

Sudanese Women and *Sharia* Law

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Introduction

It is crucial to begin our analysis with a definition of the term *Sharia* law and its sources and principles. *Sharia* law is the Muslim jurisprudence from which specific different types of family, penal, civil, labour, economic and monetary law can be derived.

The main two sources of *Sharia* law are the Qur'an and the *Sunna*. Muslims believe the Qur'an to be the word of God revealed to the Prophet Mohammed. The Qur'an as Islam's holy book can be split into different parts. The part that contains most of its verses aims at convincing the non-believers, of the time the Qur'an was written in particular, of the concept of believing in the *One God* and the afterlife with its consequences of punishment in hell or reward in paradise. Many verses deal with how a "good" Muslim should behave by worshipping God, by oneself, and in relation to other people, especially other Muslims.

The Qur'an contains detailed stories about other prophets, the support of believers and the resistance of non-believers.

There are verses that order Muslims to abstain from certain behaviour and actions and to practise others, while yet other verses recommend and commend behaviour to be followed.

The *Sunna* as the other source of Islamic teachings is the words or sayings by the Prophet or his doings, which mainly elaborate on what was revealed in the Qur'an, but also include other issues that need to be discussed according to ambiguous contents or in answer to queries of his followers. Hence, the main

characteristic of Islam is that it is a religion that demands active faith of observance and practice. It is human-centred and emphasizes ideal human relations and behaviour. It is embedded in a call for communalism and social justice with degrees of individualism in property holding and in legal and faith responsibilities. It is not characterized by emphasizing dichotomies of duality but rather by triple or quadruple classifications.

As an international religion influenced by the many cultures that Islam spread amongst from the start of its existence, the cultural diversity of its followers has influenced issues of practice. Further, individual contexts and choices have led to diversity in observance varying from the original idea. All these factors have led to a continuum in the religious practice, to a gap between the ideal and the actual. Further, the political, the socio-economic and the time context have led to diversity due to the use of Islam for political reasons, for identity formation, for cohesion or cleavage.

The elusiveness of Islamic interpretation and the ability to use its elaborate texts in various directions has led to a diversity of ways in which Muslims can make it congruent with the modern project of the West, enlightenment standards, human rights principles or western feminism, to mention some, or to make it contradictory and bring it into conflict with them. Consequently many versions of Islamic interpretations, and schools have appeared and continue to do so. On the other hand, *Sharia* law developed almost two centuries after the revelation ended. It was developed by great Muslim scholars when the Islamic state grew large and was in need of new laws, particularly since the early Islamic state can be considered as a kind of a “federal system”.

The first scholars developing such laws came from different regions of the Islamic state. The main four scholars who developed the four *Madhhabs* (Islamic legal schools) were from what is currently Saudi Arabia, Iraq, Iran and Central Asia.

The scholars differed in the main principles by which *Sharia* law should be developed. These principles are important for our analysis below.

Sharia law is based on the following principles:

1. Interpretation (*ijtihad*) of the Qur'an's teachings refers to understanding what is meant and what is the purpose of what is written in the Qur'an and developing the law according to it. The scholars given the right to conduct *ijtihad* are highly trained and specialized.
2. Analogy (*qiyās*) is used where no clear instructions for a new issue are found in the Qur'an or in the *Sunna*, but clear instructions were given for a similar issue or context. Based on that similar laws can be drafted.
3. Consensus (*ijma' al-umma*) means that Muslim scholars agree that a certain issue is right or wrong and a law can be concluded accordingly. This is what generally is known as *fatwa*.
4. The fourth principle is that of the common good (*al-maslaha al-'amma* and *al-masālih li dara' al-mafāsīd*). This means that the state's decision makers or religious scholars who are in decision-making positions could stop or nullify an order in the Qur'an and the *Sunna* or make new different interpretations because the expected new rule is more in the interest of bringing greater good and preventing an expected greater harm.

It is important for scholars including Muslim feminists to understand the diversity in *Sharia* law in the different Muslim countries at different times. The varying extent to which these principles are accepted and used can bring vitality and change to *Sharia* law. There is another continuum, as the less a Muslim scholar or school refrains from accepting these principles and the more it abides only by the words stated in the Qur'an with a rigid understanding, the more the resulting *Sharia* law can be viewed as not contemporary. A further note of significance is that religious scholars using *ijtihad* and other principles have mainly been males. Hence, the clergy is male-dominated and has had a deep impact on whether

Sharia law can be “friendly to women” or restrictive and non-emancipatory. This issue will be discussed later.

The research that has been conducted in Sudan by our institute with a team of legal practitioners and activists, both academic and non-academic, in 2002 tried to assess how far Sudanese law developed since 1991 was based on *Sharia* law. The assessment was based on the following criteria:

1. Reference to international human rights standards
2. Comparing and contrasting the individual laws themselves in regard to their contradictions against the constitution. The latter itself is based on *Sharia* principles.
3. Reference to other contemporary Islamic interpretations or laws in other Muslim countries which the research team considered to have a more women-friendly approach, based on more open contemporary interpretations or other respected scholars of the 10th to 14th century.

Further, members of the team tried to make their own judgement using the above criteria to assess the following Sudanese legislation referring to women's rights:

1. The Sudanese constitution of 1998
2. The Sudanese Family Law for Muslims of 1991
3. Sudanese Labour Law modification of 1997
4. Sudanese Penal "Criminal" Law of 1991
5. Sudanese Health and Reproductive Health Act of 1996 and 2002

The paper will refer to the following issues in sequence:

1. Definition of the age of consent in Sudanese law and its implications for girls
2. General violence against women in Sudanese legislation
3. Citizenship and political rights gaps in law

4. Rights in the labour law and inherent violence against women, as well as recommendations for improvements
5. Gaps and recommended amendments in the Penal Code to protect women and girls
6. Women's rights and problems in the Sudanese Family Law for Muslims

Further, it is important to mention the sources of legislation for different Sudanese laws.

The Sudanese Penal Code is based on Islamic *Sharia* applied to all Muslims and those living in the northern parts of Sudan. The family law is based on the husband's religion, such as in the Muslim Personal Matters Act. Labour law and political rights are based on international principles, while civil law is greatly based on the heritage of British law. However, as the Islamization process progressed, the inclusion of certain articles to amend the main Islamic rights ignored in the previous labour law was carried out.

Moreover it is crucial to remember, that Sudan is party to the following main declarations and conventions:

1. Universal Declaration of Human Rights (UDHR)
2. International Covenant on Economic, Social and Cultural Rights (ICESCR)
3. International Covenant of Civil and Political Rights (ICCPR)
4. Convention on the Rights of Children (CRC)

However, Sudan is not party to the following:

1. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
2. Home Workers Convention (HWC)
3. Equal Employment Opportunity (EEO)

Definition of the age of consent in Sudanese law and problems it creates

The definition of the age of consent differs in the various laws. The majority in political rights is reached at the age of 18 as set in the constitution, while in the Personal Code the age of consent is defined by reaching puberty, which differs for boys and girls, however for both a minimum of 15 years is recognized in the Personal Code. Yet, the age of 10 is considered a possible age for marriage for girls and the age of 16 is considered adult in the labour law of 1997. This discrepancy needs to be addressed by unifying the adult age to be 18 for all laws. Defining puberty loosely puts girls at the risk of violence by being married in childhood at an age as early as ten according to the family law. In the Penal Code of 1991 the *hudud* penalty (*hudud* are Qur'an based penalties) of adultery (*zina*) or other crimes can be applied to girls at age 12-13 if puberty is established. This can include whipping for up to 100 slashes or stoning. Hence, a unification of the age of consent definition would protect both girls and boys from gender discrepancy or bias and from unduly violent punishment or practices.

It is recommended that the age of legal adulthood is set at 18 in all law.

General violence in Sudanese legislation

Violence against women includes socio-cultural and other practices as well as the law. Examples of violence against women by law are the Public Order Law of 1992 and the State Public Order Acts of 1996 that restrict women's work time in the informal sector from 5 am to 5 pm and impose dress codes which are loosely defined in accordance to Islamic law, as well as the exit regulations of the visa department at the Ministry of Interior, where women need the permission to travel abroad from a male guardian before they are allowed to receive a visa.

All laws of this kind were established to perpetuate and emphasize an ideology that sees women as a source of possible shame and vice that society needs to be protected from. These auxiliary laws and orders need to be abolished as they contradict the Human Rights Declaration and the Sudanese constitution, which

establishes the sanctity of innocence until proved guilty. Violence against women needs to be identified and recognised as a crime in all law, whether labour or family, and not left to the Penal Code only. Women's right to protection against violence must be clearly stated in different laws, and protection mechanisms need to be established for all categories of women as will be elaborated below.

Citizenship and political rights

The Sudanese constitution and a substantial number of laws are based on the principle of equality without discrimination based on sex, religion or race.

The constitution does not have a paragraph on women, however, family protection is indicated in its preamble. The constitution does not include provisions for the right to work, education, reproduction, development and protection from poverty. Yet, other basic rights are guaranteed.

Political Rights

In reference to the International Covenant on Civil and Political Rights, to which Sudan is party, equality in voting, standing for elections and in holding public positions is guaranteed by the constitution and the law. However, socio-cultural and ideological reasons still lead to discrimination. This could be overcome by various measures. Legal ones include an introduction of affirmative action by a quota system in election acts, by appointments in committees and by a competitive quota system in executive and legislative bodies.

Rights to nationality

The Sudanese constitution of 1998 gives both parents the right to confer nationality to all children equally. Yet, the nationality law has not been changed and the current law still only entitles fathers to such a right and does not comply with the constitution.

Right to freedom of movement

Though the constitution provides for the right to freedom of movement, other laws indicated in the Ministry of Interior Act restrict women's travel abroad by requiring permission from male guardians. Further, the Khartoum State Public Order Act prohibits women in the informal sector from working after 5 pm.

Further, Sudanese women without a guardian can not stay in Sudanese hotels alone, unless as a group, which then is in need of permission from the Public Order Police. This is also a non-constitutional act. Women's activists are calling for the abandonment of the Public Order Act, especially articles 49 to 52, which basically target women.

Rights in the labour law

In general terms:

The labour law guarantees women equality in payment, in promotion, and in benefits. There are several protective measures for maternity. However, many activists agree that overprotective measures during maternity may restrict women from work opportunities or promotions.

Maternity benefits:

The current law gives women the right to a paid leave of 8 weeks for maternity, a further one year leave paid with a basic salary and another one year unpaid leave. Some activists believe a one-year leave is sufficient and the right needs to be restricted to a birth rate of two children per family to encourage family planning.

Violence against women in labour law and orders:

The right to work is not included in the Sudanese constitution, while in the Personal Matters Law the husband's/guardian's right to obedience, which includes forbidding women to work, hampers women's rights to work and to promotion. Moreover, male bias and prejudice against females restrains women's

employment and promotion opportunities at top levels both in the governmental and private sector.

The labour law does not lay stress on violence against women. It seems that this has been left for the criminal law although the need for handling this issue in the labour law is vital. Violence against women in workplaces ranges from physical assault to different forms of sexual harassment. Remedying this issue through the labour law can help sensitize and raise the whole community's awareness to women's right to protection against violence.

Various laws in the Labour Act of 1995 and 1997 are the result of the ideological motivation to bring the law in line with the drafters' interpretation or understanding of *Sharia*. To give some examples of this:

1. The Public Service Regulation Act of 1995, section 43-C, refers to women employees' decent dress in accordance with *Sharia*. This is a subjective rule, which violates women's right to choice of dress as part of individual freedom, puts them under their employers' judgement of what is decent, and discriminates between Muslims and non-Muslims if not applied to non-Muslims.
2. Another example is the *idda* right (the right of a Muslim widow to 4 months and 10 days full paid work leave if not pregnant, and until birth if pregnant). This right is given only to Muslim employees, which discriminates against non-Muslim female employees. Further, it does not give men such a right! The law is based on a custom rather than a religious order.
3. The Pension Act of 1992 defines family in a way that excludes children born out of wedlock from rights to pension. This needs to be changed to give this right to all recognized children.
4. The same act defines the retirement age as 55 years for women and 60 years for men. The differentiation between men and women in the

retirement age is not justified and we propose equality in the retirement age for both at age 60.

5. The 1996 Public Order Act of Khartoum State prohibits women from engaging in petty trade in public places before 5 am and after 5 pm. There is no such restriction applied to men. Also, women without licences are frequently arrested and all their belongings confiscated. Moreover, they go through enormous hardships in order to obtain their licences. Thus, these measures clearly discriminate against women and their market mobility within their community. Measures to make obtaining licences easier are needed. Further, the time restriction needs to be abolished.

Main gaps in the law:

1. No reference is made to establishing specific laws on women's protection from violence in the workplace.
2. Further, laws for home workers are missing, as the Labour Act of 1997 does not cover this category, nor has Sudan ratified the Home Work Convention. Though the law does not explicitly discriminate any more, equality of opportunity is not mentioned in the Sudanese labour law.
3. The current Labour Act does not cover the protection of women in the informal and in the agricultural sector.
4. Dismissal during maternity leave is not prohibited in law.

Consequently, as Sudan is approaching a new peace agreement which entails law reform, it is crucial that in such a reform the following is taken care of:

1. Ratifying the above-mentioned conventions and making law amendments accordingly.
2. Abolishing the above-mentioned articles that entail discrimination and violence.

3. Abolishing articles related to women's dress code at work and time restrictions for informal work as laid out in the Public Order Act of Khartoum State and likewise similar provisions in other states.
4. Operationalizing the maternity protection rights and including the protection from dismissal during maternity leave in the law.
5. Protecting women working in the informal and agricultural sector by formulating laws that draw from the labour law in a broader understanding than by only considering the formal sector, since the majority of workers actually work within the informal sector.

Gaps and amendments in the Penal Code

The current Penal Code defines the age of adulthood as 16 for crimes that do not involve *hudud*, whereas for *hudud* puberty is taken as the age of adulthood and punishment. Hence, adolescents of age 18 can face death penalties according to *hudud* and adolescents aged 12-17 years can receive the humiliating punishment of whipping.

The law discriminates against girls by defining the age of consent as puberty. Further, *hudud* punishments are violent in cases of adultery, whereas the distinction between rape and adultery (*zina*) is not well demarcated for adults. This makes women afraid of being accused of *zina* and punished for it, which is why they often will forsake their right to report rape. Rape of and incest with children are well defined. However, the punishment is considered as rather minor.

In the Sudan Penal Code of 1991 there is no reference to juvenile courts and adolescents appear before the ordinary criminal courts, which is contradictory to international standards and the Convention on the Rights of Children (CRC).

Zina (Adultery)

Adultery is one of the crimes committed with the consent of both parties. Section 145 of the Sudan Penal Code of 1991 defines adultery as follows:

Adultery is said to be committed by:

- a. A man who has sexual intercourse with a woman with her consent, who is not his wife
- b. A woman who consents to a man to have sexual intercourse with her without being her husband

Adultery is to be proved by the testimony of four male witnesses or by confession of the offender. Retraction of the confession or the testimony of one of the witnesses remits the penalty of adultery.

Penalties vary according to the marital status of the offenders and their religions:

- Execution by stoning for married offenders
- Whipping of 100 lashes for unmarried offenders
- Imprisonment for a term not exceeding one year, a fine, or both for unmarried non-Muslim offenders from the southern states
- Three years' imprisonment for married offenders from the southern states living in the North of the Sudan, even though they are Christian. South Sudanese people are treated as exceptions because *Sharia* law is not to be implemented in the Christian region of the country which is defined only as the southern states.

Female Genital Mutilation (FGM)

No law clearly outlaws FGM in the current law. The previous law of 1973 incriminated only infibulations, however, not as part of the public law. Also, the 1991 Sudan Penal Code abolished the previous law that existed from 1947 to 1982. Yet, that law was not based on making FGM a public crime, but rather a personal issue.

The debate over the importance of such a law has led to recommendations that all types of FGM should be considered public crimes. A specific law should be amended in the Penal Code including a punishment for the circumciser, the parents and any others who encouraged and participated. The force of the law along with other measures is believed to deter many from the practice. Further, the presence of a law indicates the government's commitment to abolishing FGM and erodes the debate over its legitimacy. Such a law could be based on the principle of the public good.

Abortion

The Sudanese Penal Code indicates the punishment for those who cause a woman to miscarry as paying *dia'* (blood money) and imprisonment if it is intentional. Legal abortion is stipulated under certain conditions as follows:

- Pregnancy is detrimental to the mother's life
- Pregnancy is the result of rape, which has occurred not more than 90 days before and the pregnant woman has decided to abort
- It is proved that the premature baby has died in the mother's womb

Whoever performs an illegal abortion is to be punished. The punishment can be imprisonment for not more than 5 years, a fine, or both.

Acts that lead to the abortion or the death of a premature baby (foetus) are also punishable (Section 136-137). The punishment can either be 2 years' imprisonment, a fine, or both. This does not affect the right to *dia'*, i.e. compensation in money for causing the death to be paid to the mother, if she is not the cause of abortion herself.

The three above-mentioned issues are specifically problematic to women and need to be addressed. The issue of a law regarding FGM is discussed a lot by activists and there is currently a strong lobby for passing a law. However, opposing groups are also active who campaign to stop a law prohibiting all types

of FGM and rather seek to forbid only the most severe types including cutting. The struggle is ongoing.

Another highly needed amendment through a more progressive interpretation of the Qur'an is to allow women to claim rape under oath rather than being accused of *zina* themselves in case of absence of witnesses, and to no longer accept pregnancy as sole evidence of adultery. This would be a modern way to overcome *hudud* penalties based on the principle of the common good. Further, the stoning penalty needs to be banished from the law.

Moreover, women should be allowed to abort a foetus within the first 90 days of a pregnancy and an article should be introduced in the law according to the Muslim scholars' definition that the soul is created in the foetus only after this time period. Hence, there is no killing or loss of a soul involved if an abortion is carried out before the 90th day. Some scholars even mention a period of up to 120 days. This could be considered a modern *ijtihād*.

Women's Rights and problems they face in the Sudanese Family Law for Muslims

Before 1991 Muslims in Sudan were governed by *Sharia* law but no comprehensive law was formulated, rather the *Sharia* judges and the supreme *Sharia* judge, the *Mufti*, were given the right to develop specific rules or acts called *manašir* (manashir), messages from the Mufti Council, to judge on various issues. They could always develop new rules or nullify older rules if they were proved not to be in the interest of the common good. This arrangement would have made the law flexible for introducing changes to some extent. However, as the main *Sharia* supreme judicial council mainly consists of men who are usually detached from new discourses concerning new interpretations as well as the feminist movement, their actual flexibility to introduce positive change has been doubted.

In 1991 the current government formed a committee of 10 persons, only two of whom were women, to develop the current comprehensive Muslim Family Law.

The law deals with the following main issues:

1. Marriage: validity, eligibility, legality, rights of spouses
2. Divorce: causes, means, implications, rights of divorcees, distribution of property and custody over children
3. Inheritance: eligibility, division of heirlooms amongst heirs
4. Parents' and children's rights, rights of children over parents and vice versa

Evaluation of marriage rights

Women's rights in entering marriage:

Women have the right to consent to marriage, but this is conditional on obtaining a male guardian's approval, i.e. his view that the groom is competent and equal in status to his daughter. This is a loose definition of competence and equality. It is made to control the girls' right to choose a partner. Male guardians can claim the nullification of a marriage if a girl decides to marry on her own against the guardian's will. The court can support his claim. Another condition for marriage validity is to have reached the required age of puberty, or alternatively to obtain the guardian's and a judge's consent prior to puberty, as early as age 10. This is a major weakness and activists have been campaigning for an age restriction on marriage. Opponents claim that reality already shows the average age of marriage rising to 19 in rural areas and 22 in urban areas. However, the lack of a law puts a number of girls at risk.

Women have the conditional right to make stipulations at the time of the marriage contract. However, in practice it is considered a shame for a girl's family if stipulations are made. It is also considered humiliating for the husband to accept or expect stipulations. Consequently this right is rarely used. The only solution to

overcome the cultural inhibition is by changing the marriage contract to include stipulations by default. Stipulations can include to allow the wife to pursue education, or work, to divorce at will without being overruled in court, to forbid the husband to marry over her, to decide on where the marital couple should live. The first two issues are considered easy and do usually not incur problems, however, husbands will be resistant to accept the last three.

Women's rights in marriage:

Women have the right to maintenance, but this is conditioned by her obedience and living in the marital household. A woman has the right to visit her parents upon the permission of the husband. On the other hand it is forbidden for the husband to use the wealth of his wife. In the case of polygamy women have the right to just treatment.

Activists consider the obedience and the control of a wife's movement laid out in the law humiliating and in opposition to the principle of an Islamic marriage based on love and mercy as stated in the Qur'an.

Women's right to divorce and custody:

A woman has the restricted right to file divorce in court, based on certain conditions, such as ill-treatment, lack of maintenance, lack of potency, or abandonment for one year. If she fails to prove any of the above mentioned, she can leave the marital house for two years and then request to pay compensation to the husband in order to get a divorce. The court will declare her *nāšiz* (*nashiz*), which means "not obedient". The court will form a committee of four relatives from both sides to seek reconciliation; if they fail, they make a recommendation for the amount of compensation and the judge issues the final decision on the payment and declares the couple divorced. In cases of husbands divorcing their wives, a wife usually forsakes the payback of the latent bride wealth and compensation with household property. In most cases relatives will press for him to divorce her, which is called a *fidya* (ransom) divorce, and is similar to *khula*.

In case of divorce the wife has a conditional right to custody over children under the age of 9 for girls and 7 for boys. After this she has to file a case in court for the continuation of the custody. This right is more or less only granted to Muslim women, while non-Muslim mothers' right to custody is highly limited by the law.

In case the woman is remarrying or leaving the country of the husband's residence she loses the right to custody.

Women's rights as divorcees or widows:

As a divorcee a woman has the right to maintenance for 3 months and 4 months, and as a widow for 10 days to be paid from the late husband's fortune before inheritance distribution. Women also have the right to a distribution of household property in case of divorce, but this is usually limited to the items that supposedly suit a woman if she can not prove ownership.

Husbands' rights in marriage:

It is a claimed right of the husband, that the wife has to take care of him, be obedient to him, and preserve him and his wealth. A wife has to look after herself (preserve her chastity) and his wealth in his absence.

The husband has the right to take up to four wives without any restrictions and without needing the first wife's permission.

Husbands' rights in divorce:

A husband has the right to divorce his wife at will without the approval of a court.

He can claim all household possessions that supposedly suit a man (such as a car, equipment and furniture). He has the right to custody over children beyond the age of 7 for boys and 9 for girls. It is evident that the law is patriarchal and not based on the equality principle. It is based on a selection of Qur'an verses, interpreted in a literal and isolated way without considering the totality of the

marriage and sanctity of family principles in Islam. Following progressive interpretations the right to absolute divorce could be lessened by imposing restrictions; polygamy could also be outlawed. Moreover, issues of obedience should be left to the ethical component of the Islamic teachings as it is the case with many other issues and not be put in the legal arena. All the other rules about the details of property division after divorce and custody are not based on any Qur'an verses, but mainly rely on the scholars' interpretations.

Parents' rights against adult children:

If parents can prove poverty and need they can claim maintenance from sons who are able to afford it. Married sons' priority of maintenance is to their wives and children. Daughters have no legal obligations. However, daughters are considered as their parents' caretakers in old age and in practice they shoulder more responsibility for old parents' support than sons.

Right to transfer of assets:

Muslim parents can transfer assets/wealth to their children by way of a will, as a gift, or according to Islamic inheritance rules. Children have the right to inheritance from both parents, however, daughters get half of what a son gets. Spouses have the right to inherit each other's possessions, but wives get half of what a husband would get. Yet, parents share an equal right to inheritance from their children.

Customary law in many rural and nomadic groups gives the right to inheritance only to males and denies females the right whether they are mothers, wives or daughters.

Every citizen can transfer assets by will, gift or sale.

Other assets such as pensions can also be transferred to children below 18 for boys and until marriage for girls. Both parents can transfer pensions after their death.

Women can legally possess separate property in their own name and can dispose of it as they determine. This aspect is respected in most sub-cultures in Sudan. However, in some parts of Sudan the wives' income and property are under the control of their husbands.

Comments on the law

Discrimination and violence in the law:

Many criticize the Family Law established in 1991 for not using progressive interpretations of Islam from various sources and *Madhhabs*.

The age of consent to marriage is defined by puberty, but can be from the age of ten for girls if the judge is convinced that it is beneficial that she should be married. This is a violation of the CRC, to which Sudan is party. Early marriage puts girls at the health risk of early pregnancy and also jeopardises their rights to education and maturity.

Unlike the previous laws, the 1991 law establishes the consent of a male guardian as a prerequisite for marriage validation. Hence, for a bride it is a shared right to consent while for the groom it is an individual right to consent. This has made women dependent on the mercy of the judgement and the will of their male guardians and curtails their full rights as guaranteed by Islam. Sudan chose a more restrictive version of the Islamic schools. The result is against women's right to equality as stated in the constitution.

Another injustice is the non-restriction of the husband's right to divorce his wife (wives) at any time and without any justification while the wife's right to divorce is restricted by court or depends on whether it was stipulated as a right at the time

of marriage (*isma*), i.e. on whether the groom accepted. Many women suffer sudden divorces and might even not know about it. This is a violation of equality principles and threatens family stability, which is a core concern in Islam.

The non-restriction of polygamy, conceived as a man's right, is a source of violence against women. This could easily be outlawed by more liberal interpretations as has been done in Tunisia and Southern Yemen.

The discrepancy in parents' right to custody over their children gives husbands a larger custody time window than mothers, who suffer from detachment and lengthy court procedures in order to claim their superior eligibility to have custody. However, practice shows that fathers mainly leave the daughters with the mothers while claiming their sons. This custody law is not based on any Qur'an or Hadith texts, hence there are great differences in custody law between the Muslim countries.

All the above-mentioned aspects of law need to be changed since they are evidence that men and women do not share equal status and equal rights within family law regarding the age of consent to marriage, validity issues and all the various other components of the law.

Main recommended changes:

It is recommended by the research team and many activists who endorse the research findings and recommendations that a new family law should be developed regarding the definition of marriage, the marriage certificate contents, age, validity, rights in marriage, divorce, custody and distribution of wealth.

The changes should implement:

1. Including a new definition of marriage based on a bond of love, respect and mercy for life between the spouses as stated in the Qur'an.

2. Drafting a new marriage document that essentially entails an equal contract defining equal rights.
3. Making divorce an equally restricted right decided by family courts for both spouses.
4. Giving the divorcee the right to equal shares of household property and assets, particularly those acquired during the marriage.
5. Restricting polygamy or prohibiting it.
6. Making custody rights equal for both parents, giving greater weight to the children's benefit.
7. Defining the minimum age of consent to marriage as 18 years for both sexes.
8. Giving the bride the full right to consent to marriage by abolishing marriage validity restrictions based on competence and a guardian's consent.

Concluding remarks:

It is evident from what has been discussed that Sudanese women enjoy substantial rights in political, civil and labour law. However, the main discriminating and violent legislations have been indicated, particularly in family law and in the Public Order Act.

Sudanese legislators in the 1990s chose rigid standards despite the existence of more progressive interpretations of Islamic law, whether written by respected Sudanese religious scholars as Mahmoud Mohammed Taha, Turabi, and el-Sadik el-Mahdi or developed by Sudanese feminists. The religious judiciary and the male-dominated legislative and judiciary bodies in Sudan remain conservative, as is the case in many Muslim countries, while activists have been developing "women-friendly" laws. They have not yet embarked upon using the principles of the common good (*dara` al-mafāsīd*), consensus (*qiyās*) or interpretation (*ijtihād*) to come up with legislation that respects the Islamic

equality principle and is congruent with all human rights principles including all articles of the CEDAW.

Having said this, I do recommend a revisiting of these laws in order to abolish those that indicate clear violence, modify others by formulating new articles, and add laws that have been missing to preserve granted rights by the actual force of the law. The rights concept has to be highlighted in the minds and cultures of those in the legislative body, educational institutions and mass media. The state must be the protector of individual rights and freedom and it has to act as protector at all times and in all cases.

Civil society needs to play a catalyst role as an educationalist on adolescents' and women's rights to its constituencies, as a lobby for law reform, as a pressure group to affect change on the legislative level, and as a provider of legal aid to the most disadvantaged groups.