can obtain a divorce by repudiation.⁴²</p> <p>The Personal Status Act does not outline specific grounds for divorce for the husband; however, it does outline grounds of divorce for the wife. She may seek judicial divorce on following grounds⁴³:</p> <ul style="list-style-type: none"> - Husband's incurable physical or mental illness making it dangerous for the wife to continue to live with him; - Husband's impotence not curable within one 	<p>constitutes a harmful act and reasonable grounds for divorce if the wife requests so".⁴⁵</p>		<p>his wife unilaterally, before a legally authorized person and two witnesses. A wife, however, cannot do so; she is required to appear before the Court to be granted permission to divorce, where the Court will examine the "grounds" for divorce; once the Court is satisfied, it will issue a judgment accordingly.</p>	<p>taking the request of divorce into consideration. This is based on the Prophet's Hadith regarding the permissibility of conciliation between Muslims. The Sudanese State and the traditional courts' perseverance in keeping families intact whatever the costs make life hard for women living in abusive relationships.⁴⁶</p> <p>In rural Sudan, traditional law based on ethnic legal traditions is common, and marital problems are a matter for the community. Even though women, or men for that matter, do not want their relationship to be a matter for any court, the traditional courts may</p>

⁴¹ Ibid, Article 132, 142

⁴² Ibid, Article 129

⁴³ Ibid, Article 151 - 192

⁴⁵ Sudanese Judicial Journal 1983 Case No. 61/1983

⁴⁶ CMI Report – Challenging the Law in Sudan

<https://www.cmi.no/news/1716-sudan-challenging-the-law#:~:text=The%20Islamist%20government%20in%20Sudan,Islamic%20nation%2C%20the%20Muslim%20family.&text=More%20often%20than%20not%2C%20the.women%20the%20right%20to%20divorce.>

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	<p>year (established by a medical report);</p> <ul style="list-style-type: none"> - Husband's cruelty or discord between spouses; - Husband's inability to pay; - Husband's absence for one year or more or his being sentenced to two years or more in prison; - Divorce by ransom, i.e., if a wife is declared nashiza (disobedient) by court order, a wife may waive her rights, and if the man does not agree to the divorce, arbitrators must be appointed; if she proves that she suffers from remaining with him divorce will be ordered by the Court.⁴⁴ 				<p>decide to interfere on behalf of the community. Traditional courts do not differentiate between the public and the private sphere. Their chief worry is to address matters that might lead to the whole community collapsing.⁴⁷</p>

⁴⁴ Islamic Family Law – Republic of Sudan <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/sudan-republic-of-the/>

⁴⁷ Lamy Badri, PhD CMI/University of Ahfad for Women Project on Violence Against Women

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Women's financial rights after divorce</p> <p>Matrimonial property <i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman's role as wife and mother recognized as a contribution to the acquisition of assets?</i></p> <p>Maintenance <i>What spousal maintenance is available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a 'gift' upon divorce (muta'a)?</i></p>	<p>The Act obligates the husband to purchase and prepare all matrimonial assets; anything that is purchased by the wife will be her own property.⁴⁸</p> <p>By law, the woman's role as a wife, mother and caretaker does not constitute a contribution to the acquisition of assets. During the waiting period, the wife is entitled to <i>idda</i> (waiting period) alimony.⁴⁹</p> <p>The divorced wife is entitled to post-divorce maintenance (<i>mut'a</i>), in addition to maintenance for children, as per the classical rules. In most cases, the post-divorce maintenance is assessed according to the means of the ex-husband to a</p>	<p>The Supreme Court held the following:</p> <ul style="list-style-type: none"> - If the plaintiff is unable to prove her claim of the ownership of the household belongings, the burden of proof shall be directed to the defendant, and if he proves his ownership, her claim shall be rejected. - If the two parties to the lawsuit are unable to prove the ownership of the household belongings, each of them takes an oath to own what suits him, and each of them shall decide what 	N/A	<p>In the event of dissolution and dispute regarding property, the parties may file a petition before the Court regarding the disputed property accordingly⁵⁴:</p> <ul style="list-style-type: none"> - <u>Trousseau to the daughter by the father/mother</u>: If the father, or heirs, allege that the trousseau was delivered to the daughter as a loan, and she, or her heirs, alleges the contrary that it was a gift; the decision of the Court will be based on the customs and traditions of the region or tribe. 	<p>It is a general practice among most spouses during wedding preparations to divide buying the assets. For example, it is the husband's responsibility to purchase furnishings for the bedroom, fridge and living room. The wife is also burdened by preparing the kitchen.⁵⁵</p> <p>The woman's role as a wife and a mother is viewed as an obligation and is therefore not recognized as a contribution to creating the matrimonial house. Under the Act, there is division upon dissolution of marriage. But, in practice, it is different. Spouses might argue about their properties and bring a claim before the Court to settle it.</p>

⁴⁸ Ibid, Article 50

⁴⁹ Ibid, Article 138

⁵⁴ Ibid, Article 49 and 50

⁵⁵ Interview with Mrs. Maha Alamir - Gender Advisor at the Ministry of Social Development

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>maximum of the equivalent of six months' maintenance.⁵⁰</p> <p>Cost of breast-feeding is required to be included in the maintenance for nursing mothers' up to two years.⁵¹</p>	<p>he swore.⁵²</p> <p>The Supreme Court decided in case 467/2007 the wife's entitlement to <i>muta'a</i> after her divorce is not contingent upon her disobedience.⁵³</p>		<p>- House Effects: Where the parties are in disagreement and fail to adduce evidence of entitlement, the wife shall, under oath, be entitled to what's considered useful to her, and the husband shall, under oath, be entitled to what's considered useful to him. However, if the evidence is adduced, then the party providing it shall be entitled to the property. Where the parties (or their heirs) are in dispute regarding house effects that are useful to both, and both succeeded or failed to adduce</p>	<p>There are two types of spousal maintenance. If the wife is breastfeeding his child at the time of divorce, she is entitled to maintenance for two years. If she is not breastfeeding, customarily, she receives maintenance for approximately one year even though the law imposes a six months period. There are also some exceptions to the entitlement of a divorced wife to post-divorce maintenance; one of the exceptions is the husband's insolvency, but the most prejudicial exclusions are for judicial separation (<i>khula'</i>). <i>Khula'</i> is where the wife initiates the divorce and usually involves returning her dower to her husband.</p>

⁵⁰ Personal Status Act for Muslims – Article 138

⁵¹ Personal Status Act for Muslims – Article 83

⁵² The Sudanese Journal 1988 Case No. 70/1988

⁵³ The Sudanese Judicial Journal 2007, case 467/2007.

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
				<p>evidence, the Court shall divide the disputed house effect into equal shares between them.</p> <p>Where one of the spouses dies, and the living spouse disputes with the heirs of the deceased over house effects, what is considered useful for both man and woman shall be for the living spouse, whether they adduce or fail to adduce evidence.</p> <p>- <u>Jewelry</u>: Where the spouses dispute regarding the ownership of jewellery, ownership is given to the husband (under oath) unless the wife adduces evidence of her entitlement of the jewels (as a gift).</p>	

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If not, who has priority rights over the child? Is a custody decision based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient, or when the child reaches a designated age when custody goes to the father?</i></p>	<p>The mother has custody of her child for up to 7 years for boys and up to 9 years for girls.⁵⁶</p> <p>Mothers can lose custody if they remarry or travel to another country where it is difficult for the father to reach his kids.⁵⁷ In order for a woman to retain custody, it must be granted by a judge.⁵⁸</p>	<p>The Supreme Court decided in case 16/1407 that the decision on whether the father or the mother is eligible for their child's custody is decided based on the best interest of the child and the judge has sole discretion to make this decision.⁵⁹</p>		<p>In the event of a dispute regarding custody of the children, the party claiming custody may file a petition before the competent Personal Status court and present all legal grounds and evidence as to why they are entitled to custody. The Act stipulates the rights over custody mainly on the basis of the child's age; nevertheless, in practice, the Court makes its decisions according to the best interest of the child.⁶⁰</p>	<p>Children customarily remain in the custody of their mothers, yet there are many disputes in Court over custody. Some of these disputes emerge from the re-marriage of the mother while being the custodian of the child. There are exceptions for mothers to keep the custody of their children after their re-marriage. It is usually subject to the discretion of the court but there are general exceptions, for instance, if the child has a disability and the mother proves that she is more fit to take care of the child than the father. Additionally, there are many maintenance disputes in connection to</p>

⁵⁶ The Personal Status for Muslims Act 1991, Article 113

⁵⁷ Ibid, Article 115

⁵⁸ Ibid, Article 115

⁵⁹ The Sudanese Judicial Journal 1986, case 16/1407.

⁶⁰ Sudan: Child Custody Proceedings in Regards to Divorce in Muslim Family <https://www.refworld.org/docid/3df4bea74.html>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
					custody, where the father neglects payment of maintenance for the child.
Guardianship of Children <i>Is there an equal right to guardianship? If not, who has priority rights over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i>	<p>As per the law, the conditions for guardianship is “an adult Muslim male”.⁶¹ Guardianship is not decided upon the best interest of the child. It is a stipulation by law that only a male (father/uncle/grandfather) can be the guardian.</p>			<p>In cases of disputes over guardianship and no one has priority rights, the Court will act as the guardian of the child.⁶²</p>	<p>There are no equal rights over guardianship. There are attempts by many women who have suffered from the incompetence of the guardian of their children. This has been recently challenged in court in a case that is the first of its kind in Sudan. In an attempt to revoke the guardianship and transfer it to the mother instead.⁶³</p> <p>Guardianship has recently been permissible to be given to women who have been married before to act as their own guardian, without the need of a male.</p>

⁶¹ The Personal Status Act for Muslims - Article 33

⁶² Ibid, Article 37

⁶³ In Pursuit of Full Guardianship under Sudan Personal Status Law- SIHA Network

<https://sihanet.org/gender-alert-in-pursuit-of-full-guardianship-under-the-sudan-personal-status-law/>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilization in the law, procedure or practice?</i></p>	<p>Women only have access to abortion if the child poses a significant health risk to the mother, if the fetus is dead, or if the pregnancy is a product of rape.⁶⁴</p>				<p>There is not much awareness of family planning generally. However, those who do practice it are accustomed to having their husband's consent beforehand.⁶⁵</p>
<p>Inheritance</p> <p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p>	<p>The general rule is that men are entitled to twice as much as women. However, there are some rare cases where women receive as much or more.⁶⁶</p>			<p>Where the inheritance is a sum of money, the heirs may divide the inheritance in accordance with the designated shares, and it is common practice to have witnesses during the process. However, if the heirs are in dispute, the parties may choose to divide the inheritance through the competent personal status court. In this process, the</p>	<p>In culture, Sudanese Muslims adhere to inheritance laws as set by the Personal Status Act, which is firmly believed to be derived from Sharia. There are some practices that are not in alignment with Sharia laws and the Personal Status Act, yet are seen as understandable in some parts of the country. These relate to the division of land shares. Women may be excluded from inheriting lands due to the fact that</p>

⁶⁴ The Sudanese Criminal Act 1991

⁶⁵ M Khalifa: Knowledge and Attitudes of Family Planning in Khartoum Province, Sudan

⁶⁶ The Personal Status for Muslims Act 1991, Article 356 and 357

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
				<p>Court will be entitled to 3% of the total sum as court fees.</p> <p>Where the inheritance is land / property / movables / immovables, the division has to be conducted before the Court (if the parties wish to divide the inherited).</p>	women may get married to men who are not from the same family or tribe. This is viewed as a risk of losing the land to the family or tribe of her husband by way of gift or inheritance. This practice is believed to be a way of protecting the ownership of lands within the same lineage. ⁶⁷
<p>Nationality</p> <p><i>Does a wife have the right to confer citizenship on foreign-born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p>	<p>A foreign wife is entitled to receive Sudanese citizenship from her husband. However, a foreign husband is not granted citizenship for having a Sudanese wife. Children born to Sudanese mothers or fathers will gain Sudanese citizenship. Once citizenship is granted, it cannot be revoked due to marriage or dissolution of marriage</p>	<p>The Supreme Court decided in the case of Iman Benjamin in 2014 that she has the right to hold Sudanese nationality following her mother's Sudanese nationality. Following this precedent, the Nationality Act was amended by the</p>		<p>A Sudanese mother may confer citizenship to her children by filing a citizenship application in the Civil Records Directorate, coupled with the child's birth certificate and the mothers' identification documents.⁷⁰</p>	

⁶⁷ FAO Report on Customary Norms, Religious Beliefs and Social Practices that Influence Gender-Differentiated Land Rights
https://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=SDN

⁷⁰ Ibid.

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	or if the father changed his nationality. ⁶⁸	parliament in 2018. ⁶⁹			

ACCESS TO JUSTICE

SYSTEM	PROCEDURES & TIMELINES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><i>How do Muslim family law (i.e. marriage and family related) cases get administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?)</i></p> <p><i>How many courthouses/court rooms around the country that administer Muslim family law cases?</i></p> <p>There are specialized courts for family law issues all across the country. In some remote areas, such as Darfur, Eastern Sudan and the Blue Nile, citizens rely on customary justice, which is run by native administration consisting of laypersons, religious men</p>	<p><i>Briefly describe procedures for filing a divorce or any other family law related cases.</i></p> <p>Men may divorce their wives simply by uttering their words to them.</p> <p>Women must file a suit in the competent Personal Status</p>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters? (E.g. lack of accessibility, bad procedures, delayed processes, gender insensitive judges, etc?)</i></p> <p>The major element that obstructs women's access to justice on family law matters is the Personal Status Act itself. It is designed in a patriarchal manner and denies women's rights, and</p>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases? (E.g. prioritizing certain types of cases, timely delivery of decisions, clear procedure, etc)</i></p> <p>- Family law procedures are relatively more prompt than all other civil procedures. Court proceedings in Sudan are commonly lengthy and time-consuming, the timelines vary depending on the case. However, family law procedures are designed in a way that can help judges act more swiftly in their decisions.</p>

⁶⁸ Sudanese Nationality Act (Amendment) 2018, Article 14

⁶⁹ A report by Naser Eldin Abdulbari <http://citizenshiprightsafrika.org/wp-content/uploads/2016/11>

<p>and tribe leaders. Some disputes are resolved by reconciliation involving family members of the spouses, typically men only.</p> <p>There are female judges, but there are no female marriage registrars for Muslims, as the registration is carried out by the “Imam”.</p> <p>Lawyers represent clients in some cases.</p>	<p>Court, by presenting a petition in Court, stating the name of the spouses, place of marriage and the legal justification for divorce. At first instance, the Court must seek to resolve the dispute of the parties to avoid their divorce. It may do so by simply warning the husband. If the wife returns to Court after some period, the Court will start to examine the case and request the wife to adduce evidence of her claim, by testimony or any other way of proof. One of the major challenges women face in divorce cases is the difficulty of providing proof. Once the Court is satisfied, it issues the decision of divorce. If the wife fails to prove her claim, the Court will reject it.</p>	<p>in many instances contradicts the rights and freedoms granted by the Constitutional Declaration. The Act stipulates various constraints, requirements and conditions to be fulfilled by women in regards to Consent, marriage and divorce, which are not imposed on men.</p> <p>Further, procedures of female testimony and proof the parentage of a child is archaic and rigid. Medical reports such as DNA tests are not admissible as means of evidence to prove the parentage of a child. Further, testimony must be substantiated by two women to be admissible in Court, meaning the testimonies of two women is equal to a testimony of one man.</p> <p>More often than not, the Court rules in favor of men, refusing women the right to divorce. But the courts may have gone too far in their attempts to keep families from disintegrating. Society is changing and the courts are lagging behind.</p>	<p>There are many fewer formalities required by Court in terms of petitions than in civil procedures, considering the nature of family issues. However, in practice, those procedures take longer than usual. For example, in custody cases sometimes it takes more than a year to resolve the issue by the Court.</p> <ul style="list-style-type: none"> - There are specialized governmental agencies dedicated to the protection of wives, mothers and children. These include the Directorate for the Protection of Family and Children as well as a specialized Prosecution Department.
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		<p>Fortunately, women are starting to challenge court verdicts claiming their rights.</p> <p>Other key challenges are:</p> <ul style="list-style-type: none">- Restrictive procedures and requirements for divorce;- Marital rape and harassment by the husband are not criminalized;- Lack of support systems;- Judges do not receive gender-sensitive training;- Social stigma.	
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