



Competing Perceptions of Women's Civil Rights in Sudan

During the peace process in Sudan women were merely “guests at the table. The role permitted to women during negotiations was based on a perception of them as passive victims of war, not active players in politics and society,” says Anne Itto, one of few female ministers in the government. She calls the comprehensive peace agreement (CPA) signed on the 9th of January 2005 “a gender-blind agreement.”

The Sudanese conception of citizenship differs from the Western understanding of it. In Sudan and the Middle East generally, there is a sharp distinction between a person's “public” rights regulating for example political rights and the “private” rights regulating civil rights such as marriage, divorce, inheritance, maintenance and financial custody of children, and alimony. In Sudan, the “private” civil rights are the legal domain of the religious and tribal communities. Research on gender in the Middle East claim that religiously anchored “private” civil rights systematically discriminate women.

The CPA and the interim national constitution present this as a religious freedom. What are the consequences of this “religious freedom” on the civil rights Sudanese women? This brief presents how the civil rights of Sudanese women are formed and applied by the religious and tribal communities in today's Sudan. Sudanese women are granted different civil rights depending on which religious or tribal community they belong to. This brief attempts to outline the main features in a complicated patchwork of plural legalities for Sudanese women.

This brief presents the main finding from fieldwork in Khartoum in November 2006 and in February/March 2007 financed by the Norwegian Ministry of Foreign Affairs. We investigated Islam's role in peacebuilding. Our focus of analysis was whether the religiously defined rights of non-Muslims and women are in alignment or in conflict with international human rights. This qualitative study is primarily based on semi-structured elite interviews with Muslim oppositional leaders, Christian church leaders, members of non-governmental, governmental organisations and government officials.

All are equal, but some are more equal than others

If the CPA is “gender blind”, the interim national constitution (2005) is “gender sensitive” and speaks directly to women. For the first time the bill of rights in the constitution (article 15 and 32) explicitly ensures women and men equal rights. The interim national constitution is a step in the right direction, say Sudanese women. Now, they feel that they have a “voice” and that they are recognised as citizens.

In the national interim constitution it is stipulated in Article 15 on Family, Women and Marriage that “the State shall emancipate women from injustice, promote gender equality and encourage the role of women in family and public life” and in Article 32 on the Equal Rights of Men and Women that “the equal rights of men and women to the enjoyment of all civil and political rights and all social, cultural and economic rights, including the right of equal pay for equal work, shall be ensured.”

The nationality issue represents a milestone and a new right for Sudanese women. Since the first Nationality Law of 1957, nationality has been granted to an individual based on the nationality of the father. Only a child with an unknown father could claim the mother’s nationality. If a woman was married to a foreign national, she could not pass on her Sudanese nationality to her child even if her spouse consented. The child remained a foreigner until adulthood. A husband could pass on his nationality to his wife, but not the reverse. For the first time in Sudan’s history “every person born to a Sudanese mother or father shall have a non-alienable right to enjoy Sudanese nationality and citizenship”. Another important improvement, even if not “a right”, emphasised by Sudanese women themselves, is the fact that the dress code is far less strict after the peace agreement.

When it comes to women’s civil rights, the CPA and the constitution fail to secure Sudanese women equal civil rights in matters such as marriage, divorce, inheritance, maintenance and financial

custody of children, and alimony. In the name of religious freedom, the CPA and the constitution have left the civil rights of women to the religious communities in the country - Islamic, Christian, and traditional African beliefs. Civil rights are perhaps the most tangible and important rights in the daily lives of “ordinary” Sudanese women. Yet, there are no official recommendations or guidelines as to how the religious and tribal laws should be applied and interpreted. It is up to the religious communities themselves to form and apply the family laws regulating women’s civil rights. This leaves women vulnerable and without explicit rights.

The situation is different for Muslim women and non-Muslim women. For Muslim women, the codified Islamic family law - the Muslim Personal Status Act of 1991- which regulates their civil rights, still has legal force in today’s Sudan. This codified law is perceived by most Sudanese Muslim women and the international community as discriminatory against women. According to the codified law, a husband can prohibit a woman from working outside the home. Thus, the constitutional right to public office becomes vain in a reality where the husband has the right to decide whether his wife should work outside the home.

There exists no codified law for the civil rights of non-Muslim women in Sudan. There is merely a law from 1926 which deals with legal aspects of marriages for non-Muslims. There are discriminatory elements in both the Christian family law and the customary family law, say the interviewees in this study.

The government “gives with one hand and takes with the other hand” says Balghis al-Badri, the head of the Institute of Women, Gender and Development Studies at Afhad University for Women.

According to the comprehensive peace agreement and the interim national constitution “all personal matters, including marriage, divorce, inheritance, succession and affiliation may be governed by the personal laws (including sharia or other religious laws, customs and traditions) of those concerned”.

In reality, there is no “equality before the law” neither between men and women nor between Sudanese women across religious and tribal affiliation. Anne Itto says that there is an internal contradiction in the constitution; “There are articles [...] that recognise customs, traditions and religion as sources of moral strength for the Sudanese people [...] Yet some customs and traditions have contributed to the marginalization of women.”

Southern Sudanese women: “the most marginalised of the marginalised”

When dealing with women’s (civil) rights, Norway along with the international community focus on Islam. Consequently they overlook the discriminatory practices within other religious and tribal communities. This is problematic, because in certain areas the Islamic family law in Sudan might actually be considered less discriminatory than the other religious and tribal communities. According to Rose Paulino, a southern activist, there are more than 50 different customary laws among the southern Sudanese population. Although there are differences across the customary laws, they all have the same basic discriminatory features which are in conflict with international human rights, she advocates. Essentially “the status of women is that of property”, she says. Referring to the late John Garang Agnes Nyoka Peter, a southern parliamentarian says “women are the most marginalised of the marginalised in southern Sudan”.

Compared with the codified Islamic family law, women have fewer rights under the customary laws. According to an African sultan in a traditional court in Khartoum the customary law allows men to take as many wives as he pleases, whereas the sharia allows only four wives. The dowry is considered a woman’s own property in the sharia, whereas in customary law the dowry is the property of the extended family. The dowry rules in the customary law make it difficult for a woman to obtain a divorce. Although it might be considered difficult for a woman to get divorce in the sharia courts, it is far easier than



in the traditional courts. Under the sharia, a woman can initiate a divorce, if she has specific legal reasons, and she does not have to pay back the dowry. In customary law, on the other hand, a woman's decision to initiate divorce will have a dramatic effect on the extended family's financial situation. They are forced to pay back the dowry whatever the reason for the divorce.

According to the *salatins* or judges in a traditional court in Khartoum *"the man gets custody of the children no matter what age the children are or who initiates the divorce,"* whereas women under the sharia maintain custody for their daughters until they are nine and for their sons until they are seven years old.

In sharia, a woman is entitled to half the inheritance of her brother(s). In the customary law a woman has no right to inheritance whatsoever. In fact, *"a woman is property"* claims the leader of Sudan Council of Churches. *"If the husband dies, she has to marry someone within the family,"* he says. In other words, the family inherits her.

Prospects for "change from within"?

Despite the fact that most Sudanese elite women deem their current "rights' status" as discriminatory, they do not demand a secular law on women's civil rights. They advocate changing it from within in a more gender equal direction.

In their battle for "gender equality" they actively use international conventions such as CEDAW to advocate gender equality. Sudan is together with USA, Iran, Somalia, Qatar, Nauru, Palau and Tonga, the only states yet to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Southern Sudanese elite women advocate ratifying CEDAW without reservations. In their opinion, Islam is the main reason why Sudan has not yet ratified the convention. They are partly correct in that the conservative perception of women's civil rights propagated by the regime is not in harmony with CEDAW. The regime particularly objects to the article 16 in CEDAW referring to a woman's equal civil right to marriage, divorce and inheritance which conflicts with the conservative codification of the Islamic family law from 1991. The president's legal advisor, Farida Ibrahim, claims that CEDAW is *"against sharia law and it does not represent the government's*

stance on women's rights. It destroys family values [...]".

Article 16 of CEDAW stipulates that "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration".

However, there are Islamic forces in the country stating that there is nothing in CEDAW which is against sharia. Although Sudan has not ratified CEDAW, the debate on the convention has fuelled the reinterpretations (*ijtihad*) on the Islamic family law and expanded the boundaries for women's rights within the frame of Islam. Islamic family law is a bargaining area between competing interpretations and political forces in the country. The issue of women's rights is actively used by the opposition to criticise the "un-Islamic" and "un-democratic" nature of the current regime. The opposition in general and the feminist activists in particular call the codified Islamic family law discriminatory and demand a total reform through reinterpretation (*ijtihad*) of Islam. According to Aziza Hassanein, an expert on Islamic law *"sharia is good for women,"* but the codified law represents a *"bad interpretation."* Equally, Sonia Malik from Afhad University for Women does not regard sharia a problem as such,

but rather the fact that *"they [men] take the hardest interpretations and apply it."* Sadiq al-Mahdi, former prime minister in Sudan and leader of the biggest opposition party, describes it as *"backwards and unacceptable. It treats women as second class citizens and it is based in the old concept of exclusive male control"*. In their view there is no contradiction between women's rights and Islam, it is a matter of interpreting the laws in a more feminist perspective.

All oppositional Muslim forces in the country, including the Sudanese Communist Party, advocate keeping the Islamic family law. However, they all have different interpretations of what the sharia says about women's civil rights. Among the opposition the interpretations of women's civil rights within the family law vary vastly from liberal to conservative. When the sharia is interpreted in a liberal manner, women have rights. Ali al-Sayid, Member of Parliament for the Democratic Union Party and a sharia judge, interprets the sharia in a way that enhances their rights when compared to the codified law. Al-Sayid illustrates how a reinterpretation (*ijtihad*) in a feminist perspective facilitates change from within the Islamic family law itself. For example, he stated that in his opinion *"a woman should have an equal right to divorce"*. He further believes that when it comes to custody, the man should not automatically get custody after the boy is seven years old and the girl is nine years old as the present law stipulates, but *"the person best capable to take care of the children should get custody"*. Moreover, he claims that polygamy *"is not sharia"*. He goes on to say that a woman should get the equal inheritance of a man as stipulated in CEDAW. This contradicts the traditional interpretation, and Ali al-Sayid admits that this is a debated issue in Sudan. Al-Sayid's personal view is that *"a woman should get equal inheritance to her brother, because the reality in Sudan is that women are working and contributing to the household, so this should be reflected in the inheritance. The "old" rules are stuck in an ideal world where the man is responsible for maintaining his wife"*.

It is important to remember that the discourse among the elite on CEDAW by and in itself is most likely falling short of meeting everyday needs of the large number of "ordinary" Sudanese women. For Sudanese women relying on entitlements embodied in family relationships, the individualistic concept of equality promoted by the international equal rights policy is disconnected from their context, namely everyday

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life. Nonetheless, the family law is at the very heart of everyday life of Sudanese women. It is therefore important to note that the international injunction to ensure the elimination of discrimination against women is perceived as reconcilable with the norms of Islam.

The “battle” to ‘change from within’ is different for Muslim and non-Muslim women. Since the customary law is not a written law, there is less room for a flexible reinterpretation of the text which increases women’s rights within the current system. It is thus not possible for southern Sudanese women to change the legal system from within by reinterpreting the sources of the law itself as seen in the contemporary reinterpretations of the Islamic law. Furthermore, there exists no codification of the customary law which involves that the state does not provide legal protection for southern Sudanese women. So for southern women CEDAW becomes even more important, because if it were ratified the state will for the first time be forced to take responsibility for their civil rights. Because there is no codification of the customary law, due process in traditional courts is not clearly defined; rendering women vulnerable to arbitrary application of the laws. In the traditional courts there is no justice, because it is “*not socially accepted for women to go to the traditional courts and the woman often end up being wrongly imprisoned*”, says Lucie Luguga, UNIFEM’s programme manager for Southern Sudan. “*The elders and the chiefs have a set mindset*” and “*many women give up on serious cases such as rape and abusive husbands as they expect no justice to be delivered to her*”, claims Anne Itto.

However, southern elite women warns the international community by saying that it takes more than a ratification of CEDAW to deal with the discriminatory laws. Anne Itto says “*customary law represents habit, attitude, value system, worldview and it takes more than a law to deal with it. Even the women in the grassroots are reluctant to change, because they are socialised to protect their family. Education and awareness raising among men, older women and younger is the key to change, but this is a long and slow process.*”

A comprehensive peace for Sudanese women?

Gender was not on the agenda despite the international awareness to include women in peacebuilding. Sudanese women were merely guests at the table. The result was a gender blind peace agreement which at first glance appeared equitable, because it was written in terms of an abstract gender neutral citizen. But in reality, there is no equality neither between men and women nor between Sudanese women across religious and tribal affiliation. In the name of religious freedom, the CPA and the constitution have left the civil rights of women to the religious and tribal communities. There are segments within the religious and tribal laws in today’s Sudan which discriminate women and prevent them from participating in society on an equal footing with men. Both the Sudanese and the international peacebuilders have failed to provide women with fundamental human rights.

Relevant CMI Projects

Religious Dialogue and peacebuilding in Sudan

Peacebuilding in Sudan: Micro-Macro Issues

Politics of Faith

Further reading

Liv Tønnessen: *Gendered Citizenship in Sudan: Competing Perceptions of Women’s Civil Rights within the Family Law among Northern and Southern Elites in Khartoum*, CMI Working Paper WP 2007: 4

Liv Tønnessen & Anne Sofie Roald: *Discrimination in the Name of Religious Freedom: The Rights of Women and Non-Muslims after the Comprehensive Peace Agreement in Sudan*, CMI Report R 2007: 5

Liv Tønnessen: “Norsk kvinnekamp i verden?” in *Klassekampen* 31.03.2007

