



## U.S. Citizen Services

- ▶ [Voting Overseas](#)
- ▶ [Emergency Contact](#)
- ▶ [Warden Security Messages](#)
- ▶ [Information for Travelers](#)
- ▶ [Medical Information](#)
- ▶ [Legal Information](#)
- ▶ [Report Birth Abroad](#)
- ▶ [Report Death Abroad](#)
- ▶ [Federal Benefits](#)
- ▶ [Passports](#)
- ▶ [Getting Married](#)
- ▼ **Personal Status Laws**
- ▶ [Consular Fees](#)
- ▶ [Notarial Services](#)
- ▶ [International Adoption](#)

## PERSONAL STATUS LAWS

### Marriage

Sudanese legal provisions governing marriage and divorce do not apply to non-Muslims: in mixed marriages, the marriage contract is drawn up according to the national laws of each spouse. However, the effects of a marriage, such as property rights and child custody, are regulated by the laws of the husband's country; thus, a mixed marriage in which the husband is a Sudanese citizen would be governed by Sudanese personal status laws. With the exception of inheritance entitlements (see below), a foreign wife would have the same legal marital rights as a Sudanese woman.

Under Sudanese law, there are three conditions for a valid civil marriage contract. First, the parties must both agree to the marriage and its conditions. Second, the couple must meet the proper age requirements (minimum age for men is 18; 16 for women). Finally, the marriage contract must be announced, notarized and signed by two Muslim witnesses (Section 26, Muslim Personal Matters Act, 1991).

Unofficial, non-registered marriages -- known as orfy or traditional weddings -- are valid but do not guarantee the wife's legal rights. For example, in an orfy customary marriage, a woman is not entitled to alimony or pension, has no judicial protection without official recognition by her spouse, and must file a legal petition to establish her children's' parentage.

The first step in the marital process is the betrothal (khutba), when the man requests to marry a woman. During the betrothal, the man and woman negotiate the content of the marriage contract. A Sudanese woman has the right to accept or deny an offer of betrothal and she may negotiate a marriage contract herself.

The Marriage Contract. Marriage is completed through the signing of a civil contract. The procedure is officiated by a ma'azuun (a religious official who is usually appointed by the government), a qadi (judge) or a legal proxy and is witnessed by two men or two women and one man. A woman may appoint a guardian to sign the contract on her behalf. In contrast to the Christian notion, a Muslim marriage is not considered a spiritual sacrament and no religious ceremony is required. However, the announcement of the marriage to the public, by a wedding party or contract gathering, is essential.

A copy of the signed marriage contract is given to the couple and another is kept in the town or city archives. In a mixed marriage proceeding, involving a Sudanese and a foreign national, a duplicate is also filed at the Office for Certification of Foreign Marriages in Khartoum, a part of the Judiciary.

Sudanese law permits the inclusion of any mutually accepted stipulations in the contract. If the bride exercises this right, her privileges can be enhanced significantly. The following conditions illustrate possible stipulations:

- The dowry (mahr), requirements of the marriage contract, is a right accorded to the bride. Negotiated by the parties prior to the contract's finalization, there is no specified amount in the law. It may be property, money, service or free use of the property of the groom for a certain period (S. 17).
- The marriage contract can include stipulations for a divorce settlement should the marriage be dissolved. One such condition might allow the wife to initiate divorce. This would not eliminate the husband's right to unilateral repudiation but it would exempt the wife from proving damages in order to obtain a divorce.
- The contract could also prohibit the man from taking additional wives. Should he violate this provision, the first wife would obtain a divorce without obligation to prove damages. Furthermore, the law allows a woman to apply for divorce within one year of learning that her husband has taken a second wife if she can demonstrate material or moral injury.
- Finally, the contract might reiterate the wife's right to work outside of the home. According to Sudanese law, women have the right to work without the husband's consent; however, it is advisable to include such a provision in the document. Men have successfully evaded alimony payments by arguing that the wife worked without obtaining permission in advance.

Therefore, specific acknowledgment of the woman's right to work may eliminate possible problems in the event of divorce.

The inclusion of stipulations in the marriage contract is a relatively new practice in Sudan, although it is done quite frequently in Saudi Arabia and in no way violates Islamic law.

Temporary Restrictions on Marriage. The conclusion of a marriage contract is subject to certain restrictions, outlined below. These limitations are divided into temporary and permanent impediments.

- Various relationships and conditions act as temporary barriers to marriage. For example, it is not permissible to marry the wife of another man, and simultaneous marriage to two women who are close relatives is not permitted. (S. 19)
- A woman is temporarily barred from marriage when she is in iddat, the waiting period following divorce or death of the husband. Iddat lasts four months and ten days for a widow and approximately three months for a divorcee, after which she may remarry. The iddat period is designed to ensure that a woman is not pregnant from her previous marriage.
- For a Muslim man, marriage is permissible only with an individual who practices one of the "religions of the Book" (Judaism, Christianity or Islam). A Muslim woman may not marry a non-Muslim unless he accepts Islam. Since it is the father who confers religion to children under Islamic practice, this means the children will automatically be Muslims. (S. 19-E)

Permanent Restrictions on Marriage. Marriage is permanently prohibited to individuals sharing certain blood and marital ties because such relationships cannot be terminated. Those prohibited relatives include female ascendants (i.e. mother, grandmother etc.), descendants (i.e. daughter, granddaughter etc.), and collateral relatives (i.e. sisters, half sisters etc.) and their offspring.

In the case of kinship by marriage, a man may not marry his wife's female ascendants, the wives of his own ascendants, nor the wives of his children. A woman is permitted to marry neither a former husband's brother nor any of his male ascendants.

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