

NUMBER 5

CMI REPORT

DECEMBER 2017



AUTHORS

Samia El Nagar
Liv Tønnessen

Family law reform in Sudan: competing claims for gender justice between sharia and women's human rights



CMI CHR.
MICHELSSEN
INSTITUTE

**Family law reform in Sudan:
Competing claims for gender justice between sharia and women's human rights**
CMI report, number 5, December 2017

Authors

Samia El Nagar
Liv Tønnessen

ISSN 0805-505X (print)
ISSN 1890-503X (PDF)
ISBN 978-82-8062-675-2 (print)
ISBN 978-82-8062-676-9 (PDF)

Cover photo

Photo by Albert González Farran – UNAMID
(CC BY-NC-ND 2.0)

Graphic designer
Kristen Børje Hus

www.cmi.no

TABLE OF CONTENTS

Family law reform in Northern Africa	6
Egypt	6
Morocco	6
Tunisia	7
Algeria	7
Undemocratic, but Islamic reforms?	8
Islamism, gender equity, and codification of the Personal Status Law for Muslims of 1991	10
Marriage contract	11
Obedience in marriage	11
Early women's mobilization for family law reform	13
Efforts to reform Sudan's Personal Status Law: 2009 to today	15
National Committee for Review of Women's Status in Laws (2009–2012)	15
The Alternative Family Law (2009–2012)	16
National Committee for Family Law Reform (2016–2017)	18
Constitutional debate (2017): A woman's right to consent	19
Conclusion: A never-ending story?	22
References	23

INTRODUCTION

This paper focuses on family law reform in Sudan—a country that has been in a state of perpetual conflict that stretches back long before its independence in 1956. The signing of the Comprehensive Peace Agreement (CPA) in 2005 between the ruling Islamist National Congress Party and the Sudan People's Liberation Movement ended Africa's longest running civil war. In the wake of the CPA, activists both inside and outside of the government have particularly been preoccupied with debating Muslim family law reform. Although the peace agreement was largely gender-blind, the interim national constitution of 2005 included clauses on gender equality and affirmative action (Itto 2006). Article 32 on the rights of women and children provides, “The State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits.” This sparked processes of harmonizing Sudanese laws to the constitution. Activists inside and outside of the government have demanded law reform on a range of women's rights issues, such as the criminalization of female genital mutilation, the introduction of a women's quota to Sudan's legislative assemblies, reform of the criminal law's definition of rape, and equality-promoting changes to Sudan's family law.

The Personal Status Law for Muslims (also called the family law in this paper) was codified in 1991. It has emerged as a highly contested piece of legislation in post-CPA Sudan, to the point that it was a central topic in the 2010 election campaign and a disputed theme in constitutional reform debates in 2017. The 1991 law has been described as a backlash against women's rights activists, as it (among other things) legalizes child marriage, stipulates a wife's obedience to her husband, and denies wives the possibility of working outside of the home without their husbands' permission. It builds on the principle of *qawama*, which loosely translates as “male guardianship.” In short, *qawama* projects a philosophy that a husband is obliged to support his family financially (*nafaqa*) in exchange for his wives' obedience.

Attempts to reform the Personal Status Law have met resistance. The law is perceived to be “untouchable because it is literally based on Sharia.”¹ Proposals for reforms to expand women's rights that “contradicts the explicit doctrine, codified tradition, or sacred discourse of the dominant religion or cultural group,” are more likely to meet religious resistance (Htun and Weldon 2010, 210; see also Charrad 2001; Tripp et al. 2009; Htun and Weldon 2012). This includes efforts to expand women's rights, including through the contested area of family law, that is, the body of rules governing matters of marriage, divorce, custody, inheritance, and maintenance. Family law has proved to be a difficult area of law to reform in general, but this is particularly so where it is codified as religious law, as in Sudan. In such countries, family law reform is shaped by the relationship between the state on the one hand and religious organizations and institutions on the other. The strength of religious institutions and beliefs is inversely related to family law reform. The more powerful the country's religious organizations, the less willing and able the state is to violate the tenets of doctrine (Htun 2003).

Codification of Sudan's Personal Status Law of 1991 in the name of Sharia has led to many initiatives to reform the law within an Islamic frame in order to avoid backlash from conservative religious actors. In the post-CPA era, religious conservatives may be only a select few individuals, but they are well-organized and close to those in power within the government. They are active both inside and outside of Sudan's legislature and government institutions, and they dominate the state-controlled media. Many of these conservatives are associated with two religious institutions, the Islamic *Fiqh* Academy (*Mujamaa Al Fiqh Al Islami*), and the Association of Sudan Scholars (*Haiaat Ulema Sudan*), which were established in 1998 and 1999, respectively, and function directly under Sudan's president.²

¹ Interview with woman right's activist, Khartoum, Sept. 2017.

² Both institutions have the functions of strengthening religious advocacy (*dawa*) and giving advice to the state on Sharia affairs. The Association of Sudan Scholars has 606 members, of which about 41 are women. It has issued 10 publications on issues of family and society; four address CEDAW and the others are on Sudanese-specific issues, such as the status of Muslim women, informal *urfi* marriage, and woman as religious advocates.

Sudan stands out as the only northern African country that has yet to reform its family law to take account of changing global standards for women. This despite the fact that reform has been on the agenda of the women's movement since the current law was first codified in 1991. Women's rights groups and the Ahfad University for Women took concrete initiatives for family law reform as soon as the early 1990s, when the Sudanese regime was at its most repressive. As of today, the only reform of family law that has taken place in Sudan's history was in 1969 under the rule of Jafaar Nimeiri, when his minister of justice, Babiker Awadalla, abolished the presence of police enforcement of "house obedience" (*bayteta'a*).³ This has been one of the few achievements within the area of family law, but it did not challenge the idea of a woman's obedience to her husband (Al-Nagar and Tønnesen 2017).

Since the coup d'état in 1989, Sudan has portrayed itself as an Islamic state built on a conservative ideology where women are complementary rather than equal to men within the family setting. This is a particularly difficult environment in which to advocate for family law reform. Religious conservatives have also had strong political influence in the post-CPA era, particularly after Sudan's separation with South Sudan in 2011. In addition, there is a continuous competition within and between activists and reformists (within and without the government) for funding as well as praise, which makes broad mobilization for family law reform difficult. Finally, the increasingly authoritarian political environment has made it challenging for women to organize broadly.

This paper details the seemingly never-ending stream of initiatives for family law reform initiatives in post-CPA Sudan, none of which have culminated into de facto reform of the 1991 law. The analysis is based on our long-term engagement and work on women's rights and legal reform in Sudan. The article builds on extensive interviews (in English and Arabic) from 2006 until 2017 with reformists and conservatives within the government, as well as non-governmental activists involved in initiatives for family law reform. The interviewees were recruited through the network of contacts we have created through many years of engagement with Sudanese women. We have interviewed, socialized, and had formal and informal discussions with many of the people interviewed for this study on many occasions throughout the last 11 years.⁴

³ "House obedience" stipulates that a woman who leaves her husband's house without his permission will be brought back to the husband's house by the police. This use of the police to enforce a wife's obedience was abolished in 1969.

⁴ We asked participants in this study open-ended questions about (i) policy priorities; (ii) initiatives for family law reform; (iii) possibilities and constraints facing women engaged in such endeavors in post-CPA Sudan; (iv) the working relationship, cooperation, and dialogue between women in the government and civil society; and (v) the history and development of Sudan's woman's movement and its focus on family law. We also asked more specific questions regarding issues we knew were hotly debated, such as child marriage, obedience, and male guardianship in marriage.

FAMILY LAW REFORM IN NORTHERN AFRICA

There have been quite a number of major reforms in Northern Africa, despite organized opposition from religious conservatives. Some of these reforms are rather minor, like the disputed divorce reform in Egypt in 2000. Others are quite comprehensive, such as Morocco's broad family law reform in 2004. Sudan is the only country in the northern Africa region that has not yet introduced any reforms to its family law. Consider the following examples from other countries:

Egypt

Egypt has taken a piecemeal approach to family law reform (Al-Sharmani 2010). Perhaps the most controversial reform was a 2000 change to women's divorce rights, or *khula*. Egypt's 2000 reform differs from the classical definition of *khula* by allowing a woman to initiate divorce in court without her husband's consent. If she returns the dowry (*mahr*) and proclaims in court that she hates marital life with her husband and fears she will fail to abide by Islam if she stays with her husband, the husband can do nothing to stop her from obtaining a divorce, at least in theory (Sonneveld 2011). The *khula* divorce reform was accompanied by other reforms, including the formulation of a new standard marriage contract that gave women the right to stipulate conditions (such as the right to divorce if the husband were to contract a second marriage). The reform also stipulated that a husband that fails to pay court-ordered maintenance to his wife or ex-wife and children can be imprisoned for one month. Also, the reform gave women who are in *urfî* marriages (i.e. unregistered) the right to file for divorce. Further, in August 2000, a new marriage contract was issued. The new contract had a blank space in which the couple could insert stipulations. In addition, in November 2000, Egyptian women were granted the right to travel without the permission of their husbands. Further reforms in 2004 also included the establishment of family courts, the creation of a family fund for court-ordered alimony and maintenance of female disputants, and new child custody laws (al-Sharmani 2009).⁵ These reforms became known collectively as the "Suzanne" laws taking the name from former President Mubarak. In other words, these laws were closely associated with Mubarak's dictatorship and thus came under heavy fire after the Arab spring. But they have not been repealed.

Morocco

In 2004, Morocco went from having one of the most conservative family laws in the Muslim world to having one of the most progressive. The *Mudawana*, as the Moroccan family code is called, is based on the Maliki school of Islamic jurisprudence. It was codified after Morocco's independence from France in 1956. The original law was built on the patriarchal ideal of a male breadwinner and guardian and an obedient wife. Among other things, the law stipulated that a woman could not marry without the permission of her male guardian. It also set the minimum age of marriage at 15 for women. A husband had the right to divorce by unilateral repudiation, and he could marry up to four wives without his current spouse's permission.

Under the new Moroccan family law, as reformed in 2004, husband and wife share equal responsibility for the family: the man is no longer required to be the main breadwinner. Male guardianship is eradicated, and the wife is no longer legally obliged to obey her husband. The minimum age of marriage is set at 18 for both men and women. The right to divorce is now a prerogative of both men and women, exercised under judicial supervision; a husband no longer has the right to unilateral repudiation of a marriage. Polygamy was not abolished by the reform, but it was quite severely restricted by subjecting it to a judge's authorization and to strict legal conditions. In addition, the reform expanded women's inheritance, property, and custody rights. It also recognized children born out of wedlock and simplified proof of paternity procedures (Pruzan-Jørgensen 2012).

The women's movement in Morocco mobilized extensively for this family law reform and succeeded in spite of resistance from religious conservatives. A first attempt at reforming

⁵ Sonneveld and Lindbekk (2015) write on how these family law reforms sparked organized protests among divorced fathers after the Egyptian revolution in 2011.

the *Mudawana* was initiated as early as 1991, when the Union for Feminist Action launched the famous “One Million Signatures” campaign. This made the reform drive a topic for political debate, rather than a matter to be discussed only by religious scholars (Sadiqi and Ennaji 2006, 97). An important factor in the success of the women’s movement was a shift in focus from secular to Islamic frames in arguing for comprehensive reform (Muriaas, Tønnessen, and Wang 2016; Moghadam and Gheytanchi 2010). The reform has received the blessing of Morocco’s king and is seen as the most comprehensive family law reform in Africa in the last two decades.

Tunisia

Habib Bourguiba introduced the still-famous Code du Statut Personnel in 1956 through a top-down authoritarian approach. Among other things, this radical code (1) granted women an equal right to instigate divorce as their husbands, (11) set a minimum age for marriage, and (111) required both parties to consent to a contract marriage (articles 5, 9). The code also abolished polygamy (article 18) and granted women the full right to work, move, open a bank account, and start a business—all without the permission of their husbands (Charrad 2012, 4–5). At the same time, however, Bourguiba’s authoritarian regime curtailed the women’s movement. During the subsequent reign of Ben Ali, women were granted the right to pass citizenship to their children, to receive alimony in cases of divorce, and to obtain custody of children upon the death of their husband (Charrad 2007; 2012, 6). Both of these waves of reform have underpinned Tunisia’s fame as a champion for women’s rights in the region.

Although Tunisia is often considered a secular country, Islamic sources have been central to the construction of its family law (Charrad 2007). The radical family law reforms were branded as “a new phase in Islamic innovation,” rather than as a departure from Islam (*ibid.*, 1519). Although outsiders view the 1956 family law as having a secular legal framework, it is clear that it has characteristic roots in Maliki *fiqh* (see Charrad 1997). For example, a 1973 circular from the minister of justice referred to Islamic *fiqh* and prohibited the registration of marriages between Muslim women and non-Muslim men (Ltaief 2005). According to Norbakk (2016), even more “secular” women’s rights activists in contemporary Tunisia use Islamic frames to argue for further reforms to the family law. For example, the right to equal inheritance has been high on the agenda after the Arab spring, as has violence against women (*ibid.*).

After the Arab spring, when Islamists came into power, a backlash against women’s rights was expected. However, despite heated discussions, in particular, regarding the principle of “complementarity” under the new constitution, this backlash never materialized (Charrad and Zarrugh 2013). Instead Tunisia saw a new wave of reforms, or at least promises of reforms. In 2016, Tunisia passed a violence against women act that criminalized marital rape. (Before this time, judges were able to conclude that marital rape was not actually rape and therefore not a crime, similar to under Sudanese law.) The new law also removed a loophole in the penal code that allowed rapists to escape punishment if they married their victims. In 2017, Tunisia also repealed the 1973 circular that banned Muslim women from marrying non-Muslims (Al Jazeera 2017).

Tunisia’s president has also recently called for gender equality in Tunisia’s inheritance laws, which has created controversy and heated debate (Nadhif 2017). However, this controversial suggestion has yet to be enacted as part of a new wave of family law reform in the country.

Algeria

In 2005, Algeria reformed its conservative family law based on Sharia. Previously, in 1984, the state had adopted a highly restrictive family code to appease the growing influence of Islamism. The 2005 reforms gave divorced women the right to stay in their former conjugal homes after divorce, prohibited forced arranged marriages, removed the legal requirement of a wife’s obedience to her husband, and restricted polygamy to cases validated by court and the consent of the first or second wife (Gray 2009).

Secular women’s groups advocated for the abrogation of the 1984 family law. Although progressive reforms were enacted, Algerian women have far from equal rights to men.

For example, the 2005 reform stipulates that an adult woman remains under the lifelong tutelage of a male guardian. The reform merely allowed a woman to choose her guardian. (Gray 2009) The family law also continues to treat men and women differently in the case of divorce. Men have the right to divorce without any justification. However, under the 2005 family law, the conditions under which a wife can seek a divorce were broadened, and include “inconsolable differences” and failure to observe conditions included in the marriage contract.

The 2005 reform met resistance from conservative Islamists who argued that it was not based on a “proper understanding of Islam” (Gray 2009; see also Catalano 2010). In fact, the reforms were regarded as encouraging family disintegration, a product of Western culture, and against Islamic principles and values (Catalano 2010). The Islamist party Movement for Society and Peace harshly denounced the proposed amendments and launched a petition for the mobilization of Algerians to stop dismantling familial unity (*ibid.*).

In March 2014, just days before International Women’s Day, the lower chamber of Algeria’s legislature (the People’s National Assembly) passed an act banning domestic violence against women.⁶ According to the new law, the attacker could face 2–20 years’ incarceration depending on the severity of the crime.⁷ Some Islamists believe the law is contrary to Sharia and will cause family disintegration. Thus, conservative actors were able to block the law in the Council of the Nation (the legislature’s upper chamber), and it was not enacted until 2015. Justice Minister Tayeb Louha defended the Islamic orthodoxy of the law, concluding that the Quran protects the honor of women and does not permit violence against them (Middle East Eye 2015).⁸

Undemocratic, but Islamic reforms?

The above reforms share at least two features. First, perhaps with the exception of the latest stream of reforms in Tunisia, family law reforms in the region have taken place in predominantly un-democratic settings and are in some contexts closely associated with an authoritarian legacy. Mubarak and Bourghiba are prime examples.

Second, women’s rights activists have been instrumental in pushing for family reform. Although they have used both international and national legal frameworks to advocate reform, in most settings advocates have also used Islamic arguments to counter resistance from conservatives. Even the prohibition of polygamy in Tunisia in 1956 was framed as a reform within the realm of Sharia. Employing Islamic arguments becomes almost inevitable in contexts where family law is codified as religious law. In most Muslim-majority contexts, the rules of *fiqh* remain particularly relevant in the area of family law, and the reform process is usually presented as taking place within Islamic law rather than external to it. The reasons for this approach range from faith-based to pragmatic and include both the personal beliefs of advocates and lawmakers and concerns about popular acceptance of an entirely secular family law.

Transnationally, one of the most important campaigns, *Musawah* (which translates as “equality”) advocates a feminist reading of Islamic scripture and argues that equality in family law in the Muslim world is both necessary and possible without stepping outside the boundaries of religion. Such equality, *Musawah* asserts, was the original intent of Islam before it became subverted by patriarchal interpretations of the Quran.⁹

6 Domestic violence is related to family law reform, because a wife’s disobedience to her husband can be interpreted as justification for beatings. Further, because of the principles of obedience in family law, the conception of marital rape has been difficult to swallow for conservative religious actors.

7 If a domestic attack prevents a woman from working for over 15 days, the perpetrator faces two to five years in prison. If a woman is mutilated, or the violence causes loss of eyesight or a limb, or any sort of permanent damage, the perpetrator faces 10–20 years in prison.

8 Women’s groups fought long and hard for the law out of a concern for the high rates of domestic violence in the country. Between 100 and 200 women die in Algeria each year in instances of domestic violence, according to statistics published by local media (Ross 2015). International human rights groups have welcomed the law, but also point to a loophole for offenders. One clause allows the survivor of domestic violence to pardon the perpetrator, which sets a dangerous precedent in a patriarchal, conservative culture (Amnesty International 2014).

9 For more information on *Musawah*, see their website www.musawah.org.

In national contexts, a common strategy for reform of Islamic law is not to produce new or feminist interpretations of the Quran and the Sunna in their totality¹⁰, but to selectively use existing interpretations, including minority views and lesser known *hadiths*. For example, the preamble of Morocco's 2004 *Mudawana* explains that these reform efforts are supported by the Prophet Mohammed's *hadith*, "Only an honorable person dignifies women, and only a wicked one degrades them." This verse is presented as evidence that a family should be placed under the joint responsibility of both spouses. However, this *hadith* is not found in any of the major *hadith* collections; it only appears in *The Book of Forty Hadith Regarding the Virtues of Mothers of the Faithful* (Stilt and Gandhavadi 2011).

Two other strategies reformists most commonly employ are *takhayyur* ("exercising preference") and *talfiq* ("patching"). These strategies also do not challenge the prevailing *fiqh*. In brief, *takhayyur* involves choosing a more desirable rule from the perspective of women and children. The new rule could come from a different school of Islamic law or from a minority view within the school that the country or community currently follows. *Talfiq* is similar to *takhayyur*, but involves combining two or more rules or parts of rules to form a new, hybrid rule that—while derived from *fiqh* opinions—would not be recognizable (or even permissible) by any one school. These strategies depend on the fact that a diversity of opinion exists within classical Islamic law, in particular, among the four Sunni schools of law (*ibid*).

For example, reformers in Morocco wanted to identify circumstances under which a husband's pronouncement of divorce would be ineffective. This resulted in article 49 of the *Mudawana*, which provides that a man's repudiation is not effective if he is completely intoxicated, is uncontrollably or violently angry, or is acting under compulsion. The compulsion exception is a Maliki rule, while the drunkenness exception is not supported by the dominant opinions in the Maliki, Hanafi, or Shafī'i schools but has support from minority views within those schools. The exception for anger comes from the Hanafi School and from individual Maliki and Hanbali jurists. As a whole, the list in article 49 is a patchwork of several schools and individual views.

As in other northern African countries, Sudan has codified its Personal Status Law based on *fiqh*. Under the rule of an Islamist state, Islam has been a frame either for advocating reform for pragmatic reasons or because Islam is genuinely believed to bring empowerment to women. In contrast to the neighboring states and despite decades of reform initiatives, a reform of the family law has not yet materialized. As of today, Sudan's family law is by far the most conservative in the region.

¹⁰ Although there are exceptions such as Mahmoud Muhammed Taha in Sudan. For an overview on Taha's radical reinterpretation of Islam and women's rights, see al-Nagar and Tønnesen 2015.

ISLAMISM, GENDER EQUITY, AND CODIFICATION OF THE PERSONAL STATUS LAW FOR MUSLIMS OF 1991

Sudan's current Islamist government came to power through a coup d'état in 1989. This instigated a process of Islamization based on the assumption that Islam and Arabic represented the foundation of the country's national identity and therefore should define its legal, political, cultural, and economic systems. Omar Hassan al-Bashir and his government called Islamization the "civilization project" (*al-Mashru al-Hadari*). As in many other political projects in the region, the question of "women's place" in the community has helped drive the civilization project (Nageeb 2004; Hale 1997; Tønnessen 2011). Codification of the Personal Status Law for Muslims of 1991 (the family law), played a particularly important role in this Islamization process and has emerged as a contested piece of legislation in present day Sudan.

Historically, Islamists in Sudan have postulated a view that promotes women's empowerment within an Islamic frame. Most Islamist women interviewed claim to be active seekers of gender "equity" (*insaf*). The emphasis on "equity" rather than "equality" has been the official ideology of the state where those advocating gender equality have often been sidelined as "secular" and "Western." Within the ideology of gender equity, Islamists women advocate equal rights in the public sphere, including politics and even the military. However, male guardianship based on a principle complementarity in rights and obligations remain the rule within the family.¹¹ This means that men are regarded as the heads of households, but women are not restricted from actively participating in politics. In fact, it was under this Islamist regime that a 25% women's quota was introduced in the Sudan's Electoral Law of 2008 (Abbas 2010; Tønnessen and al-Nagar 2013).

Within the family, however, male guardianship (*qawama*) remains the rule. As it is postulated by the official state machinery, the Islamist gender ideology builds strongly on the concept of *qawama*. Women and men have different and complementary roles and responsibilities because of their biological differences. As such, Sudanese Islamists follow the same line of thinking as most Islamic movements in the region: the ideal man has the role of protector and caretaker, whereas the ideal woman has the role of the nurturer and caregiver (Tønnessen 2011).

The principal elements of the Personal Status Law for Muslims of 1991 are marriage, maintenance, divorce, custody, and inheritance. The law's codification is significant because it marks the transition of family law from the religious field to the political field. Before 1991, judicial circulars regulated family law with what Carolyn Fluehr-Lobban (1987) describes as an enlightened and liberal interpretation." In fact, Sudan "has been a leader in legal reform, anticipating innovations which were not introduced into other Muslim regions until years or even decades later" (ibid., 117). But from 1991 onwards, family politics became an area of political contestation, with the state rather than the clergy becoming the principal authority. The 1991 law has been described as a backlash against women's rights activists and as a conservative and patriarchal interpretation of Sharia.

Islamists justify the principle of *qawama* with the following quranic verse (Surat an-nisa 4:34):

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard (...)".

The principle of *qawama* is especially apparent in two aspects of Sudan's 1991 family law: (i) the marriage contract and (ii) obedience in marriage. In present day Sudan, women's

¹¹ Complementarity is a concept widely used by Islamists in the MENA region, including in Sudan. It is rooted in an idea that although men and women are equal before God, because of their biological gender they should have complementary rights and roles, especially within the family unit. Because of women's caring and emotional nature, they are the primary homemakers of the family. Because of men are physical and psychological superior biologically speaking, they are the primary decision-makers of the family.

groups have advocated for radical change, that is, eradicating male guardianship altogether. Meanwhile, government reformers have pressed for more moderate changes, such as legislating a minimum age of marriage at 18 years and improving mothers' custody rights. Recently, Islamist reformists have also advocated for constitutional reform stipulating a woman's consent to marriage.

Marriage contract

The 1991 family law provides that a male guardian (*wali*) should only arrange the marriage of his ward with her permission and consent (article 34(1)). However, a subsequent section of the article on consent essentially gives the *wali* the power to contract a marriage without the permission of his ward, so long as she consents later on. A contract concluded by the guardian before securing his ward's consent may be termed voidable, but her refusal to consummate the marriage does not automatically void the contract. Rather, the woman must petition the court and prove that she did not consent to the marriage. According to Asma Abdel Halim (2011, 5), "many women stay in such marriages to avoid the social scandal of taking their fathers or brothers to court."

At the same time, the law allows a *wali* who does not consent to his ward's marriage to a husband he thinks is unsuitable to petition the court for annulment of the marriage, *unless* the woman is pregnant. In short, the law clearly does not secure a woman's right to consent in the same way that it secures her guardian's right to annulment.

Furthermore, the age of consent to marriage is *tamyeez*, that is, the age at which a minor has attained the ability to discriminate between right and wrong. *Tamyeez* is not adulthood, but merely the age at which a child can show some degree of independence and knowledge. Under the law, the age of *tamyeez* is 10 years, basically making 10 years the minimum age of marriage in Sudan. The law explicitly allows a guardian to contract the marriage of a minor when there is an overriding interest in doing so, and with the permission of a judge. This benefit may be financial, moral, or any other benefit a guardian claims (Abdel Halim 2011).

Obedience in marriage

The way Islamists understand the principle of *qawama* is very much linked to the ideal of the male breadwinner. The fact that a husband spends his means for the support of his family justifies his wife's duty to obey him. The law stipulates that a wife is entitled to a dowry (*mahr*), to maintenance (*nafaqa*), to receive permission from her husband to visit her parents and *maharim* (close relatives whom she cannot marry), and to not be subject to physical or psychological harassment. In turn, the wife must care for her husband, be faithful to him, and obey him. The husband is said to have *haq alhab* (the right of confinement): the wife must obey him and remain confined at home, unless she obtains his permission. As a direct consequence of the stipulations on obedience (*ta'a*), the concept of marital rape does not exist within the law.¹² If the conditions stipulated are met, the wife is not allowed to deny her husband sexual intercourse.¹³ An Islamist informant (Tønnesen 2014) explained the perspective as follows:

Some consider it rape when a husband has sexual intercourse with his wife when she does not consent. In Islam we do not consider it as a rape. In Islam there is a contract between the man and the woman. To give adequate support [*nafaqa*] is obligatory for the husband. The other part of the contract is that a woman should obey. Therefore, a woman cannot refuse sex. It is obligatory for her.

Because of the articles on obedience (91–95), a wife can be declared disobedient (*nashiz*) and lose her right to maintenance if she (i) refuses to move to the matrimonial home, (ii) leaves the matrimonial home for no legitimate excuse, (iii) works outside the home

¹² According to Lisa Hajjar (2004, 1), marital rape is "uncriminalizable" under dominant interpretations of Islamic law.

¹³ Sudan's Unit for Combating Violence against Women and Children identifies marital rape as a problem facing Sudanese women and suggests the need for a law to protect women (Abu Alyaman 2012).

without her husband's permission, or (iv) refuses to travel with her husband without a legitimate excuse.

Other discriminatory elements of the 1991 family law including the following: (a) a woman inherits half the amount of property that her brother inherits; (b) a man is allowed to marry up to four wives, so long as he treats all his wives justly and equally; (c) a husband can divorce (*talaq*) his wife outside the court without stating any reason, while the wife must petition the court for a divorce; and (d) when a divorced woman remarries, she automatically loses custody of her children.¹⁴

¹⁴ The husband has the right to take the wife back if he revokes the divorce sentence within the *idda*, a waiting period of three months after the divorce. The wife can only obtain a divorce in court, and only if one of the following conditions is present: the husband (1) fails to fulfill his financial obligation to support her; (2) has more than one wife and she can prove that he does not treat all his wives justly; (3) has a defect that she did not know about before marriage; (4) suffers from an incurable mental illness; (5) is impotent; (6) behaves cruelly; (7) remains abroad for more than one year; or (8) is sentenced to prison for more than two years. The wife can also obtain a divorce if a judge declares her to be disobedient (*nushuz*) to her husband. Normally, a divorced mother has custody (*hadana*) of her daughters until they are 10 years old and of her sons until they are seven years old.

EARLY WOMEN'S MOBILIZATION FOR FAMILY LAW REFORM

Before the codification of the 1991 Personal Status Law for Muslims, women's civil rights were not on the agenda of Sudan's women's movement, except for among the Republican Brothers, a marginal movement that advocates for a radical Islamic interpretation that awards women equal rights within the family (Al-Nagar and Tønnessen 2017).¹⁵ The 1991 law has become highly contested and regarded by many as a backlash against women's rights. In the words of one female activist, "This regime has been disastrous to women in Sudan. We are going backwards instead of forward. They even tried to put a barrier on a women's right to work in the family law."¹⁶

In present day Sudan, however, a group of activists is united against *qawama* in the family law. The group advocates gender equality within the family law, including the eradication of obedience, polygamy, and child marriage and giving women an equal right to divorce. In the group's opinion, the ideology underpinning the 1991 needs to change, as it relegates women to secondary citizenship. As it now stands, the overarching "philosophy of the current family law states that women are less than men."¹⁷

There have been several stages in activism and mobilization for family law reform in Sudan. In the early days of President Bashir's authoritarian regime, independent women's organizations were not allowed to operate, at least officially. Against the backdrop of a restrictive political environment, the main focus was providing legal aid in family courts. Mutawinat, a group of female lawyers, registered as an organization in 1990 and initiated a review and critique of the family law (Mutawinat 1997). Babiker Badri Scientific Association for Women Studies (BBSAWS) also produced booklets in 2000 on Sudan's laws (including the family law) from a human rights perspective.¹⁸ The booklets were used for the legal education of women. One of the lawyers involved in describing the laws from a human rights perspective noted, "The Personal Status Law for Muslims is discriminatory against Sudanese women. It is evident that the agenda of the committee that enacted the law is to restrict women's rights".¹⁹ BBSAWS's references for these arguments were human rights conventions as well as the laws of other Muslim countries.

Calls for family law reform in Sudan also coincided with calls to ratify the 1979 Convention for the Elimination of Discrimination of Women (CEDAW), as Sudan remains one of only a few countries that has still not ratified what is globally known as the "Women's Rights Convention." The debate about Sudan's possible ratification of CEDAW started after the Beijing conference in 1995. Sudan's regime allowed a group of women's rights NGOs to follow the official Sudan delegation to Beijing, since Sudan's government had limited institutional capacity on women's rights issues. At the time, the government allowed these NGOs (among them BBSAWS) to also engage in awareness raising activities.

¹⁵ You can read more about the Republican Brothers and family law in Al-Nagar and Tønnessen (2015).

¹⁶ Interview with Sawsan Hassan Elshowaya, Asmaa Society for Development, Khartoum Oct. 2012.

¹⁷ Interview with Asha al-Karib, former leader of SORD, Khartoum, May 2011

¹⁸ BBSAWS was established in 1979 following a decision at the Symposium on the Changing Status of Sudanese Women, held at Ahfad University for Women, Omdurman. The association's headquarters is located on the university campus, and its leaders and activists are closely related to the university as employees and (former) students.

¹⁹ Interview with Fatma Abulgasim, lawyer, Omdurman, Oct. 2014

After Beijing, the Sudanese Women's General Union (the main state-led women's organization) led a debate on CEDAW with some independent women's groups working on law reform. After several sessions of discussing the content of CEDAW and drafting proposed reservations for Sudan, the government stopped the initiative. One of the conservative Islamists and former advisor to the president on women's affair, Suad al-Fatih al-Badawi, publicly stated, 'Sudan will ratify CEDAW over my dead body.' The government regarded CEDAW as "Western" and against Sharia. The most contested article on CEDAW among Islamists was and still is article 16 on equality within the family. As presidential advisor Farida Ibrahim put it, CEDAW is

... against Sharia law and ... does not represent the government's stance on women's rights. It destroys family values, legalises abortion and prostitution under the umbrella of family values, gives equality to prostitutes and married women and legalizes lesbianism. It is a disaster for human beings. (Quoted in International Crisis Group 2006, 3-4)

There is a dividing line between women's rights activists and women inside the government that most clearly comes out in the debate on equality within the family and the ratification of CEDAW. Female activists outside of the government are often referred to as "the CEDAW women." In the words of one activist, "CEDAW is like the devil to them."²⁰ Because they refer to CEDAW and receive funding and backing from the international community, women's rights activists continue to be accused of "running the errands of the West." They are labelled as "secular" and "feminist," both concepts considered alien to Sudanese tradition in the eyes of the current government.

The 2005 CPA stimulated yet another phase in women's activism and mobilization for family law reform. The adoption of the interim national constitution followed the same year. It included a bill of rights with clauses on non-discrimination (article 31), gender equality (article 32(1)) and affirmative action (article 32(2)). This sparked a process of law review and women's demands for gender-equitable reform of a range of Sudan's laws. Activists claimed that these laws, including the 1991 Personal Status Law, were unconstitutional. Because Sudan has not ratified CEDAW and has only signed (but not ratified) the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), the new constitution's bill of rights became a particularly important legal framework within which to argue for reform. Women's groups outside the government as well as women inside the government introduced several initiatives for reform. After South Sudan's secession in 2011, family law reform also became a hot topic in the debate on Sudan's new constitution.

²⁰ Interview with Sawsan Hassan Elshowaya, women's rights activist, Khartoum Oct. 2012.

EFFORTS TO REFORM SUDAN'S PERSONAL STATUS LAW: 2009 TO TODAY

National Committee for Review of Women's Status in Laws (2009–2012)

Up until 2009, Sudan's civil society led most family law reform efforts. However, since that time, the Sudanese government has undertaken three initiatives to review and amend the family law. Sudan's Ministry of Welfare and Social Security undertook the first initiative in 2006, by formation of National Committee for Review of Women's Status in Laws (First National Committee) for review of *all* Sudanese laws in light of the 2005 constitution and bill of rights. The Committee had female and male representatives from the Ministry of Justice, Ministry of Welfare and Social Security, police, United Nations mission in Sudan gender unit, universities, and organizations such as the state-sponsored Sudanese General Women's Union, as well as independent lawyers. In the same year the Ministry established the Women's Human Rights Center²¹ (WHRC) with Suad Abdel Aal, as Director at the time. In 2009, the WGRC activated the National Committee for law review and the committee identified 88 articles in the laws that need to be reformed for gender justice. (WHRC 2009).

The First National Committee launched its report in 2013. Specifically, the committee recommended the following amendments to the 1991 law:

- a repeal of article 24, which give guardians the authority to dissolve marriage contracts arranged without their consent;
- an amendment to article 119, from “It is not allowed for the person who has custody of children to travel within the country without permission of guardian” to “It is allowed for the person who has custody of children to travel within the country without any permission”.
- an amendment to article 40 stipulating the minimum age of marriage at 18 years and requiring court approval of any exceptions;
- an amendment allowing the use of all reasonable and evidential tools (including DNA evidence) to proof descent.

The repeal of article 24 would reform the institution of male guardianship in marriage, but they would not eradicate it. While it is important to repeal the *wali*'s right to cancel a marriage contract arranged without his consent, this proposed change does not challenge the problem already discussed of male guardians arranging the marriage of their female wards without their permission and consent. Furthermore, although the committee report recommends a minimum age of marriage of 18, the proposal would still allow for child marriage with the permission of a judge. Perhaps this is why women's rights activists, who were invited to the report's launch, deemed the recommendations as minor and not radical enough.

The First National Committee embedded its arguments for reform within the constitution's bill of rights, the National Child Act of 2010, and the UN Convention on the Rights of the Child of 1990. In particular, the National Child Act defines a “child” as an individual younger than 18 years of age. Article 5(c) of that act also includes provisions that protect children against all forms of discrimination.

Members of the First National Committee were also careful to frame their call for legal reform within Islam. According to an Islamist activist central to the committee's reform process,

We cannot take the Islamic law schools as the ultimate truth. It builds on the Quran, but it is human interpretation at the end of the day. The jurists interpreted Islam in a certain

²¹ The WHRC was established in 2006 by decree from the Ministry of Welfare and Social Security as an arm for Directorate of Women and Family Directorate, Ministry of Welfare and Social security. The WHRC is responsible for advocacy for human rights, and for suggesting and revising legislations for promoting women rights and legal empowerment.

context. Society has changed, and Islamic law has to change with it. We must build it on the Quran, but interpret it in light of justice and the good life.²²

The committee did not argue for radical changes, but for interpreting complementarity and gender equity in a way that expands women's rights and freedoms. The most radical proposal they issued was a change of the minimum age of marriage to 18 years of age. Government reformers had failed to introduce this into the National Child Act of 2010, which takes precedence over all other laws.²³

Nonetheless, as yet, none of the First National Committee's proposals have been adopted; the Personal Status Law of 1991 has yet to be amended in any way. In particular, religious conservatives have strongly resisted the proposal to set a minimum age of marriage at 18 years, and the initiative has been taken off the table, as it is considered "too controversial."

Through our interviews, it is clear that, even though reformist women who participated in the First National Committee's process did not challenge prevailing Islamist views on the family in a radical way, they generally wished for more reforms than those recommended in the committee's report. There are several potential explanations for why these women did not argue for more radical reform. First, it was a pragmatic move. Reformist women are well aware that they will be alienated by the ruling party if they challenge the principle of *qawama*. In the words of one Islamist woman, "We do not use a radical method, but a smooth one."²⁴ In addition, the First National Committee included of a range of actors; therefore, the negotiated result cannot be regarded as reflecting the voice of reformist women alone. Finally, at the time of the committee's review, President Omar al-Bashir faced national and international pressure to improve Sudan's human rights record. After the International Criminal Court issued an arrest warrant against Bashir in 2009 on counts of war crimes in Darfur, he relied on the support of more conservative Salafist actors.²⁵

The Alternative Family Law (2009–2012)

The Sudan Organization for Research and Development, a non-governmental organization, undertook reform efforts simultaneous to the government's efforts. In 2009, SORD began its own initiative to write an alternative family law that contained more radical reforms. From SORD's perspective, minor amendments are not enough to ensure equality within the family. Rather, Sudan needs a comprehensive reform in the shape of an entirely new law. The Dutch embassy funded SORD's initiative, which built on work done by a range of actors and organizations pre-CPA, including extensive law reform studies and comparative law studies with other Muslim countries in the region.

SORD issued a report and proposal for an alternative law on 12 March 2012. Its report includes extensive analysis on how the 1991 law has been practiced in Sudanese courts and what problems women most often encounter in their family affairs. In preparing its report and recommendations, SORD engaged in a consultative process with a broad range of actors, including Islamists (at least initially). Following these discussions, a panel of legal experts presented the proposal, with the following declaration (SORD 2012):

The alternative proposed Sudanese family law came as a result of continuous efforts initiated by SORD since 2009. These efforts were based on the idea that achieving gender equality in the society and advocating for women's dignity and acknowledging her full legal capacity, freedom, equality and protection from discrimination and violence requires attention to the woman's private sphere which is governed by personal laws. It had been shown through experience that separating women rights in the private sphere from her

²² Interview with a leader of the Sudan Women's General Union, Khartoum, Oct. 2009.

²³ Specifically, article 3 states, "The provisions of this Act shall prevail over any other provision in any other law, upon inconsistency thereof, to the extent of removing such inconsistency."

²⁴ Interview with a leader of the Sudan Women's General Union, Khartoum, Oct. 2009.

²⁵ "Salafism" is typically defined as a conservative Wahhabi-inspired Islamic trend that emphasizes religious piety and public morality. for more information on Salafism in Sudan, see Solomon (2016).

rights in the public sphere (political, economic, cultural and social rights) is harmful to the woman's situation.

Among other things, the alternative law suggests eradicating the principles of a woman's obedience to her husband and male guardianship. More specifically, the alternative law suggests the following radical changes:

- a stipulation of the right of a woman to choose her own husband and to contract her own marriage, without consent from a male guardian;
- a stipulation of 18 years as the minimum age for marriage (with no legal exception or loophole);
- a revocation of a husband's right to divorce by unilateral repudiation;
- a stipulation of a wife's right to divorce on equal terms with her husband before a judge in court;
- a repeal of articles in the 1991 law that require a wife to be obedient to her husband;
- a stipulation that a wife or divorced woman should have the right to travel without a guardian and in the company of her child(ren);
- a stipulation that a mother has custodial rights to her children until they attain the age of legal responsibility, and they remain in her custody even if she subsequently marries another man; and
- a stipulation that courts may use modern medical techniques to establish paternity and that DNA testing is conclusive evidence in establishing descent.

SORD positions these proposals for reform within international and national legal frameworks, including the 2005 constitution and 2010 National Child Act. However, SORD also employs Islamic arguments based on family law reforms in the region. These include the example of Morocco's 2004 *Mudawana* reform, as well as the philosophies of two Sudanese thinkers, Sadiq al-Mahdi (the Umma party leader and former prime minister of Sudan) and Mahmoud Muhammed Taha (the late leader of the Republican Brothers). In the words of former SORD's leader, Asha al-Karib, "If we want it to make an impact we need to be sensitive to Islam."²⁶

Turning to these Islamic leaders, Sadiq al-Mahdi explained in an interview that "the sacred texts should be read rationally in light of the principle of justice for all, both men and women."²⁷ On family law reform, he specifically stated, "I want to reform the article concerning male guardianship [wali] for marriage and the right of divorce. [I want] to delegitimize child marriages. ... All of this can be well argued from an Islamic point of view."²⁸

Mahmoud Muhammad Taha²⁹, the late leader of the Republican Brothers, was executed for apostasy in 1985 because of his controversial interpretations of Islam, including the family law. Taha (1976) proposed the need to "redefine marriage, on the legal plane, as a contract between two equal partners, entered upon by their own free will, with equal rights for both partners for equivalent duties, and dissolved, should the need arise, by agreement between them." Continuing, he said, "Spelled out, this means that there is no longer any guardian who signs the marriage contract on behalf of the bride. Instead, the bride signs for herself. Also, the right of divorce will be equally shared by the couple."³⁰

Islamists left SORD's consultation for the alternative law early on, as they felt the recommendations for reform were simply too radical. Nonetheless, even SORD's proposed law does not go as far as some feminists might like. For example, the alternative law does not prohibit polygamy. Rather, inspired by Morocco's 2004 reform, the proposed law merely

²⁶ Interview with Asha al-Karib, former leader of SORD, Khartoum, June 2014.

²⁷ Interview with Sadiq al-Mahdi, Omdurman, Feb. 2007.

²⁸ Interview with Sadiq al-Mahdi, Omdurman, Oct. 2009.

²⁹ For a detailed account of Mahmoud Muhammad Taha's Islamic thinking, see Taha (1987).

³⁰ Mahmoud Muhammad Taha, "An Introduction To The Second Message of Islam", *The Republican Thought*, 1976
http://www.alfikra.org/books_e.php

restricts this practice by placing the decision of a man to marry second, third, or fourth wife into the hands of the court; requiring the husband to satisfy certain financial conditions; and obliging him to obtain consent from the first wife before obtaining the court's permission to marry another wife. Those involved in SORD's consultation and drafting process say this decision must not be viewed as a defense of polygamy, but as a reflection of the social realities of women living in polygamy and the risk of stigmatizing this group.

SORD's proposal also does not mention a woman's right to equal inheritance. In part, this is because of the highly sensitive nature of this issue. The Quran's verses concerning inheritance are perhaps the most detailed and are difficult to re-interpret from a feminist perspective. Although Sadiq al-Mahdi proposed ways to circumvent the Islamic inheritance rules to give women an equal right to inheritance through the establishment of wills, he was simultaneously accused of apostasy by Sudan's religious scholars for doing so (Tønnesen 2011). SORD's proposal for an alternative law is the major initiative of activists on family law reform post-CPA. However, after its launch, mobilization for family law reform dried up for some years, and the political space for mobilization of women's rights has become restrained. In 2016, Sudan's government included SORD in a new family law reform committee under the Ministry of Justice (see below). SORD made a deliberate strategy not to start a radical campaign during this time, but rather to take a soft approach, so that it would not jeopardize this historic inclusion of a representative from the women's movement in a government committee for family law reform.³¹

Other women's organizations have also remained silent, except for Regional Institute of Gender, Diversity, Peace and Rights (RIGDPR) at Ahfad University for Women. In 2014, RIGDPR's law forum created its own proposal for revising the family law, which gave special attention to divorce and custody. RIGDPR also organized a workshop to discuss its recommendations, and included representatives from the Ministry of Justice, Ministry of Welfare and Social Security, National Legislature, University of Garden City, Women's Studies Center, Mutawinat, and independent lawyers in the discussion. The initiative aimed to address gaps in previous reform initiatives by both government and SORD. RIGDPR's main addition was a suggestion to expand the arbitration section by adding an article to establish psycho-social service offices to advise courts specialized in family law.

National Committee for Family Law Reform (2016–2017)

The National Committee for Review of Women's Status in Laws established in 2009 did not include representatives from the women's movement. However, in 2016, Sudan's Ministry of Justice set up a new National Committee for Family Law Reform (Second National Committee) and invited a representative from SORD to take part. This was perhaps the biggest achievement that came out of SORD's development of an alternative law. The Second National Committee includes 20 members. Seven are Sharia judges and are members of the Fiqh Academy or the Association of Sudan Scholars. Twelve are from the Ministry of Justice, Ministry of Welfare and Social Security, Supreme Court, and Naqhabat al Muhammeen (Lawyers' trade union). And the final member is the SORD representative.

The First National Committee's reform efforts ran parallel to SORD's initial efforts, but the two groups did not communicate with each other. When the SORD representative became part of the Second National Committee, SORD gave her the mandate to press for the alternative law. Other activists (not on the committee) provided her assistance by outlining arguments for reform, particularly Islamic ones (since the committee included several conservative members).

One of the Second National Committee's most important and contested issues was the age of marriage.³² The SORD representative argued for setting 18 years as the minimum age, but conservative committee members argued for keeping the status quo, referring to the Prophet's marriage of Aisha when she was only 9. The SORD representative argued that this is in contradiction with Sudan's 2005 constitution, the National Child Act of 2010, and Sudan's international obligations under the CRC. She also argued (similar to reformists

³¹ Interview with Ilham Ibrahim, SORD Director, Oct. 2017 in SORD Office, Khartoum.

³² Interview with First National Committee member, Khartoum, May 2017.

within the government) that the *hadith* the conservatives cite for their argument has a weak chain of transmission; other sources suggest that Aisha was in fact much older at the time. Furthermore, the SORD representative pleaded for the committee to take into consideration the fact that society has developed during the last 1,000 years and Sudan's laws need to reflect new realities and information about the damaging effect of child marriage.³³

The Second National Committee's initial report remains in a drawer at the Ministry of Justice. It is unclear whether it will be taken further. In any case, it is not expected to be addressed before the government has dealt with the recommendations that came out of the UN Human Rights Committee's last Universal Periodic Review of Sudan (see below). As the Second National Committee is made up of largely conservative members, hopes are not particularly high that the committee will ever make radical recommendations for family law reform.

Interestingly, while waiting for the recommendations from the Second National Committee, the Ministry of Welfare and Social Security called back some members of the First National Committee to revise the recommendations it issued in 2012. In 2016, the First National Committee added the following recommendations to its report (WHRC 2016):

- repeal article 24, which gives a guardian the right to repeal a marriage contract;
- repeal of 34/2 which forces the young woman to accept guardian's decision for contracting her marriage without her permission and just informing her after contract.
- replace "obedience with kindness" with "mutual respect" in article 52(a);
- add DNA as a tool for providing paternity in article 96;
- amend article 119 to provide a person with custody of children to travel without permission from a guardian;
- repeal article 75/d, which deprives of maintenance (*nafaqa*) for wife who works without acceptance of husband ;
- amend article 139 on return of wife to husband in case of revocable divorce even if she does not consent to the return' to condition her consent for returning to the husband.
- amend article 151 to give a wife seeking divorce for harm the right to obtain a divorce even if she knows her husband has a disease prior to marriage as long as there is evidence for harm.

These are considerably more radical suggestions compared to the First National Committee's original recommendations in 2012. Dismantling the principle of obedience, which is one of the fundaments of *qawama* and the male breadwinner-female caretaker nexus, is a huge step forward. Also, the fact that male guardians cannot invalidate marriages contracted without their consent, gives women considerably more legal space for marrying without their family's approval of their future spouses. These new recommendations reflect demands of the women's movement, especially the alternative law SORD developed and particularly the goal to eradicate the principle of obedience. The recommendations can also be attributed to the fact that family law is high on the political agenda in the wake of the presentation of Sudan's universal periodical report to the United Nations Human Rights Council in May 2016.³⁴ In addition, the US promise to lift sanctions on Sudan (which has now occurred) was conditioned on Sudan improving its human rights record. The additional recommendations might also signal a new approach from reformists within the government. Obviously, the "soft" approach has not been fruitful, since no family law reforms have materialized.

Constitutional debate (2017): A woman's right to consent

In 2014, Sudan launched a National Dialogue process for constitutional reform. Family law has been a hotly contested issue part of this process in 2017. Sudan's 2005 constitution defines the term "family," and members of the Popular Congress Party have suggested adding a stipulation to this definition that provides that marriage should be based on mutual

³³ Interview with representative from, Khartoum, Oct. 2017.

³⁴ The report was submitted in September 2015, but presented and discussed in Geneva in May 2016.

consent (*taradi*) between a bride and groom. The late Sheikh Hasan al-Turabi proposed this alternation.³⁵ When he passed away in 2016, his supporters insisted on inserting his proposed amendment in his honor. One of his supporters said in an interview,³⁶

The main condition of marriage is mutual consent (*taradi*). According to Turabi, the woman should even sign her own marriage contract and thereby give her written consent. It is not enough to consult her and get her oral consent as the present practice is. Meanwhile, the *wali* signs the marriage contract on her behalf. She should be part of the contract ceremony and sign the contract herself. In Islamic scripture, the Quran, marriage is a union between husband and wife. The *wali* has no place. He comes at the level of the community or custom. Such understanding of consent is deformed and clearly diverges from the Quran and Sunna. (Emphasis added)

This was a rather radical proposal that Turabi's supporters wholeheartedly supported. Women's rights activists supported for the *taradi* proposal in the media, but they did not significantly mobilize to push for change.³⁷ However, in May 2017, the Sudanese Women's General Union (a state-sponsored organization) recommended that marriage contracts include evidence that the marriage is taking place with consent and by the woman's choice.³⁸ Although President Bashir mentioned revising the marriage contract in one of his speeches, a proposed reform has not yet materialized.

Despite the fact that Hanafi *fiqh* supports removing *wali* in marriage, religious conservatives have mobilized against this reform, stating that it would lead to chaos, "as any girl will marry any man without the knowledge of the father, and this is against Sharia."³⁹ *Taradi* has also became a debated issue in printed media and among politician, religious scholars, activists, and journalists.(*Islamic Fiqh Academy* 2016; *Al Sayha* 2017-b; *Al Amin* 2017; *Al Jalal* 2017). *Fiqh* Academy scholars have led the opposition. They argue that the suggested *taradi* reform would "lead to distraction of prevalent Sharia norms and would threaten security and social peace" (*Islamic Fiqh Academy* 2017). They also argue that both Sharia and Sudanese custom require the guardian to contract marriage, not the bride-to-be.

This debate reveals an underlying fear of conservatives that if the freedom and right to choose in marriage is granted to women, it will lead to sexual chaos (*fitna*). Guardianship has been presented as way to protect family unity and avoid immorality. Abdal Hay Yousif, from *Islamic Fiqh Academy*, has voiced strong opposition to *taradi* marriage, emphasizing that: "allowing women to make choices about their marriage will give women the right to promote themselves to whomever they consider desirable and thus will promote infidelity, drinking of alcohol, and prostitution" (quoted in *Al Jalal* 2017).⁴⁰

In the end, the *taradi* proposal was not taken into the National Dialogue's final recommendation for amending the constitution. Abu Bakr Abdel Razig, a leader in the Popular Congress Party, explained to *Sudan Tribune* (quoted in *Al Sayha* 2017-a):

The suggested amendment for marriage did not refer to absolute equality between men and women, but we used the bill of rights for women stipulated in 2005 constitution, which the *Fiqh* Academy blessed and never objected to. The suggested reform emphasizes that women should attend the contract ceremony themselves, not through guardians, to ensure their consent.

³⁵ Al-Turabi was the main ideologue of the Islamist movement and a central advisor in Bashir's government until 2001, when he was squeezed out and formed the Popular Congress Party.

³⁶ Interview with Turabi supporter, Khartoum, May 2017.

³⁷ Interview with representatives of the Women's Studies Center, Khartoum, May 2017

³⁸ Other recommendations included specifying *mahr* ("dowry," both early and deferred) and maintenance; setting conditions for residence and for women to return after an irrevocable divorce; and providing for the right of a wife to obtain a divorce (*khula'a*). These recommendations have not taken account of the family law reforms proposed by SORD, and it is not clear how the National Dialogue relates to other government reform processes (Abdel Tam 2017).

³⁹ Interview with Turabi supporter, Khartoum, May 2017.

⁴⁰ For Abdal Hay Yousif and Isam Al Siddig opposition to *taradi* marriage, see *Al Sayha*-b 2017 and also *Al Amin* (2017).

The National Dialogue's recommendation for a constitutional amendment on consent reads as follows: "Marriage should be contracted with consent of the woman." However, this text does not differ much from the 1991 family law, where consent is stipulated but the woman must take her male guardian to court to annul a marriage that she did not consent to. In practice, forced marriages are a problem in Sudan. The *taradi* proposal could have sparked a change in such practices, but, in the end, religious conservatives won yet again. Sudan's High Committee for Human Rights (2017): Eighteen as the minimum age of marriage

Most recently, there are rumblings of reform in the wake of Sudan's 2016 Universal Periodic Review (UN HRC 2016). There is, at least, a change in the political climate. The lifting of US sanctions on Sudan was conditioned on an improved human rights record. This meant that the government has been keen to show signs of improvements, including on women's human rights.

When Sudan presented its national report, the Human Rights Committee recommended that the country raise the minimum age of marriage to 18 years old, something Sudan's minister of foreign affairs promised to execute. A new reform committee, the High Committee for Human Rights, has been organized with Vice President Bakri Hassan Saleh at the head, and the minimum age of marriage is back on the negotiation table. The government has even engaged in discussions about signing CEDAW, which has been deemed one of the most sensitive and controversial topics in Sudan during the current government.

Since the vice president leads the High Committee, reform of the Personal Status Law seems to have a much stronger political backing than ever before. The government is also engaging in a deliberate strategy to sensitize religious conservatives (especially the Islamic *Fiqh* Academy) to women's issues. The Islamic *Fiqh* Academy is particularly conservative on suggestions to expand women's rights and has previously come out in favor of child marriage. Thus far, religious conservatives have not mobilized in the same manner as during previous government-led initiatives. While optimistic reformers within the government almost take it for granted that substantial reform will follow, others are more skeptical and stick to a softer approach to reform, as they are confident that religious conservatives will mobilize against them sooner or later. Some argue that the National Child Act of 2010, in combination with CRC, is sufficient and that if they again raise the issue of child marriage they will face a backlash.⁴¹ There are also speculations as to whether the new US president, Donald Trump, cares at all about human rights (least of all with women's human rights) and whether the deal to lift US sanctions was based more on other pressing issues, like terrorism.

⁴¹ Interview, member of parliament for National Congress Party and key person in government family law reform, Khartoum, May 2017.

CONCLUSION: A NEVER-ENDING STORY?

The codification of the Personal Status Law for Muslims in 1991 sparked a political debate on women's civil rights that is still developing. Before 1991, the only group to mobilize for full gender equality within the family was the Republican Brothers. That group attempted to mobilize the Sudan's women's movement for equality in personal status as early as the 1970s. But at that time, Sudan's women's movement was focused more on advocating for equal pay than demanding equal rights within the private sphere of the family (although women's right activities did effectively argue for lifting police force in the execution of "house of obedience").

In fact, in 1975, the Republican Brothers pleaded with the women's movement to address stark gender inequalities within Sudanese family law. According to the Republican Brothers, state-produced judicial circulars regulating family law contradicted the country's 1973 constitution, which guaranteed equality before the law, because (among other things) the circulars allowed polygamy and stipulated a wife's obedience to her husband. In the 1970s, the Republican Brothers produced a series of booklets that discussed feminist interpretation of Islam and contributed to the transformation of Muslim women in Sudan. The booklets were used as educational material for mobilizing women to resist gender inequality and injustice in the name of Sharia (al-Nagar and Tønnessen 2015).

Fast-forward to the years following 1991. Sudan's woman's movement has put equality within the family high on its agenda. These debates intensified after the 2005 constitution, which included bill of rights provisions protecting women. Reformists within the government as well as activists outside of the government have had high hopes for major reform within a range of spheres, including family law. The bill of rights is particularly important, because Sudanese activists and reformists previously did not have a legal framework to use in mobilizing for legal reform. Sudan has not yet ratified international women's rights conventions, such as CEDAW or the Maputo Protocol. During the last 12 years, an almost endless stream of initiatives has been introduced in Sudan, but—unlike its neighboring countries in northern Africa—Sudan has yet to reform its family law.

Although other reforms in Northern Africa vary from piecemeal to comprehensive, most reforms have materialized in mainly un-democratic contexts as a result of women's mobilization. Examples from the region also share the commonality of a strategic use of Islamic frames for family law reform. Although Sudanese activists have used Morocco's comprehensive *Mudawana* reform as inspiration, they could also learn lessons from other, more piecemeal reform processes in the region.

The fact that women's legal equality, both in public and in private spheres, is finally high on the agenda is a great gain. It is also notable that reformists within the government have changed their stance substantially the last 10 years. Now such hot-button issues as CEDAW, the minimum age of marriage, and women's consent in marriage are back on the table. But resistance to change is still strong, especially from religious conservatives who continue to argue in favor of laws that discriminate against Sudanese women. With the promise of lifting US sanction, the political climate has become ripe, and the Sudanese government is eager to improve its human rights record. Whether women inside and outside of the government are able to mobilize together for family law reform, instead of competing with each other, is key to success. They successfully worked together when they mobilized for a legislative gender quota, which suggests that they could be able to develop do the same for family law reform. In addition, women both inside and outside of the government need to create political alliances and strategies to counter religious resistance to reform. Now that US sanctions have been lifted, it will be interesting to see whether Sudan is in fact genuine in its effort to improve women's human rights in the country.

REFERENCES

- Abbas, S. 2010. "The Sudanese Women's Movement and the Mobilisation for the 2008 Legislative Quota and its Aftermath." *IDS Bulletin* 41, no.5: 100–108.
- Abu Alyaman, S. H. 2012. *Data Analysis Repot for Survey Measuring Gender-based Violence in Khartoum State, Sudan*. Khartoum: Unit for Combating Violence against Women and Children.
- Abdel Halim, A. M. 2011. "A Home for Obedience: Masculinity in Personal Status for Muslims Law." *Hawwa* 9, no. 1: 194–214.
- Abdel Tam, Omiama, A. 2017. "Marriage Contract in Fiqh and Law." Unpublished report (on file with author).
- Al Amin, A. H. M. 2017. *Zawaj Altrradi: Jadil la Yanthi* (Altrradi Marriage: A Never-ending Debate). *Al Tayar*, no. 1803, 18 Feb.
- Al Jalal, Y. 2017. *Zawaj Altradi ma baina Algammureen wa Alshabeein* (Altradi Marriage between Republican and Popular Congress). *Al Sayha*, no 888, 20 Feb.
- Al Jazeera*. 2017. "Tunisia Lifts Ban on Muslim Women Marrying Non-Muslims." 14. Sept. <http://www.aljazeera.com/news/2017/09/tunisia-lifts-ban-muslim-women-marrying-muslims-170914154657961.html>.
- Al-Nagar, S., and L. Tønnessen. 2017. "Women's Rights and the Women's Movement in Sudan (1952–2014)." In *Women's Activism in Africa: Struggles for Rights and Representation*, edited by B. Y. Badri and A. M. Tripp, 121–155. London: Zed Books.
- . 2015. "Women's Equal Rights and Islam in Sudanese Republican Thought: A Translation of Three Family Law Booklets from 1975, Produced and Circulated by the Republican Sisters" CMI Report R 2015: 5. Bergen: Chr. Michelsen Institute. Bergen <https://www.cmi.no/publications/5605-womens-equal-rights-and-islam-in-sudanese>
- Al Sayha-a 2017. Abdel Hay Yousif wa Isam Al Basheer Youhajman al Tadilat al Ddastouris: *Ithara baad Binoudha hadma illashrouaa Al Hadari* (Abdel Hay Yousif and Isam Al Basher attacked the constitutional reforms and consider it as destruction to the civilization project. *Al Sayha* No 886, 18 Feb.
- Al Sayha-b. 2017. *Haia'at Ulamma Al Sudan Marast 'Altadlees' bai Wathiqhat Alhuriat*, (The Popular Congress: The Association of Sudan Scholars Practiced 'Fraudulence' with Freedom Document). *Al Sayha*, No. 888, 20 Feb.
- Al-Sharmani, M. 2010. "Legal Reform, Women's Empowerment and Social Change: The Case of Egypt." *IDS Bulletin* 41, no. 2: 10–17.
- Al-Sharmani, M. 2009. "Egyptian Family Courts: A Pathway of Women's Empowerment?" *Hawwa* 7, no. 2: 89–110
- Amnesty International UK. 2014. "Algeria Accused of 'Tokenistic' Response to Sexual Violence against Women—New Briefing." Press release, 25 Nov. <https://www.amnesty.org.uk/press-releases/algeria-accused-tokenistic-response-sexual-violence-against-women-new-briefing>
- Catalano, S. L. 2010. "Shari'a Reforms and Power Maintenance: The Cases of Family Law Reforms in Morocco and Algeria." *Journal of North African Studies*, 15, no. 4: 535–555.
- Charrad, M. 2001. *States and Women's Tights: The Making of Postcolonial Tunisia, Algeria, and Morocco*. Berkeley: University of California Press.
- . 1997. "Policy Shifts: State, Islam, and Gender in Tunisia, 1930s–1990s." *Social Politics* 4, no. 2: 284–319.

———. 2007. "Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation." *Washington and Lee Law Review* 64: 1513–1527. <http://scholarlycommons.law.wlu.edu/wlulr/vol64/iss4/11/>.

———. 2012. "Family Law Reforms in the Arab World: Tunisia and Morocco." Report for the United Nations Department of Economic and Social Affairs (UNDESA), Division for Social Policy and Development, Expert Group Meeting, New York, 15–17 May. <http://www.un.org/esa/socdev/family/docs/egm12/PAPER-CHARRAD.pdf>.

Charrad, M. M., and A. Zarrugh. 2014. "Equal or Complementary? Women in the New Tunisian Constitution after the Arab Spring." *Journal of North African Studies* 19, no. 2: 230–243.

Fluehr-Lobban, C. 1987. *Islamic Law and Society in the Sudan*. London: Cass.

Gray, D. H. 2009. "Women in Algeria Today and the Debate over Family Law." *Meria Journal* 13, no. 1. <http://www.rubincenter.org/2009/03/gray-2009-03-05/>.

Hale, S. 1997. *Gender Politics in Sudan: Islamism, Socialism and the State*. Boulder, CO: Westview Press.

Hajjar, L. 2004. "Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis." *Law and Social Inquiry* 29, no. 1: 1–38.

Htun, M. 2003. *Sex and the State: Abortion, Divorce, And the Family Under Latin American Dictatorships and Democracies*. Cambridge: Cambridge University Press.

Htun, M., and S. L. Weldon. 2010. "When Do Governments Promote Women's Rights? A Framework for the Comparative Analysis of Sex Equality Policy." *Perspectives on Politics* 8, no. 1: 207–216.

———. 2012. "The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975–2005." *American Political Science Review* 106, no. 3: 548–569.

International Crisis Group. 2006. "Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda." Africa Report no. 112, 28 June. <https://d2071andvipowj.cloudfront.net/112-beyond-victimhood-women-s-peacebuilding-in-sudan-congo-and-uganda.pdf>.

Islamic Fiqh Academy. 2017. Memo on Suggested Recommendations for Constitutional Reform presented to National Assembly

Itto, A. 2006. "Guests at the Table? The Role of Women in Peace Processes." *Accord* 18: 56–59. http://www.c-r.org/downloads/Accord18_19Guestsatthetable_2006_ENG.pdf.

Ltaief, W. 2005. "International Law, Mixed Marriage, and the Law of Succession in North Africa: '... But Some Are More Equal Than Others.'" *International Social Science Journal* 57, no. 184: 331–350.

Middle East Eye. 2015. "Algeria Passes Law Banning Domestic Violence against Women." 6 Mar. <http://www.middleeasteye.net/news/algeria-passes-law-banning-domestic-violence-against-women-596359589>.

Moghadam, V., and E. Gheytanchi. 2010. "Political Opportunities and Strategic Choices: Comparing Feminist Campaigns in Morocco and Iran." *Mobilization: An International Quarterly* 15, no. 3: 267–288.

Mutawinat benevolent group. 1997. *Review of Sudanese Legislation Discriminating against Women*. Unpublished report, Khartoum (on file with author).

Muriaas, R. L., L. Tønnesen, and V. Wang. 2016. "Substantive Representation: From Timing to Framing of Family Law Reform in Morocco, South Africa and Uganda." In *Gendered Citizenship and the Politics of Representation*, edited by H. Danielsen, K. Jegerstedt, R. L. Muriaas, and B. Ytre-Arne, 111–136. London: Palgrave Macmillian.

Nadhif, A. 2017. "Tunisian President Calls for Gender Equality in Inheritance Law." *Al-Monitor*, 21 Aug. <https://www.al-monitor.com/pulse/originals/2017/08/equality-in-inheritance-raises-controversy-in-tunisia.html>.

Nageeb, S. A. 2004. *New Spaces and Old Frontiers: Women, Social Space, and Islamization in Sudan*. Lanham, MD: Lexington Books.

Norbakk, M. 2016. "The Women's Rights Champion: Tunisia's Potential for Furthering Women's Rights." CMI Report R 2016: 4. Bergen: Chr. Michelsen Institute. <https://www.cmi.no/publications/5973-the-womens-rights-champion>.

Pruzan-Jørgensen J (2012) *Liberalization and Autocracy in Morocco: The Puzzle of the Moudawana Reform*. Saarbrücken, Germany: Lambert Academic Publishing

RIGDPR (Regional Institute of Gender, Diversity, Peace and Rights). 2014. Suggestions for Personal Status Law Reform. Omdurman: Ahfad University for Women (in Arabic).

Ross, P. 2015. "Algerian Domestic Violence Law: Violence against Women Illegal, but Human Rights Group Remains Skeptical." *IBT*, 3 May. <http://www.ibtimes.com/algeria-domestic-violence-law-violence-against-women-illegal-human-rights-group-1837942>.

Sadiqi, F., and M. Ennaji. 2006. "The Feminization of Public Space: Women's Activism, the Family Law, and Social Change in Morocco." *Journal of Middle East Women's Studies* 2, no. 2: 86–114.

Salih, H. M. 2017. Haya'at Ulama'a Al Sudan: Vito a'ala Alhiwar Al Watani. (The Association of Sudan Scholars: Vito on National Dialogue.) *Al Sayha*, no. 889 (21 Feb.).

Solomon, N. 2016. *For the Love of the Prophet: An Ethnography of Sudan's Islamic State*. Princeton University Press

SORD (Sudanese Organization for Research & Development). 2012. *Towards Gender Justice in Sudan: Proposed Family Law for Muslims*. Khartoum: SORD.

Sonneveld, N. 2012. *Khul' Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life*. Cairo: American University in Cairo Press.

Sonneveld, N. and Lindbekk, M. 2015. "A Revolution in Muslim Family Law? Egypt's Pre and Post-Revolutionary Period (2011–2013) Compared", *New Middle Eastern Studies*, 5: 1-20

Stilt, K., and S. Gandhavadi. 2011. "Strategies of Muslim Family Law Reform." Northwestern Faculty Working Papers, no. 11. <http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/11>.

Taha, M.M. 1987. *The Second Message of Islam*. Translated by Abdullahi An-Na'im Syracuse: Syracuse University Press.

———. 1976. "An Introduction To The Second Message of Islam", *The Republican Thought*. http://www.alfikra.org/books_e.php

Tripp, A. M., I. Casimiro, J. C. Kwesiga, and A. Mungwa. 2009. *African Women's Movements: Transforming Political Landscapes*. Cambridge: Cambridge University Press.

Tønnesen, L. 2011. "The Many Faces of Political Islam in Sudan: Muslim Women's Activism For and Against the State." PhD diss., University of Bergen, Bergen, Norway.

———. 2014. "When Rape Becomes Politics: Negotiating Islamic Law Reform in Sudan", *Women's Studies International Forum* 44: 145–153.

Tønnesen, L., and S. al-Nagar. 2013. "The Women's Quota in Conflict Ridden Sudan: Ideological Battles For and Against Gender Equality." *Women's Studies International Forum* 41, no. 2: 122–131.

UN HRC (United Nations Human Rights Council). 2016. *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21*. Working Group on the Universal Periodic Review, 25th Sess., 2–13 May. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/025/86/PDF/G1602586.pdf?OpenElement>.

WHRC (Women's Human Rights Center). 2009. Report of National Committee for Review of Women's Status in Laws. Khartoum: Ministry of Welfare and Social Security.

———. 2016. Report of National Committee for Review of Women's Status in Laws. Khartoum: Ministry of Welfare and Social Security.

The project **Women's Human Rights and Law Reform in the Muslim World** seeks to map family and criminal law reforms in the period 1995–2015 in Afghanistan, Egypt, Iran, Lebanon, Morocco, Pakistan, Saudi Arabia, Sudan, Tunisia and Yemen. How have women activists in Muslim countries advocated for legal reform in the years since the 1995 Beijing Declaration famously stated that "women's rights are human rights"? The project is funded by the Rafto Foundation which is a non-profit and non-partisan organization dedicated to the global promotion of human rights. The project is part of an initiative taken by Rafto laureates Shirin Ebadi, Rebiya Kadeer, Malahat Nasibova, and Souhayr Belhassen, and facilitated by the Rafto Foundation to establish a Women's Network, which is an international network of high-profile and influential women to improve women's human rights and enhance gender equality in Muslim societies. In supporting local activists and civil society organizations with a common platform, the objective of the Women's Network is to raise the voices of women in Muslim societies, and to address the religious, legal, social, political and cultural mechanisms that prevent women's voices from being heard.

Chr. Michelsen Institute (CMI) is an independent, non-profit research institution and a major international centre in policy-oriented and applied development research. Focus is on development and human rights issues and on international conditions that affect such issues. The geographical focus is Sub-Saharan Africa, Southern and Central Asia, the Middle East and Latin America.

CMI combines applied and theoretical research. CMI research intends to assist policy formulation, improve the basis for decision-making and promote public debate on international development issues.

Engage with us

-  [CMInorway](#)
-  [cmi_no](#)
-  [cmi.no](#)
-  [cmi.no](#)

Contact us

Phone: 47 93 80 00 (from Norway)

Phone: +47 55 70 55 65 (from abroad)

cmi@cmi.no

www.cmi.no

P.O. Box 6033,
N-5892 Bergen, Norway
Jekteviksbakken 31, Bergen

