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SUDAN

Overview

The Sudanese legal system has been influenced by British common law, however Islamic legal principles have had the most significant impact in the shaping of the Sudanese system. The Sources of Judicial Decisions Act promulgated in 1983 establishes that where a matter is not specifically legislated on recourse should be made to Sharia principles, custom, judicial precedents and principles of justice. Furthermore, according to Article 65 of the 1998 Constitution, Hanafi jurisprudence is a residual source of law. Other sources of law are consensus of the people, the Constitution and custom.

Although Islam is not the State religion, Article 1 of the Constitution declares that Islam is the religion of the majority. Sunni Muslims make up approximately 70% of the population. There is a significant Christian population, located mainly in the southern regions of Sudan and also followers of traditional indigenous religions.

Foreign Orders

The enforcement of foreign judgements is governed by the 1983 Civil Procedures Act. This provides that foreign judgements may only be recognised and enforced if they satisfy certain conditions. These conditions are that the order should have been made by a competent judicial authority in accordance with the law of that jurisdiction, that the parties were summoned and represented and that the country issuing the order must recognise and enforce Sudanese judgements. In addition, an order will not be enforced if it was obtained by fraud or if it is contrary to public order or morality in Sudan.

Court Structure

Sharia courts have been integrated into the regular court system as part of the Islamisation process. The regular courts are divided into civil and criminal courts, which are both divided into a multi-level structure. The first level courts are the Town and Rural Courts, the second level consists of District Court and Province Courts. The Province Courts have jurisdiction over the personal status matters of non-Muslims. The third level is the Appeal Court and at the apex is the Supreme Court.

In the South of Sudan Sharia is not formally applied, rather customary law is applied by Tribal Courts.

A Constitutional Court was established by the Constitutional Court Act of 1998.

Filiation

Paternity is established within marriage where sexual relations have been possible and the child was born at least six months after the conclusion of the marriage contract. The maximum period of pregnancy recognised is one year. If a child is born to unmarried parents and the father denies paternity then the mother is the guardian of the child.

Adultery is severely punished in Sudan, in accordance with Islamic *Hadd* penalties.

Custody

The Muslim Family Law was introduced in 1991. Although it is based on classical Hanafi principles there is some scope for judicial discretion. Article 115 establishes the period of the mother's custody as until the age of seven for a male child and until the age of nine for a female child. The judge may extend this until puberty for the male child and marriage for the female child, if it is considered to be in the best interests of the child to do so.

The mother has the primary right to custody but conditions are placed upon that right. The custodian must be an adult, of sound mind, trustworthy, free from contagious diseases and able to raise the child. The female custodian of a male child should be within the prohibited degree of relationship to that child. Similarly, the male custodian of a female child must be within the prohibited degree of relationship to that child. A male custodian must also be of the same religion of the child and be able to show that there is a female who can assist in the duties of custody. In Sudan the custodian may work outside the home if suitable arrangements are made for the care of the child. A female custodian would normally lose custody if she remarried and her spouse is not within the prohibited degree of relationship to the child. However, the judge does have a degree of discretion in this matter.

If the mother cannot be the custodian, the right to custody passes to the maternal grandmother, then the paternal grandmother, the full sister, the uterine sister, the consanguine sister, the daughter of a full sister, the daughter of a uterine sister and then the daughter of an consanguine sister.

Guardianship

Guardianship of the person lasts until the age of majority, which is eighteen. According to Article 234 of the Muslim Family Law the father is the natural legal guardian, with the right to guardianship passing down the male agnatic line in the order of inheritance. Article 235 establishes that the right to be the financial guardian is for the father, then the guardian appointed by the father, the paternal grandfather and then the guardian appointed by the paternal grandfather. An appointed guardian must be an adult, Muslim, trustworthy and capable of carrying out the relevant duties.

Access

Access is guaranteed to both parents. If there is any disagreement a court order can be sought in order to establish the time and place of contact visits. A custodian may not travel without the permission of the guardian, although if she is the mother she can travel to the place where the marriage was contracted. The guardian cannot travel with the child during the custody period without the permission of the custodian.

Non-Muslim Family Law

The personal status matters of non-Muslim Sudanese are governed by customary law in accordance with provision 5 of the Civil Procedure Act 1983.

According to Section 11 of the Civil Transactions Act of 1984 the civil status and capacity of non-Sudanese persons is governed by the state to which they are nationals.

Nationality

A Sudanese father will automatically pass on his nationality to his children. A Sudanese mother can transmit her nationality only in limited circumstances.

Leaving the Jurisdiction

A Sudanese child needs the permission of the father in order to leave the country.

International Law

Sudan ratified the UN Convention on the Rights of the Child without reservation in 1990.

Parental Child Abduction

Parental child abduction is not a criminal offence.

Contacts

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