EXECUTIVE SUMMARY

"Confusion between the religious and the social": Influence of the pluralistic legal system on child marriage in Sudan

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Introduction

Sudan is the only country in North Africa that has not reformed the Personal Status Act for Muslims (also known as family law) which makes child marriage legal in Sudan. As of 2014, 38% of women (20-49 years) were married before the age of 18, and 12% of women (15-49 years) were married before the age of 15.[1]

38%
Child marriage rate

The overall objective of this study was to understand the marriage law(s), the processes and actors involved in proposing reforms of the law(s) before and after the conflict (i.e. April 2023), and the influence of the pluralistic legal system in Sudan on responding to child marriage and advocating for banning child marriage by law.

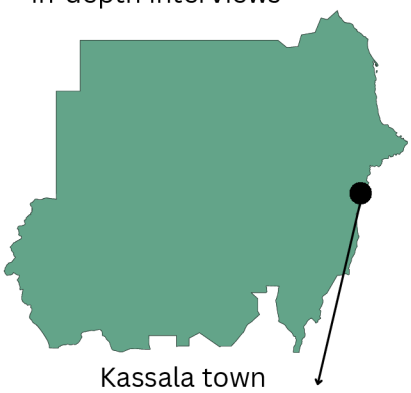
Methods

An exploratory qualitative study was carried out through a literature review and primary data collection. The research team in Sudan, in collaboration with a team based at KIT Institute in Amsterdam carried out the data collection in Kassala state.

Twelve key informant interviews (KIIs) at national, state, and community level in Kassala were conducted with (former) government officials, religious leaders, legal organisations, police etc.

Six focus group discussions (FGDs) and eight in-depth interviews were carried out with young people who married prior to the age of 18 years; and parents whose children experienced a child marriage. The data collection was conducted between February – April 2024.

12 key informant interviews
7 focus group discussions
8 in-depth interviews



Kassala town
El Elio, River Atbara
Al-Thawra, New Halfa

1 Central Bureau of Statistics Sudan & UNICEF. Multiple Indicator Cluster Survey 2014 Final Report. 2014.

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Findings

Causes of child marriage are diverse and young people feel there are no positive consequences.

In Kassala, child marriage is a commonplace tradition to protect girls' chastity and to provide economic relief for families. Physical maturity for girls and boys is often viewed as readiness for marriage. Girls' education is undervalued and child marriage facilitates an early start to reproduction.

The conflict, since April 2023, has also had an impact. Some participants asserted that the number of child marriages had increased to protect young women in over-crowded shelters from sexual harassment, and from the alleged Rapid Support Forces-perpetuated sexual violence. The conflict has also increased the number of internally displaced persons in Kassala,[2] triggered a governance crisis, increased the costs of essential commodities, and increased instances of sexual and gender based violence.

Fathers decide on the partner and timing of marriage. In one case, a young woman spoke of her marriage being officiated without her presence or her consent. Although child marriage is accepted as the norm in society, most youth, mothers and some fathers felt that there are no positive consequences or aspects to it. Most young women reflected that they were unprepared and suffered with the marital sexual relationship. In many cases, young people expressed regret at dropping out of school to marry, or at being forced by their families and social norms to marry young. Since men are the decision-makers, young women struggled to negotiate with their husbands to continue their education.

"Customs and traditions do not change, they are unchangeable in our tribe, and alas, I am going to do the same for my children, and even if I try to change, the tribe will not allow me to do so, and I will be considered an outcast. Deep inside me, I wish for my children to go to school and to be free to decide for themselves whom to marry and what type of work they like. Unfortunately, this is a farfetched dream, and I am not seeing any crack in our solid customs that make us hope for a change."

Young man, 18 years, Halfa/Kassala

2 Strategic Initiative for Women in the Horn of Africa (SIHA) Network. Silent weapons, loudest wounds: addressing the crises of sexual violence in Sudan [Internet]. Kampala; 2023. Available from: www.sihanet.org

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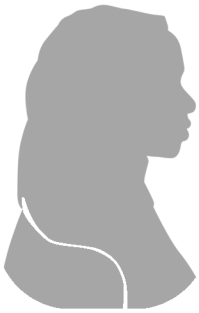
Findings

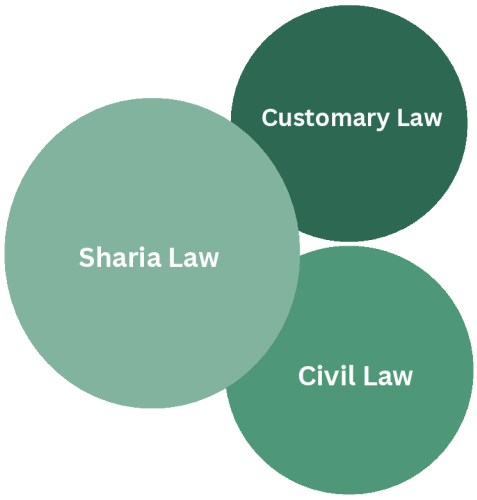


Young woman, 23 years old, Atbara

"I was forced to stop at the basic level, because I was engaged while in the sixth grade, and I didn't refuse because society treats those who refuse as lacking manners and going against prevailing customs. After the engagement, they prevented me from getting an education."

New norms that support different conceptions of maturity that go beyond physical appearance and frame maturity as being educationally and economically empowered can delay marriage until after 18 years.[3] Expanding the basket of livelihood options for families can decrease the risk of child marriage for girls.

The contradictions between customary law, Sharia law and civil law cause confusion and contribute to child marriage.



The legal system in Sudan is characterised by the civil law, sharia law and customary law and is conflicting on the minimum age of marriage.

Although the National Child Act of 2010 sets the age of majority as well as the age of sexual consent at 18 years for girls and boys, it remains in contradiction with the Personal Status Act (for Muslims) which considers the age of tamyeez (age at which an individual can determine right or wrong/age of maturity) at 10 years. This was clearly outlined by several key informants. Moreover, the different interpretation of the laws is linked to many participants confusing the Personal Status Act and the National Child Act.

Mazons are informed about the National Child Act and are meant to abide by it. The National Child Act is only acknowledged in the Family and Child courts and the Personal Status Act governs the Sharia courts. While this outlines the intersections between the Sharia law based-Personal Status Act with the civilian law of the National Child Act, there remains the matter of customary law. Customary laws are often oral, based on customs and traditions.

3 Greene ME, Edmeades J, Siddiqi M. Scope, range and effectiveness of interventions to address social norms to prevent and delay child marriage and empower adolescent girls: A systematic review. BMJ Open. 2024 Jan 8;14(1).

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Findings

Customary laws operate independently of the formal legal system at the community-level and are often confused with the Personal Status Act.

There is a lack of legal awareness, limited law enforcement and Mazons sanction child marriage.

Many participants lacked awareness about the laws, and often confused the Personal Status Act and the National Child Act. They believed that the normalisation of child marriage as a 'custom and tradition' and its high social acceptance is the reason for the persisting practice of child marriage. The influence of Islamic culture and its interplay with the existing customs is very vivid when it comes to awareness of laws.

> *As a Mazon, I don't interfere and I conclude marriages based on the desire of the families around...I don't issue the [marriage] certificate because this might put me in conflict with law".*
> *- Marriage Registrar*

Law-enforcement in Kassala, although more intact than other parts of the country that have been directly affected by war, is limited.

Mazons officiate underage marriages (but do not provide a certificate), to comply with parents' wishes. In some cases, families pressure the Mazon to do so. In the absence of the marriage registrar, the Sheikh plays an important role and provides social sanction for underage marriages. Although marriage registrars or Mazons are informed of the National Child Act and are meant to abide by it, they take advantage of the 'intersections between laws and customs', eloquently said by a participant in the study.

The lack of birth certificates hinders age verification while the lack of timely marriage certificates hinder access to social security. The large-scale displacement seen since April 2023 will mean that many in Sudan have lost their official documentation and this could perpetuate child marriage.

Moreover, the application of different laws makes it legal for child marriage to continue and hence criminalisation of parties complicit in child marriage is nearly impossible. A few participants outlined challenges such as police not believing women when they report a case, and an absence of clear written procedures for some issues like domestic violence.

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Findings

Despite many efforts towards legal reform to set a minimum age of marriage, there is a long way to go.

A few key informants at the national-level, knowledgeable about the history of law and marriage outlined several legal reform efforts by civil society organisations and the government.

Most recently, two committees were formed in the transitional period (including one initiated by the Ministry of Justice) to reform discriminating laws against women, including the Personal Status Law. *"All attempts and efforts to change and develop this law over the past twenty years have failed."*

The reason reform efforts have been unsuccessful is due to the stronghold of social norms. Social norm transformation efforts have not progressed at the same speed as legal reform efforts in the country. In recent years, when the law was to the reformed, the first transitional government spent too long on deliberations, while the second transitional government did not have the same momentum as the first. Other research has shown that the role of religious leaders alongside the 'Islamisation of Sudan' has strongly influenced the reform process.[4] Moreover, several lessons can be learnt from other countries in North Africa that have reformed the law.[5]

> *"With regard to child marriage, the law, society, legislators, and law enforcers do not see it as (child marriage)," and here lies the problem. As protection experts, we consider it a problem, but for communities and law enforcers, they do not see it as a problem or as child marriage".*
> *- Government Official*

> *"I'm optimistic because the [legal] reform that can be achieved occurs under any civilian system, not just through legal reform but also through comprehensive social and economic changes. This includes the restructuring of many social frameworks to align with the principles outlined in the aforementioned laws."*
> *- Former government official*

4, 5 el-Nagar S, Tønnessen L. Family law reform in Sudan: competing claims for gender justice between sharia and women's human rights. Bergen; 2017.

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Recommendations

Local level

- Set up formal child protection support mechanisms for preventing (and cancelling) child marriages.
- Engage local CSOs that work on rights issues in Eastern Sudan to advocate for the abolishment of child marriage. These local CSOs are often not invited for collaboration as child marriage is not problematised as a rights issue.
- Ensure that social norms transformative work around child marriage continues so that new amendments/laws (that are already in draft) are accepted and practised at community-level. This can include a community-led design of an intervention proposing new norms around maturity (as opposed to tamyeez) which caters to the diverse tribes that now reside in Kassala with an increasing number of internally displaced persons.
- Work with fathers and male leaders at community level to destigmatise speaking up and advocating against child marriage. This can be done via pledges, community dialogues and leveraging positive deviance.
- Support local CSOs in providing legal aid and supportive services.

State level

- Resume a conversation about child marriage and the law at state level, particularly in the new humanitarian context of Sudan.
- Establish a coordinated platform of actors for raising awareness at community level focusing on legal education. Include the Mazons as a specific target group.
- Promote girls' education, reopen schools, and bring girls back to school, including those who may have married.
- Build and showcase an evidence base on adverse impact of child marriage in Sudan.

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Recommendations

State level (continued)

- Work to shift norms from promoting early marriage to encouraging higher education. In parallel, promote livelihood options for families.
- Incorporate a peace-building discourse emphasizing women's role in economic reconstruction in advocacy efforts.

National and international level

- Create new linkages between civil society organisations (Musawah and Girls Not Brides Sudan) to support the drafting of alternative laws and amendments of current laws to eliminate contradictions between the Personal Status Act and the National Child Act.
- Invest in capacity-building initiatives for law enforcement officials, judges, and other relevant stakeholders to improve awareness, enforcement, and implementation of the National Child Act.
- Remove Articles 40/ 41 that permit marriage from 10 years (age of tamyeez) and/or insert the clause of a minimum age (which can be 16 years or 18 years in the best-case scenario).
- Use lesser-known hadiths and arguments from various Islamic schools of thought to advocate for an increase in minimum age of marriage.
- Add an explanatory notes document to the (amended) Personal Status Act to ensure standardized implementation.
- International CSOs can provide technical assistance, expertise, and resources to support government efforts to reform marriage laws, strengthen institutions, and improve data collection and monitoring mechanisms.

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