



**Strategic Initiative
for Women in the
Horn of Africa**

BETWEEN THE LEGACY OF GUARDIANSHIP AND THE HORRORS OF WAR

**The Fate of Women in Sudan and the Need for
Equitable Legal Frameworks**



“Between the Legacy of Guardianship and the Horrors of War: The Fate of Women in Sudan and the Need for Equitable Legal Frameworks” was developed under the Al Thawra Untha (ATU) (The Revolution is Female) Project. This was led by a consortium of three organizations being PAX, Un Ponte Per (UPP) and the Strategic Initiative for Women in the Horn of Africa (SIHA) Network, generously funded by the Ministry of Foreign Affairs of the Netherlands (MoFA).

The views expressed in this paper are those of the author and do not necessarily reflect the official policies or positions of ATU Consortium Partners or MoFA.

Research Compilation: Aroob Alfaki, Azza Ahmed Abdel Aziz

Cover Photo by: Abushariaa Ahmed

Design: Marce Digital

Published July 2026

No part of this publication may be reprinted or reproduced, or utilized in any form or by any means electronic, mechanical or other means now known or hereafter invented including copying and recording, or in any information storage or retrieval system, without permission in writing from the publishers. It is a collaborative informational and assessment document which does not reflect the views of any of the contributing partners in all its contents. Any errors are the sole responsibility of the authors.

Strategic Initiative for Women in the Horn of Africa

P.O. Box 2793 Kampala – Uganda

www.sihanet.org

©SIHA Network 2026

ACKNOWLEDGEMENTS

This research paper examines how Wilāya (Guardianship) impacts the lives and voices of Sudanese women, within the spheres of gender justice, civic engagement and Islamic identity. The paper puts forward the central argument that the intersection of male guardianship, Sharia-derived law, and women's societal participation creates tension between women's mobilization for equitable participation and the constraints of legal guardianship. It therefore unpacks these tensions from the perspective of women's interactions with Sudan's legal framework, patriarchal norms driven by culture and religion, existing within the overall context of Sudan's ongoing conflict. The paper then concludes with recommendations on how this can be remedied, cutting across bridging the gap between Islamic legal discourse and human rights, addressing intersectional and structural inequalities, critical legal and policy reforms needed as well as strengthening the judicial system and overall law enforcement capacity in Sudan.

We extend our appreciation to Aroob Alfak and Dr. Azza Ahmed Abdel Aziz for conducting this research and producing this paper. We also wish to thank the study participants, Sudanese women, for their invaluable contributions.

Our heartfelt thanks also goes to SIHA Network Sudan staff for their coordination of the project and guidance throughout the process and the SIHA Regional Team including Hala Al Karib, the Regional Director; Dr. Faizat Badmus-Busari, Regional Programme Manager; and Ramatoulie Jallow, Regional Research and Advocacy Officer, for their significant contributions and support.

This research should be cited as follows:

The Strategic Initiative for Women in the Horn of Africa (SIHA) Network, *"Between the Legacy of Guardianship and the Horrors of War: The Fate of Women in Sudan and the Need for Equitable Legal Frameworks,"* 2026.

CONTENTS

Acknowledgements	3
Executive Summary	5
Introduction	8
Methodology	10
1. Unpacking Guardianship	12
1.1 Historical Precedents of Sharia Law Reforms	13
1.2 International Frameworks vs Sudanese Law	15
2. Precedents of SGBV in Sudan	17
2.1 Case 1: Case 1: Rape of Activist S.I.	17
2.2 Case 2: N.H. – Marital Rape and Legal Consequences	18
2.3 Case 3: Guardianship and Rights of Minors – Samah Al Hadi	19
2.4 How Former SGBV Precedents Inform the April 2023 War	19
3. From Precedents to Practice: Weaponizing SGBV in Wartime	20
3.1 The Risk of Normalization of Violence through Political Justifications	21
3.2 Risks for Women: Accusations of Treason and the Empty Shell of Protection	23
3.3 Legal Concerns Raised by Practitioners	24
4. Law Enforcement, Social Norms, and Women's Experiences in Wartime Sudan	25
4.1 Limitations of Legal Response to Mass SGBV	25
4.2 Judicial Disruption and Displacement	27
4.3 Shifting Family Decision-Making amid Shifting Legal Reform	29
5. Conclusion and Recommendations	29
5.1 Legal and Policy Reform	30
5.2 Strengthening Judicial and Law Enforcement Capacity	31
5.3 Protection Mechanisms in Conflict and Displacement Contexts	31
5.4 Addressing Intersectional and Structural Inequalities	31
5.5 Bridging Islamic Legal Discourse and Human Rights Standards	32
References	33

EXECUTIVE SUMMARY

This study examines how **male guardianship (Qawamah/Wilāya)**, embedded within Sudan's Sharia-derived legal system, shapes women's rights, civic participation, and access to justice, particularly during the ongoing conflict that began in April 2023. Using a feminist, lived-experience approach, the research combines legal analysis, key informant interviews, and focus group discussions with lawyers, activists, survivors, and women human rights defenders.

This report uses the term “men”, rather than “male guardianship,” in its title because it refers to the gender roles prescribed under a specific legal code currently in force in contemporary Sudan. Accordingly, the term “men” extends beyond the biological meaning of “males,” which would exclude certain categories from exercising guardianship roles, such as male children, persons deemed legally imprudent, and persons lacking legal capacity.

This choice is also based on the Sudanese legislature's use of the term “men”, rather than “males,” in the formulation of legal provisions to convey the meaning outlined above. The English terminology adopted in this report therefore reflects this specific legal usage.

Key Findings

1. Men Guardianship Remains a Pervasive Structural Barrier

Sudan's 1991 Muslim Personal Status Law institutionalizes men guardianship by granting men authority over key aspects of women's lives, including marriage, mobility, child custody, and family decision-making. While framed as religiously derived, this research argues that these laws reflect historical and political interpretations of Islamic jurisprudence rather than immutable religious principles.

Guardianship systems continue to limit women's legal autonomy, civic participation, and access to essential services and documentation, particularly in the context of the ongoing April 2023 conflict in Sudan.

2. Conflict Has Intensified Existing Gender Inequalities

The April 2023 war has exposed and amplified weaknesses in Sudan's legal protection systems. Women have borne disproportionate burdens as caregivers, providers, and heads of households while facing heightened risks of:

- Sexual and gender-based violence (SGBV);
- Forced displacement;

- Arbitrary detention;
- Forced and child marriage;
- Economic insecurity; and
- Restrictions on movement and access to justice.

The collapse of state institutions, court closures, and administrative disruptions have further limited women's ability to pursue legal remedies, secure documentation, or resolve custody and family law disputes.

3. Sexual Violence Is Both Historical and Contemporary

With the analysis of the cases studies of activists and figures such as S. I., N. H.,¹ and Samah Al Hadi, this research demonstrates how gender-based violence has historically functioned as both a tool of political repression and an instrument for enforcing patriarchal norms.

These precedents provide important context for understanding current wartime patterns, where rape, forced marriage, and other forms of sexual violence continue to be used strategically by armed actors. Survivors frequently encounter stigma, inadequate legal protections, and barriers to justice.

4. Legal Responses Remain Inadequate

Sudanese law continues to contain significant gaps as highlighted in this research, including:

- Failure to explicitly criminalize marital rape;
- Weak protections against forced marriage;
- Reliance on social norms when determining legal harm;
- Inconsistent judicial interpretations across regions; and
- Limited access to legal abortion for rape survivors.

This research finds that legal outcomes often depend on local cultural attitudes and judicial discretion rather than consistent rights-based standards.

5. Women Continue to Exercise Agency and Resistance

Despite significant constraints, Sudanese women actively negotiate, challenge, and resist guardianship structures. Women have played leading roles in Sudan's 2018–2019

.....

¹ Due to the sensitivity of these survivors' circumstances, their identities shall remain anonymous, and they will be referred to using their initials throughout this publication.

revolution, humanitarian response efforts, community protection initiatives, and legal advocacy. The conflict has also created unexpected opportunities for renegotiating traditional gender roles.

Recommendations

This research calls for comprehensive reforms focused on:

- Revising the 1991 Muslim Personal Status Law with the aim of repealing and revising discriminatory guardianship provisions;
- Explicitly criminalize marital rape, forced and child marriage;
- Enacting strict laws to combat violence against women and girl in all its forms;
- Repealing or substantially amending legislation that disproportionately target women, including public order laws;
- Strengthening the capacity of the judiciary and law enforcement through gender-sensitive training;
- Establishing legally binding protections for women in conflict and displacement settings;
- Ensuring equitable access to justice across all regions;
- Ratifying and implementing international women's rights instruments, including CEDAW and the Maputo Protocol; and
- Promoting Islamic legal interpretations that support gender equality and human rights.

INTRODUCTION

The relationship between law, religion, and gender in Sudan has historically shaped women's lives, influencing both their legal status and individual rights. At the core of this complex relationship comes the concept of *Wilāya*, a classical notion under Islam that grants men guardianship over women, justified through kinship, societal obligations, and selective interpretations of religious texts. While *Wilāya* is not unique to Sudan, its legal codification and cultural entrenchment within Sudanese communities provide a distinctive case to examine the interplay between religious norms, legal systems, and gendered power relations.

Sudan's legal framework, particularly its **Sharia-derived personal status laws**, draws heavily on Islamic jurisprudence, including legitimising men guardianship. These laws regulate family relations, marriage, divorce, child custody, inheritance, and women's mobility rights. Beyond legal mandates, guardianship extends to gendered household hierarchies, enforcing concepts like “**home obedience**” or “**haq al-habs**”, which theoretically requires a guardian's consent for employment, travel, healthcare, and other personal decisions. Men guardians have systematically instrumentalized these theoretically extreme provisions, in varying degrees, to constrain women's agency. According to MirHosseini (2006), what is generally referred to as Sharia law is in fact human fiqh (jurisprudence), since legal rules derive from “Islamic jurisprudential texts, which define the terms of the sharia,” (2006, p.632) rather than directly from immutable divine commands. The regulations governing gender and family relations therefore reflect “prevailing interpretations of the sharia,” shaped within specific historical and sociopolitical contexts. This situates personal status laws squarely within the domain of *mu‘āmalāt*—the sphere of social and legal relations—which classical Islamic jurisprudence recognises as open to interpretive reasoning and change. As such, these laws are not fixed divine mandates but historically contingent constructions and remain subject to reinterpretation through *ijtihad* - independent, scholarly reasoning, in response to evolving norms of justice and equality. However, the potential for such reinterpretation remains largely hindered by dominant patriarchal norms across different Muslim societies.

From 1983 and the entrenchment of political Islam, adopted under Former President Ja'far Numeiry's regime,² a remarkable shift in the Sudanese personal and family laws took place. Later, with the arrival of Former President Omar al-Bashir to power, this Islamization deepened, blurring the boundaries between state law and the social interpretation of religious doctrine.

¹ *Sudan's Former President between 1969 – 1985.*

The **1991 Muslim Personal Status** Law, for example, paved the road for institutionalized men guardianship by increasingly requiring a male guardian's consent for essential civil procedures, including the issuing of identity documents, birth certificates, and the conduct of legal marriages. This legal architecture serves not merely as a reflection of religious ideals but as a mechanism of state control, reinforcing patriarchal authority and male dominance in both public and private spheres.

While abstract theological debates on *Qawamah* are important, this paper focuses on its everyday articulations in Sudan, where it shapes gender roles, access to employment, freedom of movement, child custody, and broader civic and political participation. The socio-legal landscape becomes particularly complex in the context of Sudan's shifting political conditions. In the wake of Sudan's **2018-2019 revolution**, women played a prominent role in mobilization and protest, contributing to the fall of Al-Bashir and the National Congress Party (NCP)/National Islamic Front regime. Their activism highlighted long-standing structural gender inequalities enforced by guardianship-centred laws. Despite their visibility, women found themselves stuck between the revolutionary peak they had reached and the stiff institutional resistance to reform, as transitional authorities balanced demands for change with the perceived sanctity of Islamic law. The tension has kept questions around guardianship barely touched upon.

Contrary to the 2018 revolutionary zenith, Sudan's current war, which began in 2023, created a general backlash in the discussion of legal reform and women's rights. Yet the harsh experiences of collective community displacements have brought women back to the forefront of confronting the harsh circumstances, including internal/external displacement/asylum seeking together with their dependents, surviving the economic precarity as well as the vast rates of sexual violence and trauma that women continue to face with every step of the way.

Many women navigated these hardships independently, unprotected by the state, their communities or humanitarian organizations, while still constrained by conforming to men guardianship that guards their access to civic procedures. These include obtaining official documents or travelling with minors. Temporary Court closures in war zones and institutional breakdowns amplify these challenges, leaving women unprotected without legal recourse.

Understanding the role of *Wilāya* in the wartime Sudan context, therefore, requires an interdisciplinary approach—one that considers how legal texts, religious interpretations, cultural practices, and political structures coalesce to shape women's lives. It also requires close attention to women's **lived experiences**: how they navigate, resist, or accommodate the power structures that govern them. In this context, women are not merely subjects of

the law but also active agents who confront—and sometimes transform—the meanings and effects of guardianship through their everyday struggles and varying forms of participation.

This paper examines how *Wilāya* manifests in Sudanese women's lives, intersecting with broader challenges of gender justice, civic engagement, and Islamic identity. The central argument is that the **intersection of men guardianship, Sharia-derived law, and women's societal participation** creates tension between women's mobilization for equitable participation and the constraints of legal guardianship. The research explores these tensions through women's direct interactions with the legal system, confronting both patriarchal social norms and formalized legal frameworks amid a context of conflict with weakened law enforcement.

This report uses the term “men”, rather than “male guardianship,” in its title because it refers to the gender roles prescribed under a specific legal code currently in force in contemporary Sudan. Accordingly, the term “men” extends beyond the biological meaning of “males,” which would exclude certain categories from exercising guardianship roles, such as male children, persons deemed legally imprudent, and persons lacking legal capacity.

This choice is also based on the Sudanese legislature's use of the term “men”, rather than “males,” in the formulation of legal provisions to convey the meaning outlined above. The English terminology adopted in this report therefore reflects this specific legal usage.

Using a feminist, lived-experience lens, the research investigates how Sudanese women navigate guardianship while asserting rights in legal and civic arenas. Key research questions include:

- a) How does men guardianship (*Wilāya*), as enforced through Sudan's Sharia-derived legal system, shape women's civic and political participation?; and
- b) In what ways do Sudanese women navigate and resist socio-legal structures of *Wilāya* to claim rights in public and private spheres?

Methodology

To address these inquiries, the study adopted a **qualitative, exploratory methodology**, combining primary qualitative data collection with a desk review of secondary sources. **Primary data** were gathered via semi-structured key informant interviews (KIIs) and focus group discussions (FGDs), conducted both in person and remotely using purposive sampling. Secondary data included critical reviews of Sudan's **Muslim Personal Status**

Law and other family-related laws within the national legal framework, analytical papers, reports, and media articles.

Key informant interviews were conducted remotely with individuals selected for their direct experiences or expertise which include:

- Women with experiences of violence (sexual, domestic, public, workplace, or rape), reflecting diverse contexts (urban/rural, age, education, economic status, family and marital situations, employment), and who had an experience of a direct interaction with legal institutions (police, courts, security units), to obtain reflections on their experiences.
- Legal experts, including female lawyers, judges, women's rights defenders, and women engaged in peace negotiations.
- Organizations and individuals advocating for women's rights, particularly on male guardianship under Islam, legal reform, and emergency legal aid.

Two (2) FGDs were conducted:

- **Virtually** with non-Sudan-based participants, including women activists, human rights defenders, and lawyers in exile.
- **In-person FGD** at SIHA's office in Kassala State with women human rights defenders and lawyers from diverse political affiliations, geographic origins, and varying displacement experiences.

Data collection strictly adhered to **do-no-harm principles**, ensuring participant safety, confidentiality, secure data storage and encryption, and anonymized analysis. While constrained by logistics, time, and security, the research opens a space for serious discussions on how legal enforcement shapes women's everyday lives and opens pathways toward legally binding frameworks of protection for women and girls in conflict and post-conflict contexts.

Analytical outputs are structured around four (4) overarching themes:

- 1) **Conceptual framework:** Engagement with the available literature, which provides a conceptual framework to political and legal debates around male guardianship within the Sudanese legal framework.
- 2) **Precedents of Sexual and Gender Based Violence (SGBV) in Sudan:** The second part of this paper analyses the present noteworthy precedents of SGBV in Sudan, which have informed engagements with legal codes and protection measures. It problematises the recourse to gendered norms and their connection with the institutions of the state, to situate how these modalities impinge on the circumstances of the war, which started in April 2023. This includes analysis of historical cases and their influence on legal codes and protection measures.

- 3) **Weaponization of SGBV During Wartime;** The third section discusses how precedent cases of SGBV in Sudan could inform us within a war context, and how state institutions can conduct reforms in the context of violence. Pertaining to male guardianship, in ensuring better protection for women and girls.
- 4) **Women's Experiences with the Legal System;** The fourth section invests in the analysis of field data, addressing how women's lived experiences in the current war are faced with multiple challenges in relation to law enforcement and protection. This pertains to the status of women within the public space and how, in the current context, they exert efforts to provide care, protection, and contribute to bolstering food security within local communities (e. g, working within Emergency Response Rooms (ERRs)). Such remedial measures take place, while the provision of mutual aid continues to be subjected to constant attack. The section delineates the measures that are deployed to respond to these challenges and to offer protection through the prism of the law. Testimonies of activists and lawyers present the stakes and requirements related to alleviating the negative effects of war on the Sudanese landscape. Their claims highlight the thorny process of establishing the parameters of sound legal practice and its limits as the war rages on. Finally, the paper provides recommendations based on insights given by lawyers and human rights defenders during the research.
- 5) The study concludes with **recommendations** informed by activists and legal practitioners for improving women's legal protections and societal participation in Sudan.

7. Unpacking Guardianship

In Sudanese legal and policy discourse, men guardianship is articulated through the concepts of Qawamah and **wilāya**, with **wilāya** serving as the dominant term in jurisprudence and statutory law. Linguistically, **wilāya** conveys authority and control, while in Islamic legal doctrine it refers to a legally sanctioned power enabling a guardian to make binding decisions within the scope of guardianship without external approval. This doctrinal framing has direct implications for women's legal autonomy and access to rights.

Sudanese legislation codifies guardianship in **Article 233 of the 1991 Personal Status Law**, encompassing two (2) domains:

- **Guardianship over the person** – covering care and decision-making authority over minors and individuals legally classified as such.
- **Guardianship over property** – relating to the management of their financial affairs.

The law assigns guardianship primarily to the father, followed by male agnatic relatives according to Islamic inheritance hierarchies. Eligibility is explicitly restricted to males who are Muslim, mentally competent, trustworthy, and capable of fulfilling guardianship obligations.

Importantly, guardianship under Sudanese law extends beyond marriage. Marriage guardianship, specifically regulated under **Article 32**, follows the same eligibility criteria. The law ranks guardians along the patrilineal line and stipulates only two (2) circumstances for revocation: **Article 36**, which states that **“If the guardian fails to provide maintenance for a full year without valid excuse, his guardianship lapses,”** and **Article 37/1-2** which transfer authority over marriage to the court if a guardian refuses consent, allowing judicial authorization of marriage where guardians unjustifiably block it.³

Lawyer and human rights defender Ahmed Sebar notes differences among Islamic jurisprudence schools regarding marriage guardianship. The Hanafi school equates personal autonomy with equality for both sexes once of legal capacity, while the Ibn Hanbal, Al-Shafi'i, and Malik schools restrict guardianship to males, preventing a woman from undertaking marriage by herself. From his view, this divergence of opinions highlights the gravity of marriage in Islam and the significant set of rights and obligations of spouses and children.

In Sebar's view, this jurisprudential divergence, together with the direct implications of marriage for women's rights and the mutual obligations within the family, calls for a serious review of the legal provisions and laws governing the family and marital relations. In this regard, lessons can be drawn from the experiences of many Muslim-majority countries that have prioritised the interests of the family, women's rights, the protection of children, and their psychological and social well-being by adopting modern family laws grounded in jurisprudential interpretations suited to changing social and cultural realities.

1.1 Historical Precedents of Sharia Law Reforms

During the Turko- Egyptian rule (1821- 1885), Sudan was subordinated to secular and state imposed legal codes. Islamic judges (qadis) only handled family and personal status matters, using the Hanafi school of law. This stood in opposition to the Maliki school used by the local Sudanese. (Mufti 1959) The administration manipulated Islamic inheritance law to take over land. The Mahdist reversed these measures and imposed a rigid version of sharia law.

Later British colonial rule in Sudan (1898- 1956) did not merely respond to religious diversity; it **reordered and formalised** it to make the country governable after the Mahdist revolt (1881- 1885). As Sharkey (2003, 2012) shows, British fears surrounding Muslim “fanaticism” shaped policy in education and administration.

.....
² Article 37 states that “(1) If the guardian refuses to marry off his ward, she may request the judge to authorize her marriage, and (2) the judge may authorize the marriage of the applicant if it is established that her guardian has refused the marriage without legitimate legal justification.”

Gordon Memorial College drew its students from specific geographical regions on the basis of alliances formed with their forebears who were local notables (Ahmed, 2003). These ruling strategies ultimately resulted in the strengthening - through formal educational avenues- of an Arabic speaking Muslim elite largely hailing from Northern and central Sudan. The social and political outlooks of this educated class, which formed the “efendiya” (Batthani, 2024) became hegemonic and informed the troubled history of Sudanese nation building (Alier, 1990). Significantly, colonial authorities did not preserve sharia a static religious system; they bureaucratised and reshaped it through courts, circulars and selective reliance on Hanafi and Maliki doctrines (Fluehr-Lobban 1983; Jeppie 2008). In this sense, colonial rule attempted to reduce Sudan’s social and religious diversity into administratively manageable categories through a logic of control (Boddy, 2007; Brown 2017). Notwithstanding, Sudanese social life continued to exceed this imposed categorisation

The issue of marriage guardianship has been historically contested in Sudan’s legal context. Before 1933, **the Hanafi principle**, which recognized the bride’s consent as sufficient for a valid marriage, prevailed. **Judicial Circular 35 (1933)** introduced the Maliki rule, granting the guardian—usually the father—the final authority in marriage contracts, citing conformity with Sudanese customs (Fluehr-Lobban:1981; Akolawin:1973). British colonial rule in Sudan did not merely respond to religious diversity; it **reordered and formalised** it to make the country governable after the Mahdist revolt. As Sharkey (2003, 2012) shows, British fears of Muslim “fanaticism” shaped policy in education and administration, while Gordon Memorial College was used to cultivate a narrow, largely Arabic-speaking Muslim elite from the north whose social and political outlook came to stand in for the nation. At the same time, colonial authorities did not preserve sharia as an untouched religious system; they bureaucratised and reshaped it through courts, circulars, selective reliance on Hanafi and Maliki doctrine (Fluehr-Lobban 1983; Jeppie 2008). In this sense, colonial rule worked by reducing Sudan’s social and religious complexity into administratively manageable categories; a wider logic of control that Boddy (2007) and Brown (2017) each illuminate in different ways, even though Sudanese social life continued to exceed this imposed categorisation.

In 1960, following Sudan’s political independence, and under pressure by the Sudanese Women’s Union (SWU), the Grand Qadi Sheikh Mahjoub Osman reinstated the Hanafi principle, emphasizing that explicit bride consent was essential, although guardians retained the right to refuse marriage. Courts increasingly saw women challenge their guardians’ authority, seeking judicial approval for marriage. Subsequent legislation issued in 1972 clarified that consent could be express or implied, while **Judicial Circular 59 (1973)** recognized divorce on grounds of cruelty (**talāq al-darar**), including both physical and mental abuse, with evidence admissible from witnesses, confessions, or criminal records (Fluehr-Lobban:1981).

Legal reforms also addressed **waqf (religious endowments)**, reflecting concerns over wealth concentration and Koranic inheritance compliance. **Circulars 57 and 58 (1970)** allowed revocation of personal **waqfs** and ensured heirs' rights were protected. Under Grand Qadi Sheikh Mohammed el-Gizouli **(1973–1979)**, reforms clarified judicial divorce for cruelty, women fleeing abuse, and child custody maintenance orders, demonstrating a blend of legal theory and social reality in addressing contemporary family law challenges (Fluehr-Lobban:1981). Until the late 1980s, family law reform was carried out from within, relying on **Judicial Circulars (Manshurat)** rather than parliamentary legislation, concentrating administrative and legislative authority with the Grand Qadi as the chief justice for Sharia courts, issuing administrative directives/circulars. While this centralized administrative and legislative power in the hands of Sharia Courts and away from the Parliament, it also allowed for negotiation, as in the example of the SWU, which was able to exert the pressure that brought about reforms pertaining to consent as a condition for marriage.

The 1991 Personal Status Law, however, was the first to unify family matters under a singular Sharia-based legal framework within broader constitutional structures. The consequences of this form of legislation have resulted, among others, in the de-harmonization of Sudan's family laws with the international legal framework.

1.2 International Frameworks vs Sudanese Law

The **Universal Declaration of Human Rights (UDHR, 1948)** recognizes the inherent dignity and equal rights of all humans without discrimination based on sex, race, religion, or social status, establishing the foundation for freedom, justice, and peace and obliging states to protect these rights (UN General Assembly, 1948). Male-only guardianship (**wilāya**) contradicts this principle by discriminating against women.

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)** reinforces this by granting women equal legal capacity, requiring the repeal of discriminatory laws, and explicitly addressing marriage: rights to freely choose a spouse, equality of responsibilities during marriage and divorce, reproductive rights, guardianship and custody of children, and prohibition of child marriage (CEDAW, 1979, Arts. 2(c), 2(f), 5, 16).

Similarly, the **International Covenant on Civil and Political Rights (ICCPR, 1966)** affirms equality between men and women (Art. 3), freedom of movement (Art. 12), and equality before the law (Art. 26), principles undermined by men-only guardianship (UN General Assembly, 1966, Arts. 3, 12, 23, 26). Article 23 emphasizes the family as the basic unit, granting equal rights and free consent in marriage, equal treatment in marriage and divorce, and protection of children's best interests.

Under the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** (the Maputo Protocol, 2005) Article 2 also obligates state parties to combat all forms of discrimination against women through appropriate legislative, institutional and or other measures. Article 6 also provides for extensive rights in relation to marriage for women. The provision categorically states that men and women shall enjoy equal rights and are to be regarded as equal partners in marriage. Under Article 6(a), no marriage can take place except without the free and full consent of both parties. Articles 6(e) -(j) further outline all other rights which women have within marriage or by mutual agreement, related to selection of matrimonial regime, place of residence, the right to retain her maiden name, nationality, mutual contribution to safeguarding the interest of the family and child and the right to acquire, administer and manage her own property freely. Article 7 equally provides for the equal rights of women within the sphere of separation, divorce and the annulment of marriage.

Collectively, these instruments challenge male-only guardianship, affirming women's legal equality and participation in family and social life. However, it is noteworthy to mention at this stage, that while Sudan ratified the ICCPR in 1986, it has not signed or ratified the CEDAW. Further, though it has signed the Maputo Protocol, Sudan has not ratified the same.

Sudanese thinker Abdalla An-Naim distinguishes between **"Sharia"** and the English translation of **"Islamic law"**, highlighting confusion between religiously derived norms and positive state law. In An-Naim's view, Sharia is conceptualized as both Islam's spiritual dimensions and **"the interpretation and practice of divine guidance as indicating the possibility of Islamic principles influencing national policies and legislation"** (An-Naeim:2012, p.28).

An-Naim stresses that this influence can occur without conflicting with constitutional democracy or human rights standards. The central issue, according to An-Naim, is defining the legitimate and realistic scope of this potential influence—particularly in relation to what he calls **"Islamist politics,"** referring to "political actors, whether organized as political parties or not, who are pursuing an agenda that they believe is mandated or required by their understanding and practice of Islam in general or Sharia in particular" (An-Naeim: 2012, p. 29).

In the case of the 1991 Sudanese Personal Status Law, the state's interpretation of Sharia, under the National Islamic Front, cannot be separated from the political and legal framework in which the law was formed. Therefore, it is essential to situate this discussion of sharia-based laws at the heart of its political setup. Scholars examining Muslim women's rights within Muslim-majority societies often frame debates over Islamic legislation as

sensitive, perceived as challenges to a religious belief. However, the underlying focus of such analyses primarily explores the political, socio-cultural, and ideological interpretations of Sharia within Sudan's specific societal landscapes.

2. Precedents of SGBV in Sudan

Sudan has a long history of SGBV being used both as a tool of political repression and as an instrument to enforce patriarchal social norms. The following cases illustrate the legal, societal, and political dimensions of SGBV, providing crucial context for understanding the April 2023 war's gendered impacts. While the following cases focus on a limited number of well-documented individual incidents, this should not be taken to obscure or diminish the centrality of Darfur in the history of sexual and gender-based violence in Sudan. On the contrary, the mass sexual violence and racialized targeting perpetrated in Darfur marked a defining moment in exposing the scale and criminality of such violence; however, much of this history remains unevenly documented in narrative detail, with available records often confined to aggregate reporting rather than fully documented individual testimonies.

2.1 Case 1: Case 1: Rape of Activist S.I.

S.I. was an activist within the Girifna movement ("We are disgusted, we are at the end of our tether") and played a prominent role in mobilizing for political and social change. On February 13, 2011, she was raped by three (3) members of the National Intelligence and Security Service (NISS) at the notorious Shendi headquarters in Khartoum North following her participation in a public protest. The Girifna movement issued a declaration a year later, emphasizing the gravity of the incident.

The security forces attempted to suppress media coverage and legal accountability. Female journalists **Fatima Ghazali** and **Amal Habani** were imprisoned for reporting on the case. Other figures, including **Faisal Mohammed Salih (journalist)**, **Omar Al Garrai** (academic), and **Nahid Mohammed Al Hassan** (medical doctor and writer), were also accused in court.

Fourteen years ago, S.I. overcame the **societal stigma surrounding rape** by publicly speaking about her assault in an interview with Al Hura TV (YouTube, Girifna TV). She obtained a medical violations report (**Form 8**) from Kafouri police station after hospital documentation confirmed sexual assault. Officials attempted to dissuade her from filing her case, which she perceived as a direct threat. Ultimately, she had to leave Sudan due to health and safety concerns.

In her interview, S.I. reflected on her family's initial rejection of speaking out, yet she did not regret her decision, as it was grounded in her conviction that public change in Sudan

was necessary. She framed her personal cost as part of a broader struggle for civic and political rights for all Sudanese oppressed by the governing regime.⁴ She expressed confidence that future generations would continue to push for political and social reforms.⁵

Some comments of her interviews on social media reflect the interplay between shame (dominant social norms) in Sudanese societies and how it is deployed to curb political and social resistance. Furthermore, she was condemned for her perceived political leanings and attacked on the grounds that she had chosen less than illustrious political allies since they were clearly opposed to the then government and were communist, based in Juba (linked to being part of Juba-based SPLM factions also shaped public perceptions, foreshadowing South Sudan's eventual secession in July 2011).

2.2 Case 2: N.H. – Marital Rape and Legal Consequences

N.H. was forcibly married at age 16 in Bagair (Gezira State), 40 km south of Khartoum. She fled to Sennar state but, upon returning, endured collective rape by men summoned by her husband, who also attempted to rape her. In self-defence, she fatally stabbed him. Her father brought her to the police station to prevent retaliation from the deceased husband's family.

N.H.'s case highlights that marital rape is not legally recognized in Sudan. Tried at age 19 under **Article 130 of the Penal Code (premeditated murder)**, she faced the death penalty. Human rights organizations, including SIHA Network, the European Union, UN Women, SEEMA Centre for the Protection of Women and Children, and No to Women's Oppression, intervened, and she spent a year in Omdurman prison before her verdict on 24 May 2018, in which she was formally sentenced to death for the premeditated murder of her husband.⁶ This conviction was eventually quashed on appeal and reduced to manslaughter, under which she was sentenced to five (5) years imprisonment, after massive global outrage.

The case illustrates the reliance on Quranic injunctions (sharia corpus), including **qasas (retribution)**, which affords the victim's family options of financial compensation, pardon, or capital punishment. N.H.'s conviction raises critical questions about victimhood and the definition of domestic violence under Sudanese law.

⁵ *The National Congress Party, in power at that time, was a ruthless offshoot of the Islamist regime which had taken power in 1989 only to split in 1999.*

⁶ See (Nur: 2019).

Sudan's **1991 Personal Status Law** is at variance with the international human rights instruments highlighted above as it permits the marriage of minors from 10 to 18 under judicial supervision. In practice, civil and religious marriage distinctions are often obscured. Implementation gaps are evident: the Maliki school of jurisprudence, adopted under the 1983 law⁷, requires consent from the potential wife regardless of male guardian approval, yet this was ignored in Noura's case. This indicates that Sudanese criminal law integrates multiple sources, including British colonial penal code elements, Egyptian civil code, and 1983 *hudud*-based laws. Such legal plurality could often lead to a unified legal process.

While the amendment of Sudan's criminal law theoretically allows consideration of marital rape, judges have ruled that husbands are entitled to sexual activity with non-consenting wives.⁸ Gender biases limited female representation among lawyers and judges, and subjective interpretation influenced these decisions.

2.3 Case 3: Guardianship and Rights of Minors – Samah Al Hadi

Samah Al Hadi, a 14-year-old minor, was killed by her father on **March 19, 2021** for leaving the house without permission. He ran her over with a car before fatally shooting her three (3) times. The family claimed the bullets were fired accidentally while cleaning the gun and refused an autopsy.

Although the prosecutor initially requested an autopsy, it was halted by another office order. Samah's case underscores the **conflict between guardianship rights and the protection of minors**, raising questions about accountability and the state's role in preventing domestic violence.

2.4 How Former SGBV Precedents Inform the April 2023 War

S.I.'s case set a precedent as one of the first Sudanese women to publicly speak out about rape, highlighting its use as a political tool of oppression. Similar dynamics occurred during the 2018/2019 revolution, including assaults on activists such as Ahmed Kheir by security agents in Kassala. Sites of prior detention were repurposed for political repression, showing how GBV functions as a mechanism of state control.

Security forces sought to undermine Safia politically by circulating her **Form 8 Medical Report** online, framing her as immoral, leveraging societal stigma to suppress dissent.

.....
⁷ Article 12 (1991 Muslim Personal Status Law) permits self-defence in cases of rape.

⁸ Article 149 (amended 2015) (1991 Muslim Personal Status Law) defines rape as non-consensual sexual contact involving force, intimidation, threats, or detention, considering age and capacity.

Cyber tools, including fake social media accounts (**jidad electroni**), became instruments of political control, undermining revolution, civil governance, and social cohesion, setting the stage for the overall treatment of women evident in the current the April 2023 war.

N.H.'s case, widely publicized due to her husband's death, demonstrates how **latent domestic violence** often goes unnoticed. Rape as a weapon of war blurs public and private spheres, inviting new interpretations of stigma. Police handling of SGBV cases is equally problematic: in N.H.'s case, the reporting officer lacked the required rank (**lieutenant colonel**) under Section 29, Chapter 1 of the Sudanese Evidence Act (2003), which her defence used to challenge admissibility.

Samah Al Hadi's case shows authorities framing death as natural to allow burial before autopsy, violating the victim's right to justice. Civil society organizations, including SEEMA, demanded an autopsy, highlighting issues of domestic violence, family rights, and public protection. This case interrogates guardianship, state authority, and societal responsibility, illustrating how legal and institutional power can shield perpetrators.

Collectively, these three (3) cases show how Sudanese state actors have historically used GBV to manage dissent. Rape, manipulation of legal code, and procedural failures are entrenched forms of state violence since 1989, reinforcing civilian control and legitimizing political repression through gendered means.

Furthermore, cases of sexual violence had proliferated during the civil war in Sudan between 1983 - 2005 (Kemble et al, 2016). This marked a precedent which developed during the war that started in Darfur in 2003 (as indicated below in the feminist statement of August 2023, Abdullahi, 2016). The violations that took place in Darfur are noteworthy in pointing to the dangers of impunity. The massive level of rape and gender-based violence that took place at this juncture is an important turning point in calling to attention the spread of such violations in Sudan across time ⁹.

3. From Precedents to Practice: Weaponizing SGBV in Wartime

The April 2023 war in Sudan introduced new and intensified forms of SGBV, building on historical precedents while reflecting wartime dynamics. Rape and sexual violence were

.....

⁹ At the time of writing an important report became public by the ICC, representing a step forward on evidence-based prosecution in Darfur's case. See PUBLIC REDACTED VERSION of Amicus Curiae Observations on Reparations Issues with Public Redacted Annexes I, II, and III | International Criminal Court, ICC-02/05-01/20-1345-Red, 03 June 2026 Case: The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb") on the Situation in Darfur, Sudan, <https://www.icc-cpi.int/court-record/icc-02/05-01/20-1345-red>

and continue to be strategically used by armed actors, particularly the Rapid Support Forces (RSF), not only to terrorize women and girls but also as tools of humiliation against male adversaries. These practices are rooted in longstanding social and cultural understandings that frame women as custodians of male honour (Ahmed Abdel Aziz: 2019).

According to the Feminist Statement Against the War in Sudan, reports issued in 2014 and 2015 testify to widespread sexual violence all over Darfur that remains unpunished. In this current and ongoing war in Sudan, agents within the Sudanese Armed Forces (SAF) have allegedly participated in opportunistic rape, while the RSF has used rape as an overall war strategy.

The statement cites some sources of information contained in reports by local, regional and international organisations such as the Unit for Women and Child Protection, Darfur Lawyers' Unit, the African Centre for Justice and Peace Studies, the Future Centre for Enlightenment and Development as well as SIHA Network.¹⁰

3.1 The Risk of Normalization of Violence through Political Justifications

It is well documented that at the outset of the war, women engaging in informal sector enterprise—such as tea selling—in Greater Khartoum were exposed to violence by armed men from both the RSF and SAF. However, attacks were more numerous under RSF controlled areas, including forced domestic labour, followed in some cases by retaliatory punishment by SAF actors after women were released (Ali: 2024). From this perspective the role of these women as providers of care was trivialised, and therefore depoliticized. This fits into wider discussions that underscore the invisibility of these types important roles. These manifestations are coupled with the circumstances of the current war, whereby physical violence against women rapidly spread across the country and became an unparalleled phenomenon in Sudan's modern history. Violence was increasingly normalized and serves as a marker of political alignment. Women, girls, and children of all genders bare the disproportionate brunt of this relentless violence (SIHA: 2025).

It is noteworthy to mention that prominent members of Sudan's Republican Party—who had previously not been overtly involved in contentious party politics and who were generally predisposed to non-violent political action—adopted, in the context of this war, more virulent positions. Some called for the annihilation of remnants of Islamist movements,

.....
¹⁰ *Feminist Statement Against the War in Sudan, (August 30, 2023), available at: <https://feministconsciousnessrevolution.wordpress.com/2023/09/14/%D8%A8%D9%8A%D8%A7%D9%86-%D9%86%D8%B3%D9%88%D9%8A-%D8%B6%D8%AF-%D8%A7%D9%84%D8%AD%D8%B1%D8%A8-%D9%81%D9%8A-%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86/>*

widely considered a significant actor in the present conflict, yet failed to openly condemn widespread RSF violence.

For instance, Republican Party member Omer Al-Garrai, previously a defender of N.H., wrote that in the framing of extreme RSF violence, a valuable opportunity was wasted in anchoring the revolutionary values of “freedom, peace and justice “and in calling for the creation of a new national project. Through failing to control outliers within its ranks (some rebels, some Islamists and other forces that are allied with them) it had allowed its image to become tarnished.

His focus is directed against the Islamist regime which had ruled since 1989. In an earlier article the same author holds that the Islamists were attempting to regain lost power through this war which they describe as a war of dignity (harb karama) even though the leader of SAF himself admitted that it was “absurd. His view is that those who refuse to fight on the side of the Islamist state are condemned as traitors.¹¹

The political thinker Al Nour Hamad expressed the inevitable nature of violence during war and the accompanying proliferation of extra judicial killings. In an interview with Al Tagheer Newspaper (Praxis platform interview with thinker and researcher Dr. Al-Nour Hamad, 2025¹²) he expressed that the one who starts wars should not complain about the ensuing violations and excesses. He held that the Islamists (with a stronghold within SAF) had started the war to combat the RSF because the latter had supported the framework agreement.

Other academic voices have engaged in noteworthy discussions - for example by Mohamed Jalal Hashim, Ushari Khalil, Abdel Ali Ibrahim to cite a few- that have articulated support for SAF during the current war circumstances. This is based on the argument that the RSF is being bolstered by external actors who benefit from the weakened sovereignty of the Sudanese state. This fragile condition would facilitate the extraction of the country’s natural resources. Indeed, in such a fraught context, broader accusations have proliferated across the heterogeneous Sudanese landscape about the Forces of Freedom and Change (FFC), Taqadum (later Somoud) being complicit with the opposing system of governance representing the RSF (Tasis) and its allies (SPLM/ N- Al Hilu Wing) and specific external actors deemed hostile to the Sudanese state.

.....
¹¹ Omer Algarrai, 'What do the Muslim Brothers Want to Do To This Nation,' (May 8, 2023), available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.medameek.com/%3Fp%3D121245&ved=2ahUKEwig5bKH0_2UAXWXTkEAHfOGAMkQF-noECCAQAQ&usq=AOvVaw2IQHRSD2Y50EcewY8GPBQX

¹² Praxis Platform, Interview with Dr. Al-Nour Hamad, (2025) available at <https://praxis-platform.com/%D8%AD%D9%88%D8%A7%D8%B1-%D9%85%D8%B9-%D8%A7%D9%84%D9%85%D9%81%D9%83%D8%B1-%D9%88%D8%A7%D9%84%D8%A8%D8%A7%D8%AD%D8%AB-%D8%AF-%D8%A7%D9%84%D9%86%D9%88%D8%B1-%D8%AD%D9%85%D8%AF/>

With such polarising diagnostics on the nature of war (subject to diverse perspectives whose deeper elaboration is beyond the scope of this report) there is a failure to convey the actual physical suffering that women endure. One can only ponder whether women's bodies get lost in political discourses. In such contexts, it is worth reminding those who have the power to act and express their views publicly, that violence against women should be condemned even when an atmosphere of heightened political fragmentation prevails. Women's suffering should not feature as a naturalised part of the conflict, becoming inherently decriminalized.

3.2 Risks for Women: Accusations of Treason and the Empty Shell of Protection

In the context of this war, women within Sudan were vilified based on the public order laws, but another new challenge emerged; they are now accused of collaboration with the RSF when they remained in areas under their control, further exacerbating their vulnerability. Tensions based on ethnic attributions and social misperceptions, which have reinforced inaccurate accusations surrounding the existence of a law perceived as the "law of strange faces,"¹³ have led to women being imprisoned and subjected to humiliating treatment on the basis of this unwritten and *de facto* policy. Eventually, some women were released after the immense pressure exerted by local and international rights-based actors and organisations. However, these measures are *ad hoc*, dependent on advocacy rather than a consistent legal framework.

A notable instance involved General Burhan, who, following a visit to Omdurman Women's Prison, ordered the release of 400 women, some of whom were detained with their children. He also ordered the cancellation of fines under **public order laws** and called for investigations into accusations of collaboration with the RSF, emphasizing legal review and consideration of duress before formal charges (Atar News, Jan 10, 2026).

The Minister of State for Human Resources and Social Development, Suleima Ishag, described this decision as a humanitarian measure in wartime, highlighting deteriorating prison infrastructure and the coercive conditions women face in conflict zones. She stressed the need to review punitive laws applied to women accused of collaboration, recognizing that women are often victims of coercion and social marginalization. She also

¹³ *Al wjuh Al ghariba - Ethnic targeting is clearly a stake here, as it also pertinently highlighted in the article by Nur in the case of Noura Hussein who was from Darfurian origins. The "Strange Faces Law," is an uncoded practice or policy which provides a basis for law enforcement apparatus to scrutinize individuals with differing facial features to the local populations they are found in, as a means of restricting access of those suspected to be RSF or allied, within SAF controlled territories. In fact, there is no such law that currently exists in fact. However, this practice enables common stereotyped profiling based on ethnified perceptions.*

highlighted the ways in which the war has intensified women's suffering and expressed hope that the decision would gain nationwide reach (Atar News, Jan 10, 2026).

3.3 Legal Concerns Raised by Practitioners

Interviews with several legal experts have raised significant concerns regarding the **constitutional and legal basis** for such measures. **First**, the Declarations issued by General Burhan as President of the Sovereignty Council invoke the **2019 Constitutional Declaration**, which was drafted post-Islamist regime under a civil–military partnership. However, the Military Council and RSF coup in October 2021, officially described by Burhan as “corrective measures”- suspended Articles 11, 12, 15, 16, 24/3, 71, and 72 of the Constitutional Declaration, effectively voiding the transitional framework.

Following the outbreak of war, subsequent amendments in February 2025 granted the President authority to appoint/dismiss the Prime Minister and merged executive and sovereign powers. The term “Transitional Legislative Authority” replaced the Transitional Legislative Council until the formation of a new body. These constitutional changes reflect political manoeuvring rather than stable legal grounding and suggest future constitutional revisions may follow ongoing political developments, including the **Juba Peace Agreement**-related amendment, the RSF rebellion against the army, and the removal of FFC as a civil partner.

Second, decisions which might serve to enhance protection for women seem to be secondary compared to the achievement of political goals. Accordingly, they are less driven by concerns to uphold legal rights. For instance, the decision to release 400 imprisoned women in Omdurman was applied only to that prison and did not establish a binding nationwide framework. According to the formal Sudan News Agency (SUNA), the 400 women—many accompanied by a large number of children—were accused of cooperating with the RSF. AlBurhan's decision was accompanied by a directive—in his words—for “a legal reclassification and review of the status of detainees accused of collaborating with militias, in order to expedite judicial procedures and guarantee their rights. In addition, I issued a directive for a comprehensive review of legal procedures and the justice system, to mitigate the impact of the conflict on them and ensure the fair application of the law while taking into account the exceptional circumstances our country is experiencing.”¹⁴

What we see here is not discrimination against women in general, rather than one based on socio-economic and class. The accused women are typically those without the neces-

.....
¹⁴ Sudan News Agency, “Al-Burhan Order Immediate Release of 400 Female Detainees, Including Mothers with Children,” (January 9, 2026), available at: <https://suna-sd.net/posts/al-burhan-orders-immediate-release-of-400-female-detainees-including-mothers-with-children>

sary resources or networks which would allow them to leave Khartoum. Their inability to escape RSF occupation cannot be separated from their socio-economic life histories—many were single mothers or widows who had already been displaced from conflict-ridden regions prior to arriving in Khartoum, where they survived under precarious conditions as street vendors and informal labourers.

According to a lawyer in Kosti, White Nile State, such regional, class-based disparities in judicial circular application were significant even before the war; conflict has further disrupted uniform law enforcement, leaving women vulnerable in multiple regions.

4. Law Enforcement, Social Norms, and Women's Experiences in Wartime Sudan

The above discussion raises critical questions about how social actors are framed as either victims or perpetrators under the law. This section focuses on the interaction between legal frameworks and societal norms, which sometimes evolve and at other times remain static. The ongoing war in Sudan provides a sharp lens through which to examine how these norms interact with law enforcement on the ground, profoundly affecting women's lives. Drawing on ethnographic testimonies, this section problematizes these dynamics of interaction.

4.1 Limitations of Legal Response to Mass SGBV

The massive spread of SGBV cases during the ongoing April 2023 war requires responses through both legal channels and social accommodations. Collected data indicates that survivors face multiple obstacles, particularly when rape results in pregnancy, and even more so if the victim is a minor and/or unmarried.

Sudanese State Minister of Social Welfare, **Suleima Ishag**, reported that over sixty (60) legal abortions for rape survivors were performed in Port Sudan within the ninety (90)-day legal period, establishing a precedent for **state-supported termination of pregnancies** in cases of sexual violence. However, these measures were not standardized across other regions or late-arrival cases. As Ishag noted:

"However, there are other figures that we cannot include, relating to women who were unable to access services in time, or who resorted to methods outside the known legal and scientific framework" (Ishag: 2025).

Sudanese law requires pregnancy termination to occur within ninety (90) days of conception. Yet, legal procedures often take longer, preventing timely access. According to a lawyer in Kosti, White Nile State, her area received large numbers of displaced women

and children fleeing RSF attacks in Gezira, Sinnar, and Sinja as well as from South Kordofan. Many arrived in unbearable humanitarian conditions, yet legal abortions were hard to obtain in a timely manner. She emphasized such logistical and legal barriers as follows:

“In addition to the lack of accelerated legal paths for termination, the public prosecutors who could authorize health practitioners are neither trained nor encouraged to make this decision, as some consider abortion as ‘taking a life (nafs) or the soul (rūḥ) according to Islamic understanding.”

These constraints illustrate how Sudanese legal frameworks, historically politicized and gender-biased, limit access to justice for women, particularly in cases of sexual violence against minors or marginalized populations. Lawyers and human rights defenders highlighted the added challenges in securing justice for vulnerable women living with poor mental health, where legal and societal barriers intersect, making pregnancy termination or legal recourse extremely difficult.

Tønnessen and Al-Nagar (2019) argue that abortion has historically been highly politicized in Sudan, especially under Islamist-oriented regimes with criminalization of pregnancy outside marriage. Legal frameworks effectively conflated moral offence with reproductive crimes, restricting unmarried women’s access to post-abortion care. Furthermore, abortion is highly correlated in societal norms to sinful extra-marital sexual activity (Zina) and thus considered a crime against God, not just a legal crime. In some instances, physicians exercised professional discretion to prioritize medical ethics over mandatory reporting, reflecting the tension between law and ethical practice.

4.1.1 Forced Marriages: An Old Practice in War Bottles

Forced marriages perpetrated by RSF soldiers exemplify the **interplay of social norms, coercion, and legal gaps**. Testimonies indicate that minors were coerced into marriages under threats of violence against themselves, their families, or even marriage officials. Witnesses were often complicit colleagues of the perpetrators. After the RSF withdrew from some of its previously occupied areas, those women and girls were left to navigate their own social and legal fate.

One lawyer explained the legal challenges in addressing forced marriage as follows:

“Proving forced marriage also requires greater courage on the part of law enforcement agencies in defining it from the outset. It has remained one of the most prevalent forms of violence against women, and the RSF’s use of this tactic is not the first, nor will it be the last. A more profound reform of Sudanese criminal law to broaden the definition of forced marriage and recognize marital rape is essential

to criminalize RSF violations and protect women from recurrence, regardless of the perpetrator.”

Furthermore, forced marriage is connected to largely accepted societal patriarchal norms that make it difficult to prove harm in the context of the law. This has clearly been highlighted in the afore-mentioned case of Samah and how her father was perhaps inadvertently given leeway to take her life on the basis of understandings related to his possible legitimate control of her life as her father (with the male parent having more power than the mother). The pattern of forced marriage has been exercised during this war whereby fathers have married their daughters to those who violate them or those who could potentially do so. It is observable that in the chaos of war when fathers marry their daughters off in this manner, the law does not intervene and hence the problem of establishing *darar* (harm) persists. This is an essential challenge to the law since it sometimes contributes to making social harm legal through the rights conferred to guardians (**wali**). This persistent problem is more pronounced now with instances increased through the ravages of war. One of our lawyer informants, based in Kosti/ White Nile state, gave a concrete example of how a judge had refused to attend a workshop which destabilised his cultural beliefs. This example clearly illustrates how the implementation of the law could exist on a selective basis.

4.2 Judicial Disruption and Displacement

The war has severely disrupted Sudan’s judiciary. FGD participants and female lawyers in Kassala (August 2025) reported that temporary or permanent loss of court records complicated women’s claims regarding custody, alimony, maintenance, or divorce. Displaced women are often unable to transfer records from active war zones to displacement areas. This frequently made it incumbent upon them to reinitiate their court cases in new locations, with rising court fees adding additional economic burden.¹⁵

Displacement and the pressure of sharing cramped living spaces with others in camps intensifies domestic disputes and marital violence. Female lawyers highlighted how the lack of private space and the difficulty married men had of sharing intimacy with their partners due to the physical constraints resulted –in several instances – to marital rape, physical abuse, and/or economic deprivation. While divorce filings increased, their underlying social and psychological roots were largely not publicly disclosed.

Furthermore, the issues of Zina must be addressed. In addition to the burdens of war,

.....

¹⁵ According to FGD participants minimum fees in Kassala state reached 12,000 SDG (August, 2025).

the absence of men, and the collapse of legal institutions, the legal system continues to punish women for Zina in circumstances where a husband may have been missing for two years or more.

In 2025, Courts in Haj Yousif and Al-Damazin sentenced two women to death by stoning on allegations of Zina under Article 146 of the Sudanese Criminal Act of 1991, which provides that: “Whoever commits the offence of Zina shall be punished: (a) by death by stoning if married, or (b) by one hundred lashes if unmarried.”

In carrying out charges and sentencing under this law, Sudanese courts continue to act with intransigence and disproportionately target women. This is especially that laws of this nature are not even applied in Muslim-majority countries. Moreover, the requirement of four witnesses makes it virtually impossible for a woman to defend herself against an accusation of Zina.

The urban-centred conflict generated a counter-mobility dynamic, displacing women to peri-urban and rural areas where local socio-cultural norms vary, compared to their familiar environments. Lawyers noted that displaced women were subject to **context-specific judicial interpretations**, whereby the judiciary practice is often synthesized with the local norms that predominated within any given context. This made displaced women more exposed to further layers of vulnerability. A White Nile State lawyer provided an example involving a claim for divorce on the basis of ill-treatment and cruelty, a (*talāq al-darar*) case as follows:

“The wife, an engineer, filed for divorce due to repeated domestic violence. Article 162/1/2 [1991 Sudanese Personal Status Law] defines harm according to social perception among peers or as established through testimony based on public reputation or hearsay. **The court ruled that abuse was not legally classified as harmful if her peers experienced similar treatment.**”

This framework reveals the weight the law places on prevailing social norms, as harm is not legally acknowledged unless society itself recognizes its existence.

This dialectical relationship between Sharia-based law and social norms renders the legal protection of women and girls a matter of conflicting responsibility: the legislator defers to society to define harm, while society, in turn, defers back to the law through recourse to the courts. In the case cited, the lawyer explained that the husband admitted in court to beating his wife. However, the husband’s lawyer appealed under the first clause of **Article 162**,¹⁶ arguing that harm must be assessed in relation to what happens to the woman or

.....
¹⁶ The article states as follows: “(1) A wife may petition for judicial divorce on the grounds of harm that makes continued marital cohabitation intolerable for a woman of her standing and is not sanctioned by Islamic law.

(2) Harm may be established by all legally recognized means of proof, including testimony based on public reputation and common hearsay.”

her peers. He asserted that women within the complainant's family—such as her aunts, cousins, and sisters—had also been beaten by their husbands without this leading to family breakdown or divorce. On this basis, the court ruled that the beating could not be considered legally harmful, as it also occurred to her peers.

The interviewee noted that the law does not specify who qualifies as a “woman in a similar situation,” leaving this determination to the discretion of the presiding judge. From the complainant's lawyer's perspective, the wife's peers—working in the engineering sector—should be defined as those sharing a comparable socio-economic position.

This interpretation raises a critical question about how class and intersectional socio-economic factors influence women's access to justice. Can a judiciary that fails to recognize domestic violence as harm, offer protection to women and girls in more marginalized and vulnerable social classes?

4.3 Shifting Family Decision-Making amid Shifting Legal Reform

Forced displacement altered family decision-making dynamics, particularly regarding mobility. Women, often primary custodians of children, assumed greater decision-making authority, sometimes against guardians' wishes. Paradoxically, the war created opportunities for women to negotiate previously static norms.

For example, in 2020, Sudan's immigration laws were amended to allow mothers to travel with children without written guardian permission. However, this change had no substantive impact on the status of travel for mothers and their children due to the fact that **Article 119 of the 1991 Personal Status Law**, continues to stand as is and take precedence on all family related issues.

The overlapping effects of social norms, legal frameworks, and displacement leave women in precarious positions. They navigate diverse socio-cultural contexts, deteriorating judicial infrastructures, and inconsistent interpretations of laws, intensifying vulnerability while opening limited spaces for negotiation and resistance.

5. Conclusion and Recommendations

The findings of this study demonstrate that men guardianship (**Qawamah and Wilāya**), when embedded within Sudan's Sharia-derived legal framework and reinforced through political instrumentalization and social norms, continues to restrict women's autonomy, civic participation, and access to justice—particularly during periods of armed conflict. The April 2023 war has further exposed the fragility of Sudan's legal protection mecha-

nisms and the disproportionate burden borne by women and girls.

Based on the analysis of legal texts, historical precedents, and testimonies from lawyers, activists, and survivors, the following recommendations aim to address both **structural legal deficiencies** and **practical implementation gaps**, while remaining attentive to Sudan's socio-political realities.

5.1 Legal and Policy Reform

- First, comprehensive legal reform must be prioritized to dismantle discriminatory provisions rooted in guardianship-based frameworks. The **1991 Muslim Personal Status Law** requires revision to eliminate provisions that condition women's legal capacity, mobility, and family-related decisions on male consent. This includes explicit recognition of women's full legal agency in matters of marriage, divorce, custody, and movement, in line with Sudan's international human rights obligations.
- Reform efforts should also address the **criminalization gaps surrounding sexual and gender-based violence**, particularly the failure to explicitly recognize marital rape and forced marriage as crimes. As demonstrated in the cases of N.H. and RSF-imposed marriages, existing laws allow judicial discretion to be shaped by patriarchal norms rather than survivor-centred principles. Criminal law reform should broaden definitions of rape, coercion, and consent, ensuring that legal protections apply regardless of marital status or the identity of the perpetrator.
- Public order laws—originally drafted in Khartoum in 1992 and consolidated nationwide in 1996 under Article 152 of the 1991 Criminal Code—should be repealed or substantially amended. These laws have historically served as tools of moral policing and gendered social control, disproportionately targeting women (Lubna Hussein case, 2009; Fadlalla, 2011). Their continued application during wartime has further exposed women to arbitrary detention, humiliation, and accusations of collaboration.
- Sudan should accede to and ratify key international and regional women's rights frameworks, particularly the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, which Sudan is still not a State Party to, and the **Maputo Protocol**, which Sudan has signed but not ratified and use this process to harmonise domestic legislation so that national laws align with these obligations and do not contradict future constitutional and/or legal reforms.

5.2 Strengthening Judicial and Law Enforcement Capacity

- Second, targeted training for **law enforcement officers, prosecutors, and judges**

is essential to ensure the consistent and unbiased application of the law. Capacity-building programs should emphasize survivor-centred approaches to SGBV cases, evidentiary standards sensitive to trauma, and interpretations of Sharia-derived laws that do not reproduce societal bias.

- Judicial circulars and legal reforms must be applied uniformly across regions. Disparities between Khartoum and peripheral states—already evident before the war—have deepened during the conflict, creating unequal access to justice for displaced women. Establishing **mobile courts**, legal aid units, and standardized procedures in displacement-hosting areas could mitigate these inequalities.

5.3 Protection Mechanisms in Conflict and Displacement Contexts

- Third, protection frameworks for women in conflict zones must be grounded in **legally binding mechanisms**, rather than ad hoc political decisions. While the release of women detainees from Omdurman prison and the cancellation of public order fines represent important humanitarian gestures, their selective and discretionary nature undermines the rule of law. Protection should not depend on political alignment or geographic location.
- Legal safeguards must explicitly recognize **coercion, duress, and survival strategies** adopted by women under RSF or SAF control. Accusations of collaboration should be assessed within the context of forced presence, displacement, and threat of violence. Failure to do so risks criminalizing victims rather than perpetrators.
- Special attention should be given to **minors and women with dependents**, ensuring access to documentation, travel permissions, healthcare, and legal representation without guardian obstruction—particularly during emergencies.

5.4 Addressing Intersectional and Structural Inequalities

Fourth, reform efforts must adopt an **intersectional lens**, recognizing how gender discrimination intersects with class, ethnicity, region, displacement status, and disability. Legal frameworks that ignore these intersections risk reproducing exclusion even under the guise of reform.

Partnerships between survivors, women's organizations, lawyers, and policymakers should be strengthened to ensure that reforms reflect lived realities. Feminist legal advocacy—grounded in women's experiences rather than abstract legal ideals—remains critical for challenging entrenched power structures.

5.5 Bridging Islamic Legal Discourse and Human Rights Standards

- Finally, sustained engagement is needed to bridge the perceived divide between **Islamic identity and women's rights**. Legal reform should distinguish between divine Islamic principles, human *Fiqh* (jurisprudence), and state-enforced “Islamic law” shaped by political agendas. The present-day legal frameworks should be subjected to revision, so they align so they align Islamic principles with constitutionalism, democracy, and human rights, without framing reform as an attack on religion itself.

REFERENCES

- Abdullahi, Fardowsa, Rape as a weapon of war in Darfur, master's thesis in international studies, University of San Francisco, 2016.
- Ahmed Abdel Aziz, Azza. "The Third Sudanese Revolution Reinstates Women from All Walks of Life onto the Map of Sudanese Public Life." In *Noria Special Issue: "Down with the Government of Thieves"*, May 20, 2019.
- Ahmed, Abdel Ghaffar M, " " tribal" Elite : a base for Social Stratification in the Sudan" in Abdel Ghaffar M. Ahmed (ed.) *Anthropology in the Sudan: Reflections by a Sudanese Anthropologist*, International Books in association with OSSREA, 2003.
- Alier, Abel, Southern Sudan: Too Many Agreements Dishonoured, Ithaca, 1990.
- Akolawin, Natale Olwak. "Personal Law in the Sudan—Trends and Developments." *Journal of African Law* 17, no. 2 (1973): 149–95.
- Ali, Nada. "Khartoum's Women Street Vendor Cooperatives and the Politics of Care." *Middle East Report* (MER), no. 310, "The Struggle for Sudan," 2024.
- An-Na' im, Abdullahi Ahmed. "Islam, Sharia and Democratic Transformation in the Arab World." *Die Friedens-Warte* 87, no. 1 (2012): 27–41.
- "An Enduring Relic: Family Law Reform and the Inflexibility of Wilāya." JSTOR. Accessed July 10, 2025. <https://www.jstor.org/stable/26425444>.
- Batthani, Atta, Al tabaqa al wusta fi al Sudan, muqadimat nazariya wa tatbiqiya, The Middle Class in Sudan: An Introduction to theory and Application, Dar Musawarat, April 2024.
- Boddy, J. (2007). *Civilizing Women: British Crusades in Colonial Sudan*. Princeton: Princeton University Press.
- Brown, M. G. (2017). *Khartoum at Night: Fashion and Body Politics in Imperial Sudan*. Stanford: Stanford University Press.
- "Conflict of Laws and Legal Pluralism in the Sudan." JSTOR. Accessed July 10, 2025. <https://www.jstor.org/stable/760119>.
- Fadlalla, Amal Hassan. "State of Vulnerability and Humanitarian Visibility on the Verge of Sudan's Secession: Lubna's Pants and the Transnational Politics of Rights and Dissent." *Signs* 37, no. 1 (September 2011): 159–184.
- Fluehr-Lobban, Carolyn. "Shari'a Law in the Sudan: History and Trends since Indepen-

dence.” *Africa Today* 28, no. 2 (1981): 69–77.

Fluehr-Lobban, C. (1983). “Circulars of the Shari’a Courts in the Sudan (*Manshurat el-Mahakim el-Shari’a fi Sudan*) 1902- 1979.” *Journal of African Law*, 27(2), 79-140.

Halim, Asma Mohamed Abdel. “Women’s Organisations Seeking Gender Justice in the Sudan, 1964–1985.” *Review of African Political Economy* 36, no. 121 (2009): 389–407.

Issuu. *NEGOTIATING SPACE: Sudanese Women’s Access to Vocational Education & Employment*. February 24, 2021. https://issuu.com/halayassin/docs/bgs_report_2020_final_design.

Issuu. *Tracing the Roots of Discrimination in Sudanese Law*. August 31, 2021. https://issuu.com/halayassin/docs/tracing_the_roots_of_discrimination_within_sudanese.

Issuu. *Women in Islam Journal*. Issue 5 (English). May 10, 2021. https://issuu.com/halayassin/docs/210128_siha_eng_issue_5_web.

Issuu. *At the Dawn of Post-Revolution Sudan: A Reflection on the Dynamics of the Women’s Movement*. May 24, 2022. https://issuu.com/halayassin/docs/at_the_dawn_of_post-revolution_sudan_web.

Kemble P et al, Slavery, abduction and forced servitude in Sudan, Report of the Eminent Persons Group, 2002. Posted 2016.

Jeppie, S. (2008). *The making and unmaking of colonial Shariah in the Sudan*. Seminar abstract. [\[phambo.wiser.org.za/\]](http://phambo.wiser.org.za/)

Mir-Hosseini, Ziba. “Muslim Women’s Quest for Equality: Between Islamic Law and Feminism.” *Critical Inquiry* 32, no. 4 (2006): 629–45. <https://doi-org.ezproxy1.bath.ac.uk/10.1086/508085>.

Moghadam, Valentine M. “Patriarchy in Transition: Women and the Changing Family in the Middle East.” *Journal of Comparative Family Studies* 35, no. 2 (2004): 137–62.

Mufti, Husain Sayyid Ahmad, Tatawwur nizam al-qada fi al Sudan. The history of jurisprudence in Sudan. Al-Khartum, 1959.

Nur, Abir. “Noura Hussein condamnée à mort pour avoir tué son violeur.” *Blog Africa* 4, March 13, 2019.

Sharkey, H. J. (2003). *Living with Colonialism: Nationalism and Culture in the Anglo-Egyptian Sudan*. Berkeley: University of California Press.

Sharkey, H. J. (2012). Jihads and Crusades in Sudan from 1881 to the Present. In S. H. Hashmi

(Ed.), *Just Wars, Holy Wars, and Jihads: Christian, Jewish, and Muslim Encounters and Exchanges* (pp. 263-282). Oxford University Press.

SIHA Network. *More than Numbers: Report on the State of Violence against Women and Girls in Sudan, 2023–2025*. December 2025.

Sikainga, Ahmad A. "Shari‘a Courts and the Manumission of Female Slaves in the Sudan, 1898–1939." *International Journal of African Historical Studies* 28, no. 1 (1995): 1–24. <https://doi.org/10.2307/221303>.

"Some Problems of Family Law in the Sudan Republic." JSTOR. Accessed July 10, 2025. <https://www.jstor.org/stable/41716783>.

Sudan. *Civil Procedure Act*. 1983.

Sudan. *Personal Status Law*. 1991.

"The Islamic Legal Revolution: The Case of Sudan." JSTOR. Accessed July 10, 2025. <https://www.jstor.org/stable/40705643>.

Tønnessen, Liv. *Complex Realities and Astute Actors: Sudanese Women's Activism and UN Security Council Resolution 1325*. N.d.

Tønnessen, Liv. "Women in Eastern Sudan." Google search result. Accessed January 26, 2026.

United Nations General Assembly. *Universal Declaration of Human Rights*. 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

United Nations General Assembly. *International Covenant on Civil and Political Rights*. 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

United Nations General Assembly. *Convention on the Elimination of All Forms of Discrimination Against Women*. 1979. <https://www.un.org/womenwatch/daw/cedaw/>.

"Women's International Human Rights Law: The Way Forward." JSTOR. Accessed July 10, 2025. <https://www.jstor.org/stable/762538>.

"Women's Rights in Iran and CEDAW: A Comparison." In *Changing Gender Norms in Islam: Between Reason and Revelation*. JSTOR. Accessed July 10, 2025. <https://www.jstor.org/stable/j.ctv8xnfv0.6>.



**Strategic Initiative
for Women in the
Horn of Africa**

 <https://sihanet.org>
 SIHA Network

 @sihanet  @SIHA-Network  @sihanetwork
 Strategic Initiative for Women in the Horn of Africa (SIHA)
 SIHA Network

 SIHA Network
 SIHA Network

SUPPORT US: <https://sihanet.org/support-us/>