



Gender Briefing **SUDAN**

SIHA NETWORK GENDER BRIEFING I SUDAN

The aim of this **Gender Briefing** is to examine four countries that have, over the past decade, passed and adopted gender-progressive legislation and policies. The four countries are Sudan, Somalia, Ethiopia and Uganda. Against an inventory of the existing, recent gender policy and legal progress made in each of these countries, this brief will present a short analysis covering:

- a. A general review of the social and political context in which the gender laws and policies are being implemented (broad contextual analysis) in each country.
- b. An overview of the existing laws/policies that have direct or indirect implications for gender equity in each country.
- c. For each country, a brief background of the major issues facing women's rights and gender activists. The brief shall focus on issues of VAWG, informal sector employment, women's political participation, and finally, marriage and succession.
- d. A structural analysis per country of (a), (b) and (c) above – highlighting and summarizing the major factors deepening the gap between laws/policies and women's lived realities. This brief will look at policies and laws against actual practices.
- e. This brief will highlight the women's movement situation in each country employing the SIHA community activism guide.

1. Background: Social and Political Context in Sudan

Compared to other countries in the Horn, Sudan has had a long and remarkable history of a women's movement that emerged with the movements against colonialism dating back to the mid-1940s. In 1952, the National Sudanese Women Union was established by a number of urban women living in Sudan's capital city, which had access to educational institutions. The Sudanese Women Union was initially established as a women's organization that dealt with women's issues, priorities and interests such as women's education, health and discriminatory practices against women. Later, the union was dominated and fragmented by Sudanese nationalist post-independence political parties. However, despite the fragmentation of the women's movement in northern Sudan, the Sudanese Women Union had a wide influence during the 1960s in advocating and campaigning for girls' education, women's political participation and educating women on their political rights. It was also the union that addressed the harmful traditional practices against women, including FGM.

Being the largest in terms of land among the sub-region countries, Sudan has also become known as a country with complex problems. It is a country that has just emerged out of a long north-south civil conflict only to immediately enter into a new conflict in Darfur. The Sudanese national government has undertaken a solid Islamic ideology and adopted Sharia as the main source of legislation across the country. However, and despite the rights granted to women in the Sudan Interim Constitution adopted by the Sudanese government in 2005, North Sudan still runs under Sharia laws, constituted in the 1993 Sudan Constitution and developed by the Islamic Fundamentalist Party who changed their name in 1989 to the Nationalist Islamic Front after they overtook power through a military coup against the National Congress. The bottom line of Sharia law, as is stated in the 1993 constitution, is to undermine women's roles as citizens and human beings and limit their participation outside the ruling party ideology. Moreover, oppressive legislation has governed women's mobility and appearance. The *hijab* became a mandatory condition for women who wished to be employed in government offices and private companies who are in partnership with government.¹

¹ Hala Alkarib (2009), *Walking through a Forest of Thorns: Advocacy and Experiences of Women's Groups in the Horn of Africa*, Kampala, SIHA Network.

The public order forces, a government recruited militia, are specifically trained to oversee women's movement and interaction on the streets and have the authority to jail and/or beat women for infractions. The legislation against rape disappeared and was replaced by Zina (an adultery law derived from Sharia laws to punish men and women involved in sexual relationships outside of marriage) where, in the majority of cases, women are held responsible and exposed to punishment such as stoning. The real irony comes when looking at the current situation for Sudanese women and girls. Over 80% of girls still experience FGM, domestic VAW is still prevalent and early marriage has increased substantially in the past 20 years. The conflict situation between the northern and southern parts of the country has brought massive numbers of displaced people to (North) Sudan. Furthermore, millions of Eritrean and Ethiopian refugees have been continuously migrating to Sudan over the past 30 years, mainly due to the civil war between Eritrea and Ethiopia and later to escape the political situation in Eritrea and the economic hardships in Ethiopia. The waves of refugees, in addition to Sudan's own displaced peoples, has become part of the Sudanese demographic context. The majority of the displaced persons and refugees are women. Both refugee and displaced women have suffered and are still suffering systemic violence and rape as a result of being highly vulnerable to local police and discriminated against by mainstream culture.²

² Ibid.

2. Major Issues Impacting Gender Equity and Women's Human Rights

At present, Sudanese women are faced with significant challenges owing to the repressive nature of the state and its laws and policies, and owing to the restrictions of women's public engagement, livelihoods and activism by both the state and its public watchdogs. This briefing highlights five major areas in which the conflict between laws and their implementation can be traced.

2.1 Public order regime and criminalization of women

The frequent arrest, detention as well as trial and punishment of women under Sudan's public order regime ostensibly designed to protect morality, are key features of the criminal justice system. The public order laws incorporate strict moral codes designed to exclude and intimidate women from actively participating in public life, for instance by restricting their presence in the public sphere and controlling what they wear. Public order police and public order courts are the main institutions responsible for enforcing those laws. The public order laws owe their origin to the introduction in 1983 of Sharia laws and include the imposition of Sharia *huddud* punishments such as crucifixion, amputation, cross amputation, flogging and death by stoning. Upon these laws' introduction, the ruling regime at the time declared a state of emergency which authorized security officers to raid homes and clubs and arraign suspects before specially established 'prompt justice courts' where the suspects were tried for alcohol consumption, gambling, mixing of sexes without family bonds and/or for holding unlawful gatherings. When the current government came into power following a coup in June 1989, it further extended and developed the public order regime, effectively criminalizing and controlling an array of private relations in the public sphere.³

The public order regime embodies and imposes a particular set of values designed to control gender relations within society and to control the necessity of state engagement in the regulation of personal "morality". Overall, the public order laws contain a mix of criminal and moral prohibitions, which blur the distinction between the enactment of law for public interest and the imposition of moral precepts based on religious convictions. The public order laws are vague and open-ended leaving them exposed to exploitation as a social control tool by the authorities. The laws comprising the public order regime include the Khartoum Public Order Act of 1998, provisions of the Sudanese Criminal Act of 1991 as well as the Organization of Prisons and Treatment of Prisoners Act of 1992. These laws are applicable to Sudanese men and women, yet categories of women such as female alcohol brewers and sellers, tea sellers, female students and women human rights defenders are disproportionately affected. These groups of women are especially vulnerable owing to their origin and social status and/or because of the repression or criminalization of their activities.⁴ These laws also affect women because they aim to criminalize and restrict public presence – public spaces where of necessity, women conduct their trade. The laws

³ SIHA & REDRESS (2017), *Criminalization of Women in Sudan: A Need for Fundamental Reform*, Kampala: SIHA Network.

⁴ Ibid.

also inadvertently seek to re-ascribe gender and women to the private sector, and thus deem them punishable when they “transgress” into the public.⁵

The groups of women most affected by the application of the public order regime are alcohol brewers and sellers, human rights defenders, female students and migrant women. The majority of women arrested under the public order regime are alcohol brewers many of whom are internally displaced persons (IDPs) and refugees who frequently come from marginalized communities in the peripheries of Khartoum. Alcohol brewers and sellers are by law, engaged in illegal activity and are much more at risk of public order raids and arrests than those living in wealthier areas of the city. The risk of arrest increases during the weekends, particularly for alcohol and tea sellers whose businesses flourish over weekends. Unlike tea and food sellers who can turn to cooperatives and unions for support upon arrest, alcohol brewers and sellers live hidden lives and carry the stigma of being involved in an illegal trade. Migrant women from South Sudan, Eritrea and Ethiopia who are based in Sudan are also regularly arrested and detained by the public order police for alleged public order and immigration offences. As some of these women work as housemaids, they are also prone to accusations of theft by their employers.⁶

Another group affected by the public order regime is female student activists whose vulnerability is compounded by threats perpetrated by security officials. Female student activists on various campuses have reported that police and national security officers arrested and threatened them ostensibly for the breach of public order laws. Female student activists are, for instance, targeted for wearing trousers considered to be ‘immoral’ by public order police. For female human right activists, the constant prospect of arrest and detention casts a dark shadow on their activities. These women’s lives are frequently interrupted by the public order police and security agencies who make threatening phone calls, make allegations of a personal nature and interfere with friends and family. Negative cultural and social perceptions of women, promoted in official ideology, further reinforce discrimination, harassment, and various forms of ill treatment of women activists.⁷

Public order-related legal/policy framework:

The main components of Sudan’s public order laws are included in the Khartoum Public Order Act of 1998 and relevant provisions of the Criminal Act of 1991.

● The Khartoum Public Order Act of 1998

- ▶ The Khartoum Public Order Act (KPOA) of 1998 regulates social activities such as festivities and social gatherings. It criminalizes dancing between women and men, women dancing in front of men, the singing of trivial songs at parties and prohibits begging.
- ▶ It regulates management of queues in public places (separation of men and women) and regulates private businesses, for instance requiring hairdressing salons not to employ any women unless they are certain of their righteousness and good reputation.
- ▶ The KPOA is directed at the control of male and female relations (with a number of exceptions) and characterized by a specific conception of women’s oral capacity. Any

5 SIHA & REDRESS (2017), *Criminalization of Women in Sudan: A Need for Fundamental Reform*, Kampala: SIHA Network.

6 Ibid.

7 Ibid.

contravention of the Act “attracts punishments which include imprisonment for a term not exceeding five years, a fine and whipping.”⁸

The Criminal Act of 1991

- ▶ Article 79 of the Criminal Act (1991) criminalizes alcohol, providing that: “whoever deals in alcohol, by storing, sale, purchase, transport or possession with intention of dealing with others...shall be punished with imprisonment for a term not exceeding a year with a fine.”
- ▶ Article 151 prohibits gross indecency, providing that: “There shall be deemed to commit the offence of gross indecency, whoever commits any act contrary to another person’s modesty.”
- ▶ Article 152 grants public order police the unrestricted power to determine what constitutes an indecent act, indecent dress and acts contrary to public morality.
- ▶ Article 154 of the Criminal Act, which criminalizes prostitution and is used as a measure to control women. Because the law does not define the crime of prostitution, women gathering at home could easily be accused of prostitution by their sheer presence in “a place” irrespective of whether that location serves the purpose of prostitution.⁹
- ▶ Section 135 violates women’s reproductive health rights - a woman who suffers a miscarriage and is in need of medical assistance, is presumed guilty of abortion and is immediately arrested and detained.
- ▶ Article 145 criminalizes adultery, which is usually proven through (a) confession, (b) the testimonies of four male witnesses, (c) pregnancy or, specifically in the case of married adulterers (d) lia’an – A Muslim tradition where a husband accuses his wife of adultery and the wife must swear she is innocent in order to deny it.

At the same time, Sudan has ratified a number of regional and international human rights documents, which sets the stage for conflict between the Public Order laws and women’s human rights. **The relevant international documents** ratified by Sudan include the following:

- ▶ The International Covenant on Civil and Political Rights (ICCPR)
- ▶ International Convention on the Elimination of all forms of Racial Discrimination (CERD)
- ▶ The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ▶ The Convention on the Rights of Persons with Disabilities (CRPD)
- ▶ The Convention on the Rights of the Child

8 Ibid, p.8

9 Ibid, pp. 11-12

At the regional level, Sudan has ratified:

- ▶ The African Charter on Human and Peoples' Rights (African Charter)
- ▶ The OAU Convention Governing Specific Aspects of Refugee Problems in Africa

Aspects of those treaties have been incorporated into Sudan's 2005 Interim National Constitution (INC). They also form part of the INC by virtue of Article 27(3), which provides that the rights and freedoms enshrined in international human rights treaties ratified by Sudan shall be an integral part of the Constitution.

The provisions of the 1991 Criminal Act outlined above and the Khartoum Public Order Act are not applied in a vacuum and must be considered in the context of Sudan's obligations under the regional and international human rights instruments it has ratified. Many of the provisions in these laws are contrary to Sudan's human rights obligations, as is their enforcement in practice. The factors widening the gap between existing laws and actual practice are as follows:

- a. Ambiguous definitions:** There is deliberate and abundant use of vague language within Sudanese laws. E.g. Article 151 does not define the kinds of acts that amount to gross indecency and therefore, is prone to subjective interpretation by public order police who routinely arrest individuals on the basis of Article 151 for acts that should not be criminalized.¹⁰
- b. Lack of accountability mechanism:** A civil suit against a (state) perpetrator can only proceed if the head of the forces (e.g. the National Intelligence and Security Services or the Armed Forces) concerned lifts immunity. However, there is no procedure in place to request the lifting of immunity, which is entirely at the discretion of the head of the relevant forces.¹¹
- c. Risk of discrimination in gender-neutral phrasing:** For example, Article 75 of the Criminal Act prohibiting the brew and sale of alcohol by everyone, both men and women, is a gender-neutral provision. In practice, however, the majority of individuals arrested for these offences are women with roots in the Nuba Mountains or South Sudan, where the production, consumption and sale of alcohol is part of their way of life.
- d. Lack of clarity and information:** In April 2015, Sudan passed a number of amendments to the 1991 Criminal Act, including long awaited amendments concerning rape and sexual violence. An amendment to article 149 changed the definition of rape to reflect international standards so that Sudanese women would no longer face charges of adultery or committing immoral acts for sexual crimes committed against them. A closer look however, shows that serious gaps remain around clear guidance to law enforcement officers and judges. The government is yet to publicly release this amendment.
- e. Lack of a holistic approach:** Sudan has not yet taken the steps toward adopting comprehensive anti-discrimination and equality laws, in order to align existing

¹⁰ Ibid.

¹¹ Ibid, p. 13

legislation and institutions with regional and international obligations. A holistic approach to substantive equality looks beyond the surface to how discrimination may occur in the course of implementation of laws and policies.¹²

2.2 Sexual Violence

Throughout Sudan, from the battlegrounds of Darfur to the streets of Khartoum, women are at risk of sexual violence in the form of rape and other criminal acts that are typically enabled by a strong culture of silence and shame. The use of sexual violence as a weapon of war in Darfur has garnered the most attention nationally and internationally. It is however, by no means unique to the region. Women who are involved in political or human rights activism have been subjected to sexual violence and assault. Women who speak up are at risk of retaliation from government actors who leverage the fear and shame of rape as a method of silencing these women. In marginalized areas of Khartoum, criminal gangs use sexual violence as a weapon, creating fear to assert dominance over the community, much like the militias. Furthermore, marital rape and sexual violence against men have never been discussed, let alone criminalized by lawmakers. Indeed, human rights movements have not even discussed sexual violence against men.¹³

All laws relating to women are embedded in violence in Sudan. None of the preventative laws that might reduce the prevalence of VAW are active. Legislation that prohibits FGM in the Sudan Criminal Code was suspended and the rape legislation was removed and replaced by *Zena* (adultery law). According to Forward Foundation for Women Health Research and Development, as of 2005, approximately 89% of Sudanese girls were subjected to FGM, particularly Type 3 – the Pharaonic type. The conflict in Darfur multiplied the number of women who were subjected to rape, which was used as a war strategy. The prevalence of rape in general, is substantially increasing in the conflict region of Darfur but Sudanese legislation lacks the necessary mechanisms to address this issue from a legal perspective as well as a political one.¹⁴

Legal/policy framework:

Albeit inactive, the following existing laws relate to sexual violence against women:

- **The 2015 Amendment to the 1991 Criminal Act (Penal Code)**

- ▶ In February 2015, Sudan passed a number of amendments to the 1991 Criminal Act, including long-awaited amendments concerning rape and sexual violence.
- ▶ The amendments to Article 149 (rape) of the 1991 Criminal Act expanded the range of acts deemed to constitute rape. Importantly, rape is no longer defined by reference to adultery or sodomy.
- ▶ The new Article 149(1) replaced the vague reference to “sexual intercourse” found in the old text with a more precise and expansive definition of rape as sexual contact by way of penetrating any part of the body or sexual contact by placing any object into the vagina or anus of the victim.

¹² Ibid.

¹³ SIHA (2017), *It's Always Her Fault: Sexual Violence in Sudan*, Kampala: SIHA Network.

¹⁴ Alkarib (2009), *Walking through a Forest of Thorns*

- ▶ Although there is no separate prohibition of marital rape, the removal of reference to adultery in the definition of the crime also means that it should now be possible to prosecute marital rape under Article 149(1) of the 1991 Criminal Act. However, the definition may remain too narrow to address some forms of rape, such as oral rape.¹⁵

Despite this Amendment, existing evidence does not suggest its effectiveness in preventing or providing redress for sexual violence for women in Sudan. The primary reasons for this are as follows:

- a. Ambiguity between “victims” and “perpetrators”:** The new provision on sexual harassment within the existing law on “gross indecency” introduced ambiguity about who the victims and the perpetrators actually are in sexual harassment cases. It refers to acts, speech or behaviour that cause seduction or temptation, and is likely to serve as a further deterrent to women reporting sexual offences, owing to a risk they could be accused of “gross indecency.”¹⁶
- b. Conflation of rape and ‘zina’:** Until 2015, rape was defined under the 1991 Sudan Criminal Law Act as zina without consent.¹⁷ The amended Article 149 unfortunately, created legal uncertainty relating to the possible continuing conflation of the offence of rape with the offences of “adultery” and “sodomy” because the penalty for rape, set out under Article 149(2), remains unchanged and still refers to rape by way of those acts. This has resulted in a continuing risk that rape claimants could face prosecution for adultery or sodomy if they fail to prove a rape case. There is a lack of clarity concerning the evidence standards that will apply in rape cases.
- c. Conflict with Muslim Personal Law Act of Sudan (1991):** Considering rape as a sub-type of *zina* excludes the possibility of marital rape, since *zina* is defined as sex between unmarried people. The notion that rape cannot occur inside marriage is further reinforced by the 1991 Muslim Personal Law Act, which provides that a woman “*shall always obey her husband,*” provided that he has paid the dowry and provides her a home. The Personal Law Act discourages prosecutions in practice.¹⁸
- d. Ambiguity on age of consent:** There is also a lack of clarity about the age of consent and whether this is determined by the definition of an adult under the 1991 Criminal Act, which refers to puberty, or the 2010 Child Act, which dictates that a child is any person under 18 years of age.¹⁹ Further, the 1991 Muslim Personal Law Act provides that marriage can take place at puberty (ages 9-15 years for a girl), raising serious questions about the possibility of consent in early marriages.

¹⁵ African Centre for Justice and Peace Studies (2016), *Sudan’s new law on rape and sexual harassment: One step forward, two steps back?* Available online at: http://www.acjps.org/wp-content/uploads/2016/03/Sudan%E2%80%99s-new-law-on-rape-and-sexual-harassment-One-step-forward-two-steps-back_-.pdf

¹⁶ *Ibid.*

¹⁷ *Zina* is considered a *hudud* crime; that is, a crime for which strict penalties are imposed – 100 lashes for unmarried offenders and death by stoning for married offenders.

¹⁸ SIHA (2017), *It’s Always Her Fault: Sexual Violence in Sudan*, Kampala: SIHA Network.

¹⁹ African Centre for Justice and Peace Studies (2016), *Sudan’s new law on rape and sexual harassment: One step forward, two steps back?* Available online at: http://www.acjps.org/wp-content/uploads/2016/03/Sudan%E2%80%99s-new-law-on-rape-and-sexual-harassment-One-step-forward-two-steps-back_-.pdf

- e. **Consent:** Although the new legislation usefully elaborates and expands on the circumstances where a lack of consent may be demonstrated, including not only the use of physical force, but also psychological coercion and incapacity to consent, it provides what appears to be an exhaustive list of circumstances where consent cannot be deemed to have been given. This list may prove too narrow to address all rape cases.²⁰
- f. **State immunity:** Sudanese law allows for immunity of a broad range of state officials. These laws include Article 33 of the 1998 National Security Forces Act, Article 46 of the 1999 Police Forces Act and Article 8 of the 1986 People's Armed Forces Act which, was expanded by a 2005 presidential decree that grants immunity to military actors in the performance of their official duties and grants immunity to government law enforcement personnel, including security, police, military, militias and guards. In practice, this means that women raped by government personnel stand very little chance of receiving justice.²¹
- g. **Procedural limitations ("Form 8" requirement):** Many women do not report sexual violence because of fear of re-victimization at the hands of the police authorities. While a ministerial decree, effective 21 August 2004, allows women to access medical treatment without Form 8 under certain circumstances, this form is still required under the Sudanese Criminal Procedure Act. The majority of health care providers also still require it²²

2.3 Women's struggles for equal citizenship

The Sudanese domestic legal framework is characterized by limitations in responding to human rights violations, and by discrimination and abuses mainly targeting women and girls, as well as vulnerable groups such as displaced persons, victims of war and migrant workers. The harsh discrimination and abusive practices against women in Sudan have increasingly gained national, regional and international attention although such awareness has not translated into serious reforms and responses by the establishment. Citizenship and nationality encapsulate different rights and responsibilities. Citizenship has a precise legal definition and provides access to certain rights while nationality is defined more broadly and often with reference to origin and a culturally defined community. In Sudan, both law and common discourse often focus on nationality rather than citizenship. Sudan is a multi-ethnic and multi-cultural state but by defining belonging in terms of religious and cultural identity, it disenfranchises a portion of the population. The current Laws of Sudan remain unconstitutional before the 2005 Interim National Constitution (INC), which pledged state support for gender equality. The current process of constitutional review by the ruling National Congress Party has led to calls by party hardliners to develop a constitution based solely on Militant Islamic based ideology. This process is cause for concern, and several indicators suggest that it is to a large extent an isolative process.²³

²⁰ Ibid.

²¹ SIHA (2017), *It's Always Her Fault: Sexual Violence in Sudan*, Kampala: SIHA Network.

²² Ibid.

²³ SIHA (2015), *Third-Class Citizens: Women and Citizenship in Sudan*, Kampala: SIHA Network, pp. 1-2

Sudan has committed itself to several international and regional human rights obligations. The adoption of the Universal Declaration of Human Rights (UDHR) (1948), led to the drafting of two covenants in 1966, namely the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social, and Cultural Rights (ICESCR). Sudan ratified the ICCPR and ICESCR in 1986, both of which emphasize gender equality and the guarantee of human rights for women and men with respect to employment, marriage, education and protection - *“without distinction of any kind, such as race, color, sex, language, political or other opinion, national or social origin, property, birth or other status.”* Regionally, Sudan committed to the African Charter on Human and Peoples’ Rights and the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children of the International Conference on the Great Lakes Region. However, the country has not taken practical steps to domesticate these instruments to ensure equal citizenship and protection of the rights of women and girls in the country. Sudan has notably not signed the cornerstone human rights commitment, which is the 1979 Convention on the Elimination of Discrimination against Women (CEDAW). Sudan claims that CEDAW is incompatible with Sharia law and Sudanese culture. It is thus urged that Sudan makes less commitment to taking all appropriate measures, including legislation, to ensure gender equality a serious issue at the center of discrimination and abuse of women in the country with limited national response especially through laws, policies and development programs for equality.²⁴

Citizenship-related domestic legislation:

In addition to the Khartoum Public Order Act and the Penal Code, which have already been reviewed above and apply here too, this section reviews two pieces of domestic legislation that directly affect women’s citizenship rights:

- **1994 Sudanese Nationality Act**

The 1994 Nationality Act provides that all children born in Sudan with a male ancestor who has been a resident in Sudan since 1956 acquire Sudanese nationality. A constitution passed in 1998 repealed the 1994 Nationality Act, stating in article 22 that “everyone born of a Sudanese mother or father has the inalienable right to Sudanese nationality, its duties, and obligations.” The law was amended in 2005 to allow a child born to a Sudanese mother to acquire nationality by following an application process.²⁵

- **The Personal Status Law (1991)**

The Personal Status Law (1991) classifies Shari’a principles and interpretations of judicial circulars and is based on the most militant forms of classical Fiqh, unlike other legislation passed in the same year. Compared to Family laws in other Muslim countries in the Horn of Africa region such as Djibouti, the Sudanese Personal Status Law emerges as demeaning to the identity of women and girls presenting them as inferior; unable to survive and manage their lives without oversight from men. Even though it requires wives to be obedient to their husbands, Djiboutian Family Law emphasizes respect and support. The Sudan Personal Status Law, on the other hand, establishes guardianship of girls and women by men and boys who deprive women and girls of their independent decisions and

²⁴ Ibid.

²⁵ Ibid.

choices in essential socioeconomic areas including marriage, custody of children, access and ownership of resources including property and finally, mobility, especially in public.²⁶

Sudan's Nationality Act contains provisions that contradict international obligations and negatively impact the equal citizenship of women in Sudan:

- a. **Contradictory provisions:** The provisions in the Nationality Act contradict Article 7 of the 2005 Interim National Constitution (INC). Article 7 guarantees that "every child born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship".
- b. **Discrimination:** Article 4 of the Nationality Act states that a person is entitled to acquire Sudanese nationality if he has a Sudanese father, but when it comes to the mother, a clause provides that the person acquires it "whenever he applies to it". The mention of "application" here stands with no clear procedures, and it is unclear why citizenship is not also automatic with a Sudanese mother. This restriction can be taken as evidence that despite the considerable progress in amending the law in favor of women's citizenship rights, the status quo of gender discrimination in the minds of legislators and law enforcers still exists.
- c. **Statelessness:** Section 10(2) of the Nationality Act states that: "Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan". Article 7(3) of the Constitution provides that "no naturalized Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law". This mainly affects women with South Sudanese partners.

The Personal Status Law also contains provisions that contradict international obligations and negatively impact the equal citizenship of women in Sudan:

- d. The idea of guardianship contained in the Personal Status Law is based on the historical Islamic legal perspective that men are the primary breadwinners, and as such, have primary access to the public sphere. Islamic jurisprudence considered guardianship crucial to the protection of women. It also restricts freedom of movement – the Passport and Immigration Act of 1994 states that women need the written approval of their male guardian in order to travel.
- e. The provisions in Articles 25, 32 and 42 of the Act determine marriage responsibilities and particularly Article 25 sets three essential requirements for the validity of a marriage contract: the inclusion of testimonies of two witnesses, payment of a dowry and the consent of a male guardian. The law makes it clear that an adult woman is not permitted to marry of her own volition, and if she does, her male guardian has the right to cancel the contract.
- f. Article 34 of the Act also permits forced marriages and marriages to minors with permission of the girls' guardians and on her consent. This is a very serious infraction of the 1989 Convention on the Rights of the Child, which was ratified by Sudan in 1990, and forbids marriage under the age of 18.

²⁶ Ibid.

- g. **Autonomy:** Divorce can be granted under Articles 157 – 204 of the Muslim Personal Status law but only in three circumstances. Firstly, men can divorce their wives by *talata* which means that a man can say “I divorce you” three times after which a court is then mandated to prepare documents recognizing the divorce. The process is safeguarded by a period of *iddat*, a period of waiting, between each declaration. Divorce can also be granted by *khula* where a couple mutually decides to divorce and a wife agrees to pay back the dowry.
- h. Women have primary custody of daughters until they are nine years old, and sons until they are seven years old, after which custody is determined by what is in the best interest of the child. A woman automatically loses custody if she remarries.
- i. Inheritance is in accordance with the classical Shari’a, where a woman inherits half the property inherited by her brothers, with the rationale that men are primary breadwinners and their property will be shared with their families. Sudan also has a personal status laws for Non-Muslims, which is known as the Marriage Law of non-Muslims of 1926 and there is a court that tries personal status cases of non-Muslims under this law and it decides on issues of marriage and divorce as well as inheritance.

2.4 Access to sexual and reproductive health

Sudanese children suffer an under-five mortality rate of 112 deaths per 1,000 live births, an infant mortality rate of 81 deaths per 1,000 live births and a maternal mortality ratio of 1,107 deaths per 100,000 live births. 68 per cent of children have not been fully immunized.²⁷ As of 2015, the maternal mortality rate in Sudan was 216 deaths per 100,000 births. Out of 100,000 newborns, 330 die at birth.²⁸ According to the World Health Organization (WHO), Sudan’s maternal mortality rate has fallen from 744 per 100,000 live births in 1990 to 311 in 2015. However, women and girls in conflict-affected areas like rebel-held Southern Kordofan do not have access to donor supported government health services that have contributed to this decline. No recent data on maternal mortality is available for the region, but a joint research effort by the UN and the Sudanese government in 2006, put Southern Kordofan’s maternal mortality rate at 503 per 100,000 live births, compared to 91 per 100,000 births in the Northern state and 213 per 100,000 births in Southern Kordofan’s neighboring Northern Kordofan state.²⁹ The highest mortality rate in the country was registered in South Darfur, with 334 deaths in 2014. There is a high rate of maternal deaths in the marginalized states of Darfur and in South Kordofan state.³⁰ Women and girls living in rebel-held areas of the Nuba mountains of Southern Kordofan have little or no access to contraception, adequate antenatal care or emergency obstetric care, leaving them unable to control the number and spacing of their children, and exposing them to serious health complications and sometimes death. Reduced access to health services is one of the many devastating consequences of six years of armed conflict between Sudanese government forces and the armed wing of the rebel Sudan People’s Liberation Movement/Army-North (SPLM/A-North), a spin-off of the former southern Sudanese liberation movement and now ruling party of independent South

27 https://www.unicef.org/infobycountry/sudan_background.html

28 <https://www.dabangasudan.org/en/all-news/article/highest-maternal-mortality-rate-of-sudan-in-south-darfur>

29 <https://www.hrw.org/report/2017/05/22/no-control-no-choice/lack-access-reproductive-healthcare-sudans-rebel-held>

30 <https://www.dabangasudan.org/en/all-news/article/highest-maternal-mortality-rate-of-sudan-in-south-darfur>

Sudan. Healthcare access is low in the four areas currently under the control of rebels and worse than in other parts of Sudan because of marginalization by Sudan's government and earlier conflicts. This is not a new phenomenon and was the case before the current war began in 2011. The poor humanitarian situation there cannot be entirely blamed on the conflict, however, unlawful government bombardment, destruction of clinics, poor distribution of medicines, and hard-to-cross frontlines have all further reduced access to healthcare.³¹

In rebel-held Nuba areas of Heiban, Delami and Um Dorein, antenatal care from skilled and equipped health workers is available at two hospitals and their outreach clinics, both operating without government authorization. However, many women and girls live too far away to access emergency care or live on the other side of frontlines of the conflict, making it too hazardous to travel to the facilities. Most pregnant women must rely on local birth attendants who have no formal training, or trained midwives who have not been able to acquire new or sterile equipment since the conflict began. Women and girls experiencing complications during labor may have to travel for days, often on dangerous routes including across frontlines, to get emergency obstetric care. Family planning is not available except in rare instances. The rebel SPLM/A-North administration provides the bulk of health care through a network of some 175 clinics, but these do not distribute contraception, including condoms. One agency provides three-month injectable contraception but restrictions imposed on them by the local rebels require patients' husbands to give permission before they can provide the contraception to women.³²

Legal/policy framework of maternal health in Sudan:

The Government health system is a three-tiered network. Following on the decentralization reform in the 1990s, Sudan's health system is composed of three layers: federal, state and local. The Federal Ministry of Health (FMOH) is responsible for formulation of national health policies and overall health planning in addition to human resource development and international relations. The FMOH also supervises the work of lower levels and is mandated to intervene at any stage to deal with emergencies including epidemics and other health disasters. The state ministries of health (SMOHs) are entrusted with the planning, management and delivery of health services in addition to programming and project management at the state level. Primary health care was adopted as a main strategy for health care provision in Sudan in 1976 and reemphasized in the National Comprehensive Strategy for Health in 1992 and in the 25-year Strategic Health Plan 2003-2027.³³

● The Federal Reproductive Health Directorate (FRHD)

- ▶ FRHD functions under the hierarchy of the Directorate-General of Primary Health Care (PHC) and is responsible for reproductive health (RH) services in the country.
- ▶ FRHD is charged with the design of general policy, work plans and follow-up of implementation, laying the principles of collaboration between all sectors involved in RH and monitoring and evaluation of RH activities in the country.
- ▶ Reduction of maternal mortality was incorporated as a national priority in all strategic long and short plans since 1992. The Making Pregnancy Safer (MPR) national plan sets

³¹ <https://www.hrw.org/report/2017/05/22/no-control-no-choice/lack-access-reproductive-healthcare-sudans-rebel-held>

³² Ibid.

³³ http://www.fmoh.gov.sd/St_Paln/HRH%20strategic.pdf

a national target, to maximize the number of deliveries attended by skilled persons and to have comprehensive and basic emergency obstetric care in all hospitals.³⁴

Disconnect between existing laws/policies, and practice:

- a. Weak links between community and health-facility based MNH services – Traditional birth attendants (TBAs) are utilized by a large section of the rural populace, yet there has not been sufficient focus on existing legal/policy framework on the role and significance of TBAs. Weak links mean that complications arising from traditional births are not easily addressed and there are also no clear support and referral mechanisms between community and health-based facilities/state health facilities.
- b. Women experience delays in receiving attention for complications in maternal health, which are related to and dependent on cultural norms, education and current socio-economic conditions. The existing legal framework barely recognizes the traditional and customary domains within which many women exist and therefore, cannot address them directly.
- c. Clash between religious edict (Sharia) and gender equality - For instance, abortion services, which constitute a core reproductive health services in most places around the globe, are not formally available to many women, especially unmarried ones in Sudan. An equally big problem exists for those seeking screening for cervical cancer, which is an intrusive procedure and therefore not offered to unmarried women because it is assumed that it would break their virginity. Many cancer deaths occur due to this problem but the law remains silent.
- d. Existing maternal health policies take a fairly narrow focus as they do not explicitly incorporate issues of sexual and gender based violence as a proactive and responsive measure to issues that affect women's reproductive health.

³⁴ <http://apps.who.int/medicinedocs/documents/s17310e/s17310e.pdf>

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