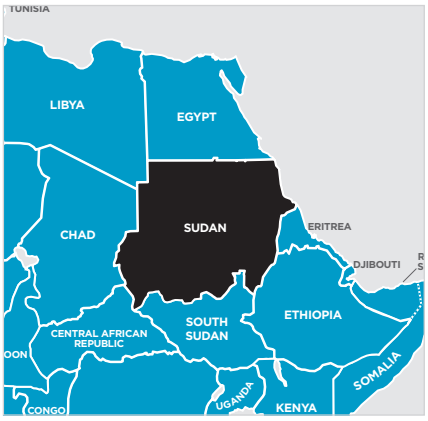
SUDAN



INTRODUCTION

The Republic of Sudan is an Arab State in North Africa occupied historically by Britain and Egypt. It gained independence in 1956 and has suffered successive wars and civil wars in recent times.

The Sudanese legal system is based on a complex mosaic of laws composed of English common law, civil law and Sharia law.

LITIGATION

1. WHAT IS THE STRUCTURE OF THE LEGAL PROFESSION?

Lawyers in Sudan act as both solicitors and barristers; there is no split profession. Qualified lawyers may appear before all courts, with the exception of the Constitutional Court, which is restricted to senior lawyers only.

To qualify as a lawyer, one must obtain a degree in law, pass the Bar examination and spend one year training in an office of a senior advocate who has at least 10 years' experience as a practising lawyer. All qualified Sudanese lawyers are members of the Bar Association.

A foreign lawyer may be granted a licence to practise in Sudan on an *ad hoc* basis in association with a local lawyer.

2. WHAT IS THE STRUCTURE OF THE COURT SYSTEM?

There are three types of court: civil (including special courts for commercial, labour and land disputes), criminal, and personal law (Sharia).

The general structure is as follows:

- the High Court has jurisdiction to overturn decisions of the Court of Appeal
- the Court of Appeal has jurisdiction to overturn decisions of the General and District Court of First Instance and to hear objections against administrative decisions
- the District Court has jurisdiction to hear matters that are urgent or of a simple nature
- the General Court has jurisdiction to hear matters without limit as to value or subject matter
- Town Benches have jurisdiction to determine petty cases which the District Court may determine summarily
- the Constitutional Court is separate from the judiciary and is empowered to review the constitutionality of all laws adopted by the legislature and to decide on cases where persons allege that their rights have been violated in contravention of the guarantees provided for in the constitution

3. WHAT ARE THE TIME LIMITS FOR BRINGING CIVIL CLAIMS?

The law does not provide time limits for bringing civil claims except for the following:

- actions for compensation for a harmful act may be brought no more than 15 years from the date of the harmful act (if the claimant did not have knowledge), but no more than five years from the date when the claimant had knowledge of the harmful act
- 15 years for an action for usufruct (the right to enjoy advantages on a neighbour's land, eg, a water pipeline from the neighbours' land to your land) or a right of use/right of dwelling
- 10 years for an action for the possession of movable or immovable property
- 10 years for an action on an easement
- one year for an action for rescission or reduction of price from the date of delivery
- one year for an action founded on an employment contract (this does not apply to the Labour Act)
- six months from the date of delivery for an action claiming a defective warranty
- 30 days for an action for pre-emption after notice of the registration of sale and six months from the date of registration

4. ARE COMMUNICATIONS BETWEEN A LAWYER AND HIS CLIENT PRIVILEGED (IE, PROTECTED FROM DISCLOSURE TO A COURT/TRIBUNAL AND OPPOSING PARTIES)?

Yes. Both the Advocacy Act 1983 and the Evidence Act 1994 provide that such communications are privileged. As such, lawyers are not allowed to disclose information or facts obtained through representation of a client unless the client agrees otherwise. This privilege applies even where the lawyer is called upon as a witness before court (unless the evidence concerns the client's intention to commit a crime in the future). The client may waive privilege by giving consent in writing.

5. HOW ARE CIVIL PROCEEDINGS COMMENCED, AND WHAT IS THE TYPICAL PROCEDURE WHICH IS THEN FOLLOWED?

Generally, civil proceedings are commenced by filing a brief and clear plaint (statement of claim). If the judge authorises the plaint, the court issues a summons submitted with the statement of claim to the defendant to appear and file his/her statement of defence on a specified date. Then a date is fixed for the plaintiff to file his/her reply. After the pleadings are finalised the judge decides the issues (facts and law) and determines who must prove what. Thereafter a date is fixed for the hearing.

6. WHAT IS THE EXTENT OF PRE-TRIAL EXCHANGE OF EVIDENCE, AND HOW IS EVIDENCE PRESENTED AT TRIAL?

The law does not provide for any pre-trial exchange of evidence.

Evidence is exchanged before the court. The plaint (statement of claim) and defence must include a list of all the documentary evidence the plaintiff/defendant wishes to rely on as well as the names of the witnesses. In addition, the court has the discretion, either on its own initiative or on an application from a party, to require any of the parties to produce a specific document or all the documents he might rely on in the proceedings. At the hearing the judge hears witnesses (under examination, cross-examination and re-examination) and each party reviews documents. The parties may submit closing written submissions.

7. TO WHAT EXTENT ARE THE PARTIES ABLE TO CONTROL THE PROCEDURE AND THE TIMETABLE? HOW QUICK IS THE PROCESS?

The parties or their lawyers liaise with the judge to fix a date suitable to all. In the case of disagreement the judge imposes a date suitable to him. The average timetable consists of a weekly court session for exchange of memos and a monthly court session to hear witnesses. The average time for a case to be determined by a court of first instance is at least one year.

8. WHAT INTERIM REMEDIES ARE AVAILABLE TO PRESERVE THE PARTIES' INTERESTS PENDING JUDGMENT?

The court may at any time grant provisional remedies including:

- the attachment of property (movable or immovable)
- prohibition of activity
- an order for security
- an order not to leave Sudan
- appointment of a receiver
- control of bank accounts
- furnishing of security
- injunction against the waste, damage or alienation of property in dispute or
- any other order that it sees fit to protect the plaintiff without causing serious damage to the defendant

9. WHAT MEANS OF ENFORCEMENT ARE AVAILABLE?

The following are the main methods of enforcing court judgments:

- delivery up of property
- attachment and sale of any property by public auction
- changing the register of any immovable property from the name of the defendant to the name of plaintiff
- appointment of a receiver
- detaining the defendant in prison until full satisfaction of judgment (this has been subject to serious criticism and is the subject of attacks by lawyers and human rights activists)
- in such other manner as the nature of relief granted may require

10. DOES THE COURT HAVE POWER TO ORDER COSTS? ARE FOREIGN CLAIMANTS REQUIRED TO PROVIDE SECURITY FOR COSTS?

The court has power to order costs, including court fees, advocate's fees, costs of experts, witnesses and expenses. The court, in making a final judgment will, of its own motion, determine the payment of the costs of the suit.

Foreign claimants are not required to provide security for costs.

11. ON WHAT GROUNDS CAN THE PARTIES APPEAL, AND WHAT RESTRICTIONS APPLY? IS THERE A RIGHT OF FURTHER APPEAL? TO WHAT EXTENT IS ENFORCEMENT SUSPENDED PENDING AN APPEAL?

Decrees and orders of Town Benches are appealed to District Courts, decrees and orders of District and General Courts are appealed to the Court of Appeal (three judges).

In the Court of Appeal the grounds for appeal are open, ie, dispute over facts, incorrect application of the law and evaluation of evidence.

Court of Appeal decisions may be appealed to the High Court (three judges). Such appeals are restricted to points of law only.

Judgments of the High Court may be revised in limited cases, mainly if there is contravention of Sharia law (five judges). At least one of the judges must have been on the judicial panel which issued the High Court judgment.

An appeal should be submitted within 15 days of the date of the judgment.

Usually, the courts, upon the appealing party's request, suspend execution of a judgment for a reasonable period to enable the appellant to obtain a stay from the court hearing the appeal, if the effect of execution cannot be rectified.

12. TO WHAT EXTENT CAN DOMESTIC AND/OR FOREIGN STATE ENTITIES CLAIM IMMUNITY FROM CIVIL PROCEEDINGS?

There is no immunity for domestic entities. However, no suit may be instituted against any organ of the State or a public servant in exercise of their duties unless the plaintiff gives notice in writing to the Attorney General's office and waits two months until issuing a claim. According to the Immunities and Privileges Act, immunity from civil proceedings may be granted to diplomatic entities and diplomatic agents and international organisations by virtue of bilateral agreements, reciprocity, or international agreements where Sudan is a party.

13. WHAT PROCEDURES EXIST FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS?

A foreign decree or order may not be executed unless it satisfies the following conditions:

- it is made by a competent judicial tribunal in accordance with the rules of international law relating to jurisdiction which are applicable in the country where the judgment or order was made and which became

final in accordance with that law

- the parties to the suit were duly summoned and duly represented
- the decree or order does not conflict with a prior decree or order made by the Sudanese courts
- the decree or order is not contrary to public order or morality
- the decree or order has not been obtained by fraud
- the decree or order does not contain a claim founded on a breach of any Sudanese law
- the decree has been issued in a country which allows for the enforcement of judgments of the Sudanese courts

ARBITRATION

14. IS THE ARBITRATION LAW BASED ON THE UNCITRAL MODEL LAW? IF YES, ARE THERE ANY KEY MODIFICATIONS? IF NO, WHAT FORM DOES THE ARBITRATION LAW TAKE?

No. The Arbitration law is not based on the UNCITRAL Model Law.

The Arbitration Law was enacted in 2005 as an Act of Parliament. It is derived from different sources, including the old Sudanese Arbitration Rules which were part of the Civil Procedure Act.

15. WHAT ARE THE FORMAL REQUIREMENTS FOR AN ENFORCEABLE ARBITRATION AGREEMENT?

Under the Arbitration Law, there must be a written agreement by the parties to submit present or future disputes to arbitration. Any letters, notes or email messages between the parties are considered written. The agreement does not need to be signed. The agreement does not have to specify the seat or the number of arbitrators. The default position is that the number of arbitrators will be three. Each party will select an arbitrator and the two co-arbitrators will select the chair of the tribunal. To the extent it has not been agreed by the parties, the tribunal will determine the seat.

Notwithstanding that there is no arbitration agreement, after a dispute has arisen and if there is already a pending action in court, the parties may apply by agreement to the court to request an order that the matter is referred to arbitration.

16. WILL THE COURTS STAY LITIGATION IF THERE IS A VALID ARBITRATION CLAUSE COVERING THE DISPUTE? DOES THE APPROACH DIFFER IN THIS REGARD IF THE SEAT OF THE ARBITRATION IS INSIDE OR OUTSIDE OF THE JURISDICTION?

The court will dismiss litigation of any dispute subject to a valid arbitration agreement upon the defendant's request at the first session of the court, which session is fixed for the defendant to submit his/her written statement of defence. If the defendant does not dispute the jurisdiction of the courts at the first session he/she will be considered to have waived his/her right to arbitrate the dispute. This approach does not differ if the seat of the arbitration is inside or outside of the jurisdiction.

17. ON WHAT GROUNDS CAN THE COURT INTERVENE IN ARBITRATIONS SEATED OUTSIDE THE JURISDICTION?

The Arbitration Law provides that either party may request the court (or the tribunal) to grant interim remedies in support of arbitrations seated outside the jurisdiction upon the request of one of the parties or the tribunal.

18. CAN A FOREIGN ARBITRATION AWARD BE APPEALED IN THE LOCAL COURTS? IF SO, ON WHAT GROUNDS?

Foreign arbitrations awards cannot be appealed in the local courts.

19. WHAT PROCEDURES EXIST FOR ENFORCEMENT OF AWARDS RENDERED IN ARBITRATIONS SEATED OUTSIDE OF THE JURISDICTION?

Sudan is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). A foreign arbitration award may not be enforced unless it satisfies the following conditions:

- the award is made by an arbitration centre or institution or tribunal in accordance with the laws which are applicable in the country where the award was made and the award has become final in accordance with that law
- the parties to the arbitration were aware of the existence of the arbitration, were notified in accordance with any contractual notice provisions or served in accordance with the local law governing the arbitration and had an opportunity to be heard
- the award does not conflict with a prior award made by the courts of Sudan
- the award is not contrary to public order or morality in Sudan
- the award has been issued in a country which enforces judgments of Sudanese courts on the basis of reciprocal treatment or an international agreement to which Sudan is a party

20. ARE FOREIGN AWARDS READILY ENFORCEABLE IN PRACTICE?

They are subject to the above-mentioned rules.

Awards are enforced by submitting a petition to the court attaching a copy of the authenticated award. After certain conditions are satisfied the court will order:

- delivery of any decreed property
- attachment and sale of any property
- arrest and detention of the judgment debtor
- appointment of a receiver
- any other relief as the nature of the relief granted in the award may require

It is impossible to determine how long it will take to enforce an award, as it depends on the award and whether enforcement is resisted by the party against whom it is being enforced.

The Sudanese courts will not review awards on their merits.

ALTERNATIVE DISPUTE RESOLUTION

21. ARE THE PARTIES TO LITIGATION OR ARBITRATION REQUIRED TO CONSIDER OR SUBMIT TO ANY ALTERNATIVE DISPUTE RESOLUTION BEFORE OR DURING PROCEEDINGS?

No. Parties to litigation or arbitration are not required by law to consider or submit to alternative dispute resolution before or during proceedings. However, where there is an arbitration the parties may all agree to go to conciliation first with the same arbitrators. If no agreement is achieved then the formal arbitration is followed.

In litigation the judge may ask the parties to sit together and try to reach settlement. This relies on the parties' willingness to attempt this. There are no costs sanctions if they fail to attempt to reach settlement in this way.

REFORMS

22. ARE THERE LIKELY TO BE ANY SIGNIFICANT PROCEDURAL REFORMS IN THE NEAR FUTURE?

No, there are not likely to be any significant procedural reforms in the near future.

CONTRIBUTOR:

Nafisa Omer
Partner

Omer Abdelati Law Firm

Talya House, Street 39
Khartoum 2,
Khartoum
Sudan

T +249 183 468713

F +249 183 464080

nafisa@omerabdelati.com

www.omerabdelati.com