

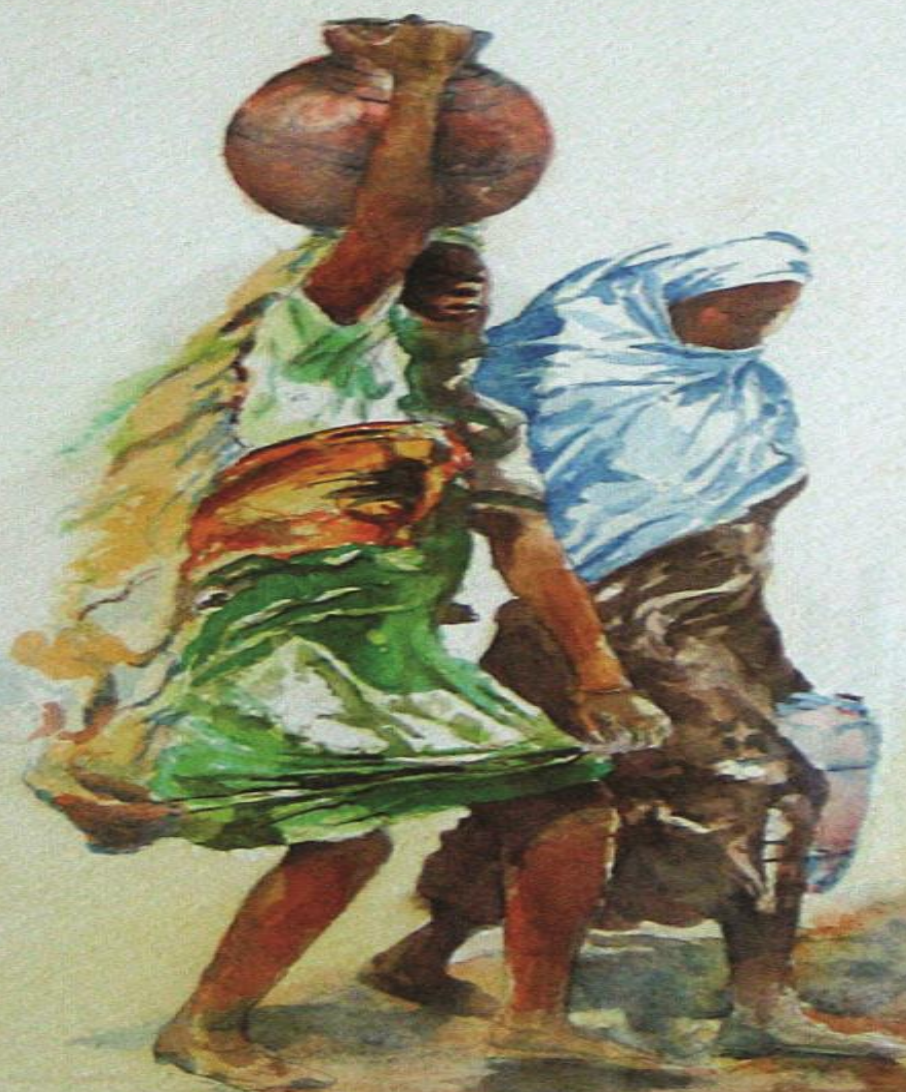


SIHANetwork

THIRD-CLASS CITIZENS

WOMEN AND CITIZENSHIP IN SUDAN

A PAPER ON WOMEN'S STRUGGLE
FOR EQUAL CITIZENSHIP IN SUDAN



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INTRODUCTION

During a hot evening in Khartoum in 2013, while a young girl and her mother were passing by young men playing football in a public yard in one of Khartoum's working class areas, she stopped and fixed her eyes on the boys. Captured by the freedom exercised by the young men, the young girl refused to move ahead even when her mother tried pulling her by the hand. The young girl wondered aloud to her mother why only boys played football on the streets and not girls. The young girl's question draws attention to the inequalities between women, men, boys and girls in Sudan in light of their rights and responsibilities.

Citizenship is a legal and constitutional relationship between individuals and the State, which is based on protection and grants citizens certain rights and privileges. SIHA Network's experiences implementing human rights interventions in the Horn of Africa and particularly Sudan have unveiled the fact, that citizenship does not denote equal rights and duties for all. 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 most 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 establishment of serious reforms and responses.

Awadia Abass, the head of the Women Food and Tea Sellers Union in Sudan shared her story as a roadside tea seller in Khartoum – a business she had been involved in for over 20 years. Awadia recounted, that she had frequently been negatively implicated by the Sudanese Public Order Laws, regardless of the fact that she had a license and was obedient to the regulations. According to Awadia, the administrative law passed in the mid-1990s banned women from working after dark and thus required them to close their businesses even when they had clients. One day Awadia's corner was attacked by the Public Order Police and she was taken to court. During the hearing, the judge asked her why she had been working in the night and Awadia responded by asking the same question to the judge, "why are you working late at night Moulana (your honor)? Awadia informed the judge that she had to work just like the judge and perhaps for the same reasons.

On 11 May 2014, the Al-Haj Yousif Criminal Court in Khartoum convicted a 27-year-old Meriam Ibrahim, born to a Muslim father and Christian mother (considering herself Christian) on charges of apostasy and adultery, declaring her marriage to a Christian void even though her husband had entered the marriage in good faith knowing she was Christian. On 15 May Ms. Ibrahim was sentenced to death and one hundred lashes. She was shackled on 15 May 2014 and forced to give birth to a daughter on 27 May 2014 while remaining in chains. Following consistent advocacy engagement by civil society organizations, the charges on Ms. Ibrahim were dropped and she fled Sudan with her family.

This paper presents insights on Sudan's international, regional and human rights commitments juxtaposed against the existing domestic legislations and how these negatively impact on the equal citizenship of women in Sudan. Drawing on personal stories and experiences of marginalized women in Sudan, it sheds light on the inequalities affecting unequal access to citizenship of women and men, from a human rights perspective, highlighting issues of the tolerated impunity on cases of abuse against women and girls.

Citizenship and nationality encapsulate different rights and responsibilities, legally with citizenship having a precise legal definition and providing 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. As a multi-ethnic and multi-cultural State, this has had the impact of disenfranchising portions of the population in defining belonging in terms of religious and cultural identity.¹

The current Laws of Sudan remain unconstitutional before the 2005 Interim National Constitution (INC), which pledged state support for gender equality; however the current process of constitutional review by the ruling National Congress Party has led for calls by party hardliners to develop a constitution based solely on Militant Islamic based ideology. This process is cause for concern and several indicators imply that it is to a large extent an isolative process. At the time of this writing, the process of constitutional revision was ongoing and had been extremely contentious amongst civil society and political opposition in Sudan.



1. HISTORICAL AND POLITICAL PATTERNS OF WOMEN'S RIGHTS IN SUDAN

In 1972 Sudan took a bold step when the Grand Qadi (similar to a Chief Justice) of the Islamic courts appointed the first woman justice in a Shari'a legal system. To date three other women were appointed by the Honorable Sheikh el-Gizouli and these remain the only prominent ones in the contemporary Islamic world. Coming to 1983, Ga'far Muhammad Numayri, who was ruling Sudan from 1969 to 1985, declared Sudan an Islamic Republic based on Shari'a Law, with the hope that this would earn his regime political support from the Conservative Islamists of the rich gulf countries.² These laws also installed a new Penal Code based on militant Islamic Shari'a and applied *hudud*³ punishments.

Hudud is an Islamic legal concept defined as "crimes against God". Hudud crimes include adultery, apostasy, and the consumption of alcohol and punishments include a series of corporal punishments, including flogging and amputation.

Several judges who refused to apply *hudud* punishments under Numayri were dismissed, and over 150 people had their limbs amputated in public after being found guilty for committing *hudud* crimes.⁴ It has to be noted that to date corporal punishment is applied in Sudan. The passage of the 1983 September Laws further contributed to the outbreak of the Second Sudanese Civil War from 1983-2005, between the assumed Muslim North and the South and were also opposed by secular Muslims and non-Muslims. In April 1985 a civilian uprising led to a bloodless military coup d'état in Sudan and introduced civilian and democratic rule a year later. A third coup d'état took place on June 30, 1989 and was led by the Sudan National Islamic Front⁵ (NIF) military and political fractions.

The NIF controls Sudan to date and continues to drastically affect women's human rights and citizenship entitlements, as the introduced legal framework at the time openly enforced guardianship on women and instituted for their subordination. According to a report by the Al Sharq Alawsat newspaper, the NIF

dismissed nearly 73, 640 civil servants between 1989 and 1999 - at least 25% of whom were women.⁶ Many of them were released from their employment to allow more pro NIF cadres to enter and because of being perceived as opponents to the regime's Islamized agenda. Those who remained in the public service had to choose between either conforming to the NIF dress-code or losing their jobs.

The NIF, which after 1989 turned into the National Congress Party (NCP), initially retained a freeze on implementing the harsher provisions of the 1983 September Laws, which had been instituted under Numayri and drafted a new Criminal Code (the 1991 Sudanese Criminal Act) with the help of Turabi.⁷ This was later expanded to integrate the use of Shari'a into Criminal and Personal Status Law. The 1991 Sudanese Criminal Act reintroduced many elements of the 1983 September Laws such as *hudud* penalties. The Act also grossly penalized indecency and offending public morality as well as nurtured a mentality adopted in implementation that viewed women as a source of sin and wrongdoings, and continually in need of State discipline. Legislations implemented under the NCP regime, including the 1991 Sudanese Criminal Act, the 1991 Personal Status of Muslims Law, the 1994 Nationality Act, and the 1996 Khartoum Public Order Act, all combined have gradually created a solid ideology, which is legitimized by an institution of moral policing and courts into which considerable amounts of resources are vested towards alienating women from the public arena and administer their dress code and public interaction and are consequently abusing their basic civil and political rights as citizens. Further those are punishable with corporal punishment such as flogging and lashing.

Sudan's version of Shari'a Law has been subject to different strategic interventions and manipulated by various leaders to ensure political ends with a legal system based on both British Common Law and Islamic law and is therefore particularly complex. The primary basis of citizenship criteria embedded in Sudan's legal system practices is determined by the notion of the most restrictive version of Islam whose basis of belongings and status of citizenship are determined by how individuals are perceived through the lenses of the traditional Salafi⁸ and militant jurisprudence and interpretation. It should however be noted that there are many different interpretations of Shari'a Law; for instance, while militant's approaches are strongly discriminatory against women, most reformative Islamic scholars on the other hand focus on finding an alternative path within Islam that recognizes women's rights, and is also closer to international standards and obligations noting that the Quran views women and men as of the same human nature.⁹

Sudan has imposed a complex and strict set of Guardianship Laws, which ensure women's subordination for instance through controlling their right to inheritance, their mobility and travel outside the country.¹⁰ As a result, women are subjected to discrimination. This can be illustrated for example through looking at the Guardianship Laws, which states that a woman requires the permission of a male family member or guardian to be allowed to travel. This applies to all women below the age of 50 years. The Guardianship Law implies additional harsh challenges for women such as single mothers or widows, as the law forces them to depend on their in-laws to give them the permission to travel. The below gives an outline of the laws, which are most commonly limiting women's and girl's right to equality.



2. THE 1991 SUDANESE PENAL CODE

Several clauses of the 1991 Sudanese Penal Code (SPC) reflect a narrow interpretation of “morality” under Shari’a Law. The discriminatory Acts provided within the SPC have had two main detrimental impacts. First, there is little provision for the protection of women against certain discriminatory practices, such as domestic violence and different forms of sexual violence. Secondly, the absence of criminalization for various forms of violence against women has reinforced violations of women’s rights. Domestic violence charges are typically issued under “injury” or “harm” by the SPC. However even though legal provisions exist to prosecute perpetrators of domestic violence, in practice prosecutions and convictions are very difficult to obtain.

In a 2013 interview with Amal Taha, a lawyer based in Khartoum, she stated that; “While courts will adhere to standard procedures for trials under the Criminal Act and Evidence Act, it is hard for a woman as wife or daughter or sister, to prove the conduct of a violent act from the given male where this happens inside the house, with no witnesses.”¹

Rape and Potential Countercharges of Adultery (Zina)

One of the most problematic aspects of the 1991 SPC is the lack of adequate protection for women against rape. Article 149, which criminalizes rape, states that:

- 1) *There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent.*
- 2) *Consent shall not be recognized, where the offender has custody or authority over the victim.*
- 3) *Whoever commits the offense or rape shall be punished with whipping a hundred lashes, and with imprisonment, for a term, not exceeding ten years, unless rape constitutes the offence of adultery, or sodomy, punishable by death.*

This paper argues that the definition of rape is narrow in scope and does not reflect legislative reforms and best practices elsewhere. It also fails to address marital rape, as well as rape with objects. Article 62 of the 1991 Evidence Act clearly undermines the status of women and girls as it provides for four credible male eyewitnesses being required to report rape and places severe deterrence to women who may face countercharges under adultery (Article 145). If a woman is unable to present four male eyewitnesses to testify that they witnessed non-consensual sex, she may therefore be charged with adultery.

Several practical and logistical impediments also exist to prevent a girl or woman from bringing a rape case to fair hearing, such as high legal costs and lack of access to legal aid, as the latter is only accessible through a few non-governmental organisations.¹¹ Women also face high stigma by the police in reporting rape, as police have occasionally been reported to refuse to process a sexual abuse complaint. A further obstacle to the prosecution of rape in Sudan is the broad immunities prescribed to law enforcement, military and government militias, for actions performed “in the course of duty”, as the immunity of the such can only be waived, if the Ministry of Interior decides to lift it.

Suad from Nyala shared her story with SIHA in 2012. She was gang raped by three militia men as she was farming even when they saw she was pregnant. “I heard one of them say, “She is pregnant, we should just leave her” but the other two asked “So what?” “So I was raped by all the three of them.” My husband cried when I told him and we went to Balil village police station to report the case. But the policemen just started calling my husband names and telling him to abandon me and seek another wife.

The Amendments to the 1991 SPC provisions are to address several controversial elements of Article 149, and disentangle rape from adultery and are set out to prevent countercharges for women reporting rape. The legality of the amendments is however unclear based on doubted involvement of the legislative Assembly. Although the amendments cited are positive, rape is not dissociated from adultery with regards to punishment. The clause of Article 149 outlining punishment remains, and stipulates that “whoever commits the offence of rape shall be punished, with whipping a hundred lashes, and with imprisonment for a term, not exceeding ten years, unless rape constitutes the offence of adultery, or sodomy, punishable with death”. Added to Article 151 (gross indecency) is a provision that states that “anyone who commits sexual harassment is anyone who carries out an act or behavior that is a temptation or an invitation for someone else to practice illegitimate sex, or conducts a horrendous or inappropriate behavior with a sexual nature that harms a person, psychologically, or makes them feel unsafe, will be sentenced to a period not more than three years and lashing.” It is unclear whether this vague amendment will put the onus of responsibility on the harassed or the harasser: words such as “temptation” or “inappropriate acts” are often associated with women’s presence in the public space and moral policing.

An ex- policeman who worked for the Public Order Police stated in a 2013 interview that: *“There are no regulations or orders to policemen – at least there weren’t in my squad. There was nothing that suggested you had to behave well or respect women. When I challenged a colleague who insulted a girl or slapped her, my commander told me: “listen, we are here doing our job, those girls are prostitutes, not reared by their families and bring them shame, so we just do what they failed to do, they are not afraid from God or hell. When we were going to a raid or doing a patrol I always heard them laughing: today we will find our prey... they just kept telling me that those who came to work here were lucky because you could meet prostitutes, drug dealers, and you could anything you wanted to and be protected by the law. What’s more, there is no explicit guidance or directive principles for public order police.”¹*

The Public Order Regime

The Public Order Regime (POR), which only applies to the capital State of Khartoum, is governed by the 1991 SPC, local orders, Public Order Courts, and the 1998 Khartoum Public Order Act. Articles 151–156 of the 1991 SPC criminalize the personal behavior of women and their basic personal freedoms such as their dress code, their presence in the private sphere, and their right to work. The environment created by the Public Order Regime has impacted Sudanese women in every meaningful aspect of their public lives: it has prevented them from enjoying a full experience of physical and mental health, access to education and the right to freely participate in the cultural life of the community, the right to freedom of expression and assembly, as well as political participation – all of which are guaranteed by the 2005 INC. Although these clauses are theoretically non-discriminatory, they have been implemented in a way as to maintain – and often increase – discriminatory practices against women.

An example of discriminatory sentencing and interpretation of law can be seen in cases where men and women have been arrested for brewing and selling alcohol under Article 79 of the SPC (dealing alcohol). Under Article 79, selling alcohol is punishable by up to one year in prison or a fine. Judges do not have sentencing guidelines, and consequently sentencing is at their discretion. Female sellers of alcohol have reported paying fines of up to 20,000 SDG (approximately 3, 500 USD), whereas men rarely have to pay such exorbitant fines.¹² Article 154 of the SPC provides for “Practicing Prostitution”, which defines a “place of prostitution” as “any place designated for the meeting of men and women between whom there is no marital relationship, or kinship, in circumstances in which the exercise of sexual acts is probable to occur.” The law is extremely vague and broad in scope, and could be hypothetically used to prosecute any woman in the same room as an unrelated man. In the past, Sudanese civil society organizations have

noted the use of Article 154 to especially target and intimidate female human rights defenders and activists critical of the regime, where they have been accused of prostitution for working with male colleagues alone in their offices.

Further criticism also targets the language included in Article 152 of the SPC as incredibly vague and open to interpretation, leaving the door wide open for subjective interpretations by law enforcement bodies. “Indecent” and “immoral” are open to interpretation by the Public Order Police and has been interpreted to mean everything from wearing trousers in public to not wearing a headscarf. Those procedures before the Public Order Courts fail to meet fair trial standards, despite constitutional guarantees of due process and equality before the law¹³, since women arrested under the Public Order laws are typically tried in summary trials at Public Order courts.

The Public Order Courts function outside Sudan’s central legal system and have greatly limited procedural safeguards as they typically conduct summary trials without legal representation, where sentencing, such as flogging, is often implemented immediately. Women who cannot pay fees are sent to jail immediately.

Even in cases receiving public attention, as the one of Ms. Hassan, who was armed with broad support, managed to insist on consulting a lawyer and having her case transferred out of the Public Order Courts, she was still not allowed by the court to testify on her own behalf.¹⁴ In another case documented by SIHA in February 2015, two young women, Fatima Abdel-Fadil Hassan, 16 years of age, and Amna Mohamed Banaga, 18 years of age, were arrested in Al-Haj Abdullah village in the south of Al Jezira State. The two women had been wearing trousers while working at a brick-making site. They were held from 4pm–11:30pm by the police. They were charged under Article 152 and released on bail for trial the following day. Ms. Hassan was acquitted of the charge; Ms. Banaga received twenty lashes on her hands although the lashes are normally administered on the legs.

1998 Khartoum Public Order Act

As mentioned before, the Khartoum Public Order Act 1998¹⁵ applies to Khartoum only, however there are similar laws in other States with similarly harsh Public Order Articles such as in Port Sudan and different States of Darfur where the Act includes various restrictions which circumscribe male and female interactions, and restrict women’s right to work.

Under Chapter 2 of the 1998 Khartoum Public Order Act, private parties are banned, unless permission is obtained by the locality before a party is hosted. Dancing between men and women is forbidden, and women are not allowed to dance in front of men; Chapter 3 outlines restrictions on public transportation, and requires that buses reserve a separate door for women and ten seats; Chapter 5 places restrictions on women’s hair salons, requiring them to be licensed, managed by a woman over the age of 35, and without male employees. Similar restrictions are placed on e.g. tailors where according to Chapter 7, contraventions of the Act are punishable with a) imprisonment for a term not exceeding five years, b) a fine, c) both of the above, d) whipping, e) forfeiture of any instrument used in such contravention, and f) closure of the premises for a term not exceeding 2 years. It is unclear from the language of the Act,

In 2014, Haj Yousif Police in Khartoum arrested a group of women from a family picnic and detained them for days without allowing their families to post bail as law stipulates. Some policemen informed the lawyers of the detainees that their arrests and detention without charge took place upon directives from their commanders. The arrests took place without reference to any laws or directives. The commanders reportedly informed police of their power to arrest as “guardians” of the community.

however, what contraventions would consist of.¹⁶ The Public Order Police operates as the regime's enforcement arm and while they function under the General Authority of the police, they also take some directions from the local "safety committees" and local and State authorities. One of the defining features of the Public Order Police is their deployment for kasha campaigns.

Kasha campaigns are spontaneous "sweep and arrest" campaigns, and are typically carried out against already marginalized and vulnerable groups.¹ Women rounded up by kasha sweeps are particularly vulnerable to financial and sexual exploitation and abuse.

Further, Local Orders are often not made publicly available and vary by location; as these orders are issued by local municipalities, there may be variation within a region. Women may be found to be breaching local orders without even realizing they were in place. Local orders issued in Khartoum State in 2000 prohibited women from working in particular jobs, such as petrol stations. When the local order was decreed, the decision faced opposition even amongst hardliners within the GoS. The constitutional court later reversed the local order.

Guardianship, the Personal Status Law and the Position of women in Sudan

The Personal Status Law (1991) codifies Shari'a principles and interpretations of judicial circulars¹⁷ and is based on most militant forms of classical Fiqh¹⁸ 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, decide and manage their lives without oversight from men. While respect and support are emphasized through the Djiboutian Family Law even though it requires wives obedience to husbands, the Sudan Personal Status Law in contrast establishes guardianship of girls and women by men and boys, who deprive women and girls of their independent decisions and choices in essential socioeconomic areas including marriage, custody of children, access and ownership of resources including property as well as mobility especially in public.¹⁹

It must be emphasized that the concept of guardianship in Sudanese domestic Law is one of the greatest restrictions to women's ability to control their lives and make decisions independently. Under Article 33, guardians are adult men that are Muslim, of sound mind and they do, among other things, decide upon the suitability of a potential husband, meaning that a woman can effectively be married without her consent if her guardian approves. Articles 25, 32 and through 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 a woman is not permitted to marry of her own volition, and if she does, her male guardian has the right to cancel the contract.²⁰ This is not to mention forced marriages and marriages to minors which are permitted by the Act under Article 34 with permission of the girls' guardians and with her consent. This is a contravention to the 1989 UN Convention on the Rights of the Child, which was ratified by Sudan in 1990, and forbids marriage under the age of 18 and must thus be addressed seriously.

*The idea of **guardianship** is based on the historical Islamic legal perspective that men are the primary breadwinners, and as such, had 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.*

Divorce can be granted under Articles 157 – 204 of the Muslim Personal Status Law but only under three circumstances; 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* (period of waiting)²¹ 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. Additionally, *Enfisal* (separation) is a divorce granted on five separate conditions: physical or emotional injury, irreconcilable difference, male impotency, failure by the husband to pay maintenance to the wife, absence of the husband from the family home for one year, and if her husband is sentenced to prison for more than two years. Women can also obtain a divorce, if a judge declares her disobedient to her husband. There are numerous practical considerations that may prevent a woman from seeking a divorce, including, but not limited to, stigma, poor access to courts, and financial incentives. It is important to note that even though physical injury is a ground for divorce, Article 162 of the law does permit wife-beating if it is within the limits of what the society she lives in accepts, and for the woman to successfully win a divorce case, she needs to prove that physical or emotional injury has taken place and that the physical injury in question was an offense not in line with what was faced by other women in her community.

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 the best interest of the child. A woman automatically loses custody if she remarries. Inheritance is in congruence 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. Early marriages are rife, as the set out age, what is called the “age of awareness or consciousness” is 10 years.

A case documented by the Sudanese Organization for Research and Development (SORD) illustrates the disparities of the law, where a young girl was forced into child marriage. When divorcing one year later, court, which had in first instance allowed her marriage, denied her the custody of her child, arguing that she was not yet old enough to assume responsibility for her child.¹

In addition to child marriage, polygamy is also widespread; however, the interesting aspect is that the Family Law does not include provisions on issues such as wife and child maintenance, which can present challenges to women who are dependent on their husbands. There is urgent need for Sudan to learn from the Djiboutian Family Law so as to put in place opportunities for the protection of women and girls and ensure justice for those affected by traditional and customary laws and oppressive structures. The Djiboutian Family Law for instance stresses the right of the first wife to choose between staying in the marriage or divorcing and receiving her alimony in case her husband wanted to marry another wife. Contrary to this, the Sudanese Personal Status Act allows men freedom to marry up to four wives without consulting their first wife.



3. INTERNATIONAL AND REGIONAL POLICY FRAMEWORK IN RELATION TO WOMEN'S EQUAL CITIZENSHIP

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, all of which emphasize gender equality and the guarantee of human rights for women and men in employment, marriage, education and protection among others “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.

Regarding women’s citizenship, one female activist in Sudan commented that “it is not only a matter of political discourse, it is part of the whole patriarchal community: women have been devalued and discriminated against for years, yet when mother’s day comes, things become different: women are celebrated and honored as “struggling mothers” emphasizing their role as women who exist to care in the private sphere. Many private-sector companies sponsor such events, to celebrate women as mothers. Why does no one ask who were those women before they became mothers? Of course they are not coming from the sky; they were also girls, teenagers and adults. But no one recognizes or respects their rights and calls for their equality”.¹

4. 1994 SUDANESE NATIONALITY ACT

Citizenship is determined through a long process often affected by several factors. The status of a person to enjoy rights and to have duties is the simplest expression of citizenship, meaning that s/he can enjoy citizenship rights determined through their nationality. As for the matter of sovereignty, States have the power to regulate their own nationality laws. However, International Human Rights law prohibits discriminatory laws that enable the mass expulsion, discrimination, or denationalization of citizens, particularly on racial grounds.

In other words, addressing state policies towards women cannot be dissociated from the way in which women are perceived by a State or community that is under the influence of a militant Islamic way of thinking, a mentality in which women are seen as dependent and as not having any role outside of the family. The historical progress reflected in the beginning of the paper, also endorsed this point: where there were developments in the legal system related to women’s rights - in particular during the totalitarian regime of Numayri or the current regime – these focused on labor rights and were weak with regard to political and civil rights. An element of this can also be seen in the development of the 1994 Nationality Act, and who can enjoy – and access - Sudanese citizenship.

The 1994 Nationality Act provides that all children born in Sudan with a male ancestor 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”.²² The law was amended in 2005 to allow a child born to a Sudanese mother to acquire nationality by following an application process. These provisions contradict

Article 7 of the INC, which guarantees that “every child born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship”.

Despite the amendment of several provisions of the Nationality Act, several of them are not consistently implemented. Article 4 of the Act states that a person is entitled to acquire Sudanese nationality if s/he has a Sudanese father, but when it comes to the mother, a clause provides that the person acquire it “whenever s/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 mind of legislators and law enforcer still exists.



5. DENATIONALIZATION OF SUDANESE WOMEN MARRIED TO SOUTH SUDANESE MEN

Two important factors influence women’s equality in their capacity to attain national documents. The first is linked to the secession of South Sudan, as well as amendments made to the Sudanese Nationality Law. Additionally, South Sudan’s Nationality Law also creates particular challenges surrounding citizenship rights for families with representation from Sudan and South Sudan with women being the most affected. The second factor impacting Sudanese women are discriminatory practices that deprive or hinder the capacity of Sudanese women to access nationality documents. Research into women’s capacity to access citizenship and nationality documents show that several impediments exist to hinder Sudanese women’s access to such crucial documents, such as prolonging bureaucratic procedures and requesting the presence of a male guardian which have no basis within Sudanese law.

It is important to note the controversy particularly between Section 10(2) of the Nationality Act which provides that: “Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan” and Article 7(3) of the Constitution which provides that “no naturalized Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law” as this is mainly affecting women for instance those with South Sudanese partners.

One of the most problematic aspects of the Nationality Act is that it does not prevent against mass expulsion on a racial or ethnic basis.²³ The post-referendum situation preceded by a number of political frameworks agreements aimed to prevent such massive denationalization or statelessness. Hundreds of Sudanese were yet denationalized by laws passed by the then newly independent South Sudan, where citizenship was defined as having one great grandparent born in South Sudan. This was in particular the case with Sudanese women married to men from South Sudan. Citizenship in the case reflects the adage that women belong to a husband’s family, tribe, or clan.

There are no gender sensitive provisions in the framework agreements between Sudan and South Sudan that paved the way for the referendum, such as the Framework Agreement between The Republic of the

Sudan and The Republic of South Sudan on Border Issues or Framework Agreement on the Status of Nationals of the Other State and Related Matters. The focus was mainly on demilitarizing the border areas and other security and economic concerns more than being related to gender issues. The impact of the secession is not only confined to south Sudanese, but also to different ethnic and tribal groups in Sudan who reside or originate from disputed areas, or were displaced during one of Sudan's conflicts and lost access to their identity documents.

6. DIFFICULTIES ACCESSING IDENTITY DOCUMENTS

Some women face additional challenges, to obtain identity documents. As for example marginalized women especially in Internally Displaced Person (IDP) camps or areas, like Soba, face particular difficulties in obtaining identity documents. Unlike the problems faced by IDPs in Khartoum, many women in Soba have been compelled to pay considerable sums of money in order to be issued a "citizenship" certificate by a local society in their areas as part of the requirement to apply for nationality and a national number.²⁴

An IDP woman in Soba recounted "I want to purchase a raksha¹, so I started to apply for a loan from the bank. They instructed me to get a citizenship certificate to prove that I am Sudanese. They told me to bring three male witnesses from my blood-line relatives, yet a male neighbor just went to them with a friend and got his documents in seconds."

Many women considered to be "non-Sudanese" are simply unable to access nationality documents or be issued new ones. This is particularly of concern for women from the conflict areas who were displaced and lost access to their nationality documents. People born outside Khartoum generally face greater difficulties in obtaining nationality documents.²⁵ As a result, large numbers of people living in the marginalized and peripheral areas of Sudan have no nationality documents, or access to such papers. This lack of access was highlighted during the voter registration period preparing for the 2010 elections, and more recently when everyone in Sudan was supposed to register for a National Number. Women in conflict areas face hardships to access nationality documents and are often unable or unwilling to access government sources, and must address their native administrations with administrators who are all men²⁶. In some cases, native administrators prevented Sudanese women from obtaining identity documents. In one recent instance, a woman went with her son to apply for a nationality card. However, the officer refused her nationality, asking where the father was. When she argued that the law did not prevent her from being a witness and said that she can confer her nationality to her children, the son was denied the nationality card. After a long argument, the officer conditionally accepted her nationality but requested proof of her father's nationality.

Women are also often ordered to cover their hair while taking photos for different nationality documents and identities. The officers and persons responsible for taking the photos always inform those women that in case of not covering their hair, a photo will not be taken, regardless the fact they satisfy all requirements to acquire such a document. One woman reported that when she went to apply for a passport, she was told that she must cover her head. When the woman argued that wearing a headscarf had nothing to do with the validity of the ID, a high ranking male officer came and told her that the photo would not be taken with her head uncovered.²⁷ Clearly, there is no explicit law which provides for such procedure. An Immigration Police officer interviewed denied any existence of legal provision, but reported that the procedure was a part of internal regulations that they were ordered to follow.²⁸

Furthermore, identifying one's ethnic background has become a compulsory part of the application form for a National Number. Citizenship certificates are required from women who have originated from certain ethnic backgrounds. One woman reported that an immigration officer looked at her face, and to my name on the form, and asked his colleague: "how did they give her such certificate, I doubt that she is even Sudanese!"²⁹ Of the experience, the woman commented, "The existence of the male, as guardian, physically or in the documents, is seen as the pivot of his debate. It's not about the law; it's just another example of mainstream masculine mentality." Officials in some of these cases justified such procedures by saying that "women in these areas are coming from mixed tribal and ethnic backgrounds between north and south, as their faces and character may baffle us. We need to be sure they are Sudanese." demonstrating the authorities' discretionary power to be suspicious in some cases and not in others.³⁰ Furthermore, there is no explicit law, regulation, or even local order for "citizenship" certificates to be obtained, and the localities only issue "residence" certificates. There is no clear standard for who should be refused such status.

On 8 May 2014, Al Gadarif Criminal Court dropped charges against a woman accused of apostasy after she recanted her Christian faith and converted to Islam to avoid the death penalty. A criminal complaint had been lodged against her by a police officer at the National Identity office in Al Gadarif town after she applied for a national identity card. On application, she was asked to declare her own faith and that of her father. The criminal complaint was filed when she declared that she was a Christian, married with eight children to a Christian man, and that her father was a Muslim.

Comparatively, Sudan's policies towards nationality are in line with many other African countries. A number of African countries discriminate on a gender basis in the granting of nationality. Some countries, such as Kenya, Morocco, Rwanda, and Uganda have moved in the last years to reform these laws in favor of gender equality. Sudan and other countries like Tunisia, Benin, Libya, Togo, and Somalia still discriminate on gender basis in their nationality laws. The turning point in reforming nationality laws could be referred to the landmark court case of *Unity Dow* in Botswana 1993, which challenged the constitutionality of Botswana's Citizenship Act on the ground of its gender discriminatory articles which violated the Constitution's Bill of Right; this Act deprived a woman's right to pass her nationality to her children from a foreigner husband. The court verdict led to reforming the Act, and had its impact on the reform process which was initiated in different African countries³¹. Other countries have similar legal frameworks to Sudan, wherein the Constitution is written in gender-neutral language, yet the citizenship law is gendered.³²



7. SUMMARY OF EMERGING ISSUES

On one hand, gender inequality in citizenship rights and entitlements is deeply rooted in the Sudan's political and legal system. On the other hand, while the Sudanese regime is benefiting from women's economic contribution in both the formal and the informal sector, it continues to openly deny women their equal citizenship rights through enforcing laws and policies that undermine their rights and entitlements.

The presented parts of the Sudanese legal frameworks, which are based on militant Islamic interpretations and tend to objectify women and assume they are not to be in existence in the public sphere. Thus their presence and participation in public life is constantly fought against, through the institutionalization of discriminative practices such as the Public Order Regime. A severe dichotomy is established as a result, between a regime that needs women's contributions economically and to present itself as a functioning modern State within the international and regional arena and at the same time internally continues to condone international human rights, promulgating misogyny.

Since the constitutional framework largely emphasizes equality before the Law under Article 32 of Sudan's Interim Constitution, which was approved in 2005, "women and men have equal entitlement to all civil, political, economic, social, and cultural rights". It further iterates that 'the State shall emancipate women from injustice, promote gender equality and encourage the role of women in family and public life'. That being said, Sudan's legal framework, which incorporates major discriminatory articles against women and girls, remains intact. There is unmistakable contradictions between Sudan regional and international obligations as a recognized Citizen State, and the massive level of discrimination against women and girls incorporated into the State laws, polices and praxis.

The struggle for women's equal citizenship rights and entitlements in Sudan remains to be led and often raised by Sudanese women's movements. Nonetheless, the women's movement struggles with layers of obstacles such as the limited space for civil activism that presents a major hindrance, in addition to women's movement challenges of technical capacity and poor access resources. International actors are contributing rather little towards women's equal rights in Sudan, whereas Sudanese civil activism platforms are largely considering women's citizenship rights as a major issue and criticized, that it is often being reduced to a minor issues on the political agenda. The direct connection between women's equal citizenship rights in Sudan and the militant Islamic ideology incorporated into the country's legal framework makes the issue more complex and less appealing for many actors inside and outside the country, as they prefer to avoid the complexity of getting involved in the dilemma of militant interpretations of Islam. Nonetheless in spite of the complexity found in challenging the autocracy of militant religion, it remains the only way out.

¹Assal, Munzoul, "Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote", Chr. Michelsen Institute, 2011.

²Laws implemented in Sudan from 1983 to 1985 under Ga'far Numayri as part of his Islamization program, to buttress his political legitimacy, and to justify authoritarian rule. www.oxfordislamicstudies.com/article/opr/t125/e2134

³ *Hudud* is an Islamic legal concept defined as "crimes against God". *Hudud* crimes include adultery, apostasy, and the consumption of alcohol; all of which attracted severe punishments when found guilty.

⁴ Robert O. Collins, "A History of Modern Sudan", Cambridge University Press, 2008.

⁵ The National Islamic Front ([Arabic](#): الجبهة الإسلامية القومية; [transliterated](#): *al-Jabha al-Islamiyah al-Qawmiyah*) was an [Islamist](#) political organization founded in 1976 and led by Dr. [Hassan al-Turabi](#) that influenced the [Sudanese](#) government starting in 1979, and dominated it since 1989.

⁶ Elzobier, Ahmed: Political Islam: The logic of Governance in Sudan. Author House, 2014.

⁷ Hassan 'Abd Allah al-Turabi is an influential religious and Islamist political leader, who played a major role in the institutionalization of Shari'a Law in Sudan. He also advised and oversaw other controversial policies and laws. Natsios, Andrew S. *Sudan, South Sudan, and Darfur: What Everyone Needs to Know*. Oxford University Press. (2012).

⁸ Salafism is a fundamentalist and orthodox movement within Sunni Islam.

⁹ "O mankind: Reverence your Guardian Lord who created you from a single person created of like nature his mate and from them twain scattered (like seeds) countless men and women; reverence Allah through whom you demand your mutual (rights) and (reverence) the wombs (that bore you): for Allah ever watches over you." (Qur'an 4:1).

¹⁰ The Personal Status Law of Muslims in Sudan, 1991: <http://www.justice-lawhome.com/vb/showthead.php?t=7909>

¹¹ The work of NGOs on sexual violence is extremely controversial. In 2009, the Government of Sudan ordered the closure of 3 national and 10 international NGOs operational in Darfur following the announcement of the ICC indictment in Sudan. The ability of NGOs to monitor the situation and document cases has been severely hampered since. Rape survivors now face even more limited access to desperately needed recovery services, such as medical treatment and protection, which were previously provided by humanitarian groups.

¹² Interview with Mahjoub Dawood, Lawyer, Darfur Bar Association.

¹³ SIHA, "Teens tried for wearing trousers in Sudan", 18 February 2015

¹⁴ SIHA Network, "Beyond Trousers: The Public Order Regime and the Human Rights of Women and Girls in Sudan", A discussion paper submission to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, the Gambia, 12th November 2009.

¹⁵ This decree was originally issued by the Governor of Khartoum State but later ratified by the Assembly of Khartoum State in 1996.

¹⁶ Khartoum Public Order Act 19980,

<http://www.icla.up.ac.za/images/un/useofforce/africa/Sudan/Khartoum%20Public%20Order%20Act%20Sudan%201998.pdf>

¹⁷ Sharanjeet, Parmar, "An Overview of the Sudanese Legal System and Legal Research", January 2007.

¹⁸ The concept of fiqh refers to the human understanding and interpretation of Sharia law. Both are commonly referred to under the scope of Islamic jurisprudence. Fiqh can be translated as "understanding", and refers to the conceptual understandings and interpretations of sharia by scholars over the centuries. Quran and Sunna are the primary sources of Sharia and Fiqh is the interpretation of Sharia.

¹⁹ Tonesson, Liv, and Kjølsvædt, Hilde, "Gender citizenship in Sudan, Competing perceptions of women's civil rights within the family laws among northern and southern elites in Khartoum", Chr. Michelsen Institute, 2007.

²⁰ *Ibid*

²¹ The total waiting period endures over three months, in case a woman is pregnant the period is extended until she gives birth.

Katz, Jochen. "[The 'Iddah rules for divorced and widowed women'](#)". *Answering Islam*.

²² Tønnessen, Liv and Kjølsvædt, Hilde, "The Politics of Women's Representation in Sudan: Debating Women's Rights in Islam from the elites to the grassroots", Chr. Michelsen Institute, 2010.

²³ Abdulbari, Nasredeen, "Identities and citizenship in Sudan: Governing constitutional principles", *African Human Rights Law Journal*, Issue 13 (2013): pages 383 – 414.

²⁴ Focus Group Discussion with female activists, Khartoum, 2013.

²⁵ Assal, Munzoul, "Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote", Chr. Michelsen Institute, 2011.

²⁶ Interview with lawyers from Darfur Bar Association, Khartoum, 2015.

²⁷ Interview with Wafa Taha, graduated student.

²⁸ Interview with Lieutenant Nawal Abd Alkareem, Immigration and Passport Administration, Police, Ministry of Interior, Khartoum, November 2014.

²⁹ Interview with activist IDP woman, Focus Group Discussion, Khartoum 2013

³⁰ Interview with Jaafar Siralkhatim, Brigadier in Passport and Immigration Department, Khartoum, 20/3/13

³¹ For the full review for the case, see the link: <http://www.law-lib.utoronto.ca/Diana/fulltext/dow1.htm>

³² Manby, Bronwen, "Citizenship and Nationality Law in Africa" Open Society Foundation, 2010. For example, in Ethiopia, the Constitution of 1995 clearly stipulates for non-discrimination on the basis of sex. The Nationality Law of 1930, amended in 2003, states that "a lawful marriage [in Ethiopia or abroad] of an Ethiopian [man] with a foreign woman confers Ethiopian nationality upon her, when the situation is different for Ethiopian woman who her marriage contracted abroad with a foreigner husband, that result in the loss of her Ethiopian nationality". The reform took place in 2003 removed gender discrimination in nationality law articles, providing that an Ethiopian national of either sex may pass nationality to his or her spouse, and also simply that "any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian."