IN SEARCH OF CONFLUENCE

Addressing Discrimination and Inequality in Sudan

Equal Rights Trust
in partnership with Sudanese Organisation for Research and Development
In Search of Confluence

Addressing Discrimination and Inequality in Sudan

The Equal Rights Trust Country Report Series: 4
London, October 2014
The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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Confluence:

1. the junction of two rivers, especially rivers of approximately equal width;
2. an act or process of merging.

For you oh noble grief
For you oh sweet dream
For you oh homeland
For you oh Nile

For you oh night
Oh good and beautiful one
Oh my charming country

(...)

Oh Nubian face,
Oh Arabic word,
Oh Black African tattoo

Oh My Charming Country (Ya Baladi Ya Habbob), a poem by Sidahmed Alhardallou written in 1972, which has become one of the most popular songs of Sudan, performed by the much loved singer Mohamed Wardi. It speaks of Sudan as one land, praising the country’s diversity.
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This report is published by the Equal Rights Trust, in partnership with the Sudanese Organisation for Research and Development (SORD). The conceptual framework, structure and research methodology were developed by the Equal Rights Trust as part of its Country Report Series on addressing discrimination and inequality in different countries around the world.

Dimitrina Petrova, Executive Director of the Equal Rights Trust, oversaw the research and drafting of the report. In March 2013, assisted by Vania Kaneva, she travelled to Sudan in a scoping mission, assessing the context and potential of producing this report. The first draft of the report was prepared by Khansaa al-Karib, on the basis of materials, evidence and analysis provided by SORD, and a review of existing literature. This draft was reviewed, amended, updated and expanded by Jim Fitzgerald, with assistance from Richard Wingfield. In January 2014, Dimitrina Petrova and Jim Fitzgerald undertook a validation mission to Sudan, meeting experts and stakeholders from civil society, academia and government to consult them on the report. Following this exercise, Jim Fitzgerald produced a third draft, incorporating new research. The report was edited and authorised for publication by Dimitrina Petrova.

Field research, coordinated by Ahmed Omer of SORD, and conducted under the general supervision of Asha al-Karib, was central to the identification and description of patterns of inequality and discrimination. A number of civil society organisations participated in gathering evidence through field research in different parts of Sudan. In addition, a number of independent researchers were hired to undertake desk research on particular patterns of discrimination and inequality, and on the legal and policy framework. For reasons of their security and personal safety, these individuals and organisations are not named here; nevertheless, they have our profound gratitude.

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In the process of producing this report, we conducted interviews, sought information and consulted a wide range of Sudanese experts and organisations, many of whom are cited in the report. The Trust wishes to thank all individuals and organisations who responded to queries, gave feedback on the draft report, provided information and advice, or met with us, SORD or our researchers.

Finally, we wish to thank all persons who shared their stories with us. This report is dedicated to them and all other persons in Sudan who have suffered – and those who continue to suffer – discrimination and exclusion.
**ACRONYMS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACJPS</td>
<td>African Centre for Justice and Peace Studies</td>
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<tr>
<td>AIDS</td>
<td>Acquired Immunodeficiency Syndrome</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<tr>
<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSOs</td>
<td>Civil Society Organisations</td>
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<tr>
<td>FGM</td>
<td>Female genital mutilation</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>HAC</td>
<td>Humanitarian Aid Commission</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>HRC</td>
<td>Human Rights Committee</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of all forms of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>IDPs</td>
<td>Internally Displaced Peoples</td>
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<tr>
<td>IGCSE</td>
<td>International General Certificate of Secondary Education</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>INC</td>
<td>Interim National Constitution</td>
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<td>INGOs</td>
<td>International Non-Governmental Organisations</td>
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<tr>
<td>JHR</td>
<td>Journalists for Human Rights network</td>
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<tr>
<td>JEM</td>
<td>Justice and Equality Movement</td>
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<tr>
<td>LGB</td>
<td>Lesbian, Gay and Bisexual</td>
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<tr>
<td>NCP</td>
<td>Nationalist Congress Party</td>
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<tr>
<td>NDA</td>
<td>National Democratic Alliance</td>
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<td>NGOs</td>
<td>Non-Governmental Organisations</td>
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<tr>
<td>NHRC</td>
<td>National Human Rights Commission</td>
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<td>NISS</td>
<td>National Intelligence and Security Services</td>
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<tr>
<td>OCHA</td>
<td>Office for the Coordination of Humanitarian Affairs</td>
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<tr>
<td>PDF</td>
<td>Popular Defence Forces</td>
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<tr>
<td>RRC</td>
<td>Relief and Rehabilitation Commission</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>RSF</td>
<td>Rapid Support Force</td>
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<td>SAF</td>
<td>Sudanese Armed Forces</td>
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<tr>
<td>SIGI</td>
<td>Social Institutions and Gender Index</td>
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<td>SIHA</td>
<td>Strategic Initiative for Women in the Horn of Africa</td>
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<td>SNAP</td>
<td>Sudan National Aids Program</td>
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<td>SORD</td>
<td>Sudanese Organisation for Research and Development</td>
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<tr>
<td>SPLA</td>
<td>Sudanese People's Liberation Army</td>
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<tr>
<td>SPLM</td>
<td>Sudanese People's Liberation Movement</td>
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<tr>
<td>SPLM-N</td>
<td>Sudanese People's Liberation Movement – North</td>
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<tr>
<td>SRF</td>
<td>Sudan Revolutionary Front</td>
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<tr>
<td>STD</td>
<td>Sexually Transmitted Disease</td>
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<tr>
<td>TB</td>
<td>Tuberculosis</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organisation</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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EXECUTIVE SUMMARY

Khartoum, the capital of Sudan, sits at the confluence of the Blue and White Niles. Sudan itself, recipient of the rich and diverse influences from both northern and sub-Saharan Africa, sits at the confluence of different races, religions and cultures. This report finds that unlike the Nile, whose two branches meet and together form one of the world’s mightiest rivers, Sudan remains racked by division and divergence, with inequality being their root cause.

The report identifies the ideology promoted by President Omar al-Bashir as a main factor driving the 21st Century metamorphoses of older patterns of discrimination and inequality. Since 1989, al-Bashir has sought to degrade and diminish the country’s immense diversity in favour of a narrow vision of Sudan as a singularly Arab, Islamic, and male-dominated country. In so doing, the government has institutionalised discrimination on the basis of religion, ethnicity, political opinion, gender and sexual orientation. The state shows scant respect for the right to non-discrimination: the legal and policy framework is manifestly inadequate to provide protection from discrimination, and in many cases laws act as an instrument to promote, rather than prevent, discrimination.

Part 1: Introduction

Purpose and Structure of This Report

The purpose of this report is to describe and analyse discrimination and inequality in Sudan and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities of many different forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. Part 1 sets out the conceptual framework which has guided the authors’ work, as well as the methodology applied during the research process. It then provides an overview of the demographic, economic, historical, social and political context of discrimination and in-
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equality in Sudan. Part 2 discusses the principal patterns of discrimination and inequality affecting different groups in Sudan. Part 3 analyses the legal and policy framework as it relates to non-discrimination and equality. Part 4 contains conclusions and recommendations, drawn from an analysis of both the patterns of discrimination and inequality examined in Part 2 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 3.

**Conceptual Framework and Research Methodology**

The conceptual framework of this report is the unified human rights framework on equality which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation, inconsistencies and gaps in the field of equality law, policies and practices. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

a. types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;

b. types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education and the provision of goods and services; and

c. status inequalities and socio-economic inequalities.

This conceptual framework is expressed in the Declaration of Principles on Equality, adopted in 2008 and endorsed by thousands of experts and activists on equality and human rights from all over the world.

This report is the outcome of the Equal Rights Trust’s long-standing engagement with equality and human rights movements in Sudan. Between 2010 and 2014, the Equal Rights Trust and the Sudanese Organisation for Research and Development worked in partnership on a project designed to empower civil society to combat discrimination and promote equality in Sudan. Throughout this project, the partners undertook research on discrimination and inequality by gathering direct testimony, as well as reviewing research conducted by others. The Equal Rights Trust has also worked directly with
the Journalists for Human Rights network, supporting its efforts to promote human rights in Sudan, emphasising the importance of non-discrimination and equality in this struggle.

In the context of this work, the Trust had extensive opportunities to consult and conduct research on patterns of discrimination and inequality in Sudan. We have also independently reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the country’s legal and policy framework related to equality. Prior to publication, this report was the subject of an extensive consultation, in which its findings and conclusions were exposed to scrutiny by experts and stakeholders from civil society, government, academia and the media. We believe that as a result, the report’s findings and conclusions have been significantly strengthened.

Country Context, Government and Politics

In addition to the conceptual framework, the first part of the report provides an overview of the demographic, economic, social, political and historical context in which discrimination and inequality occur in Sudan.

The Republic of the Sudan (Sudan) is a large country located in Northeast Africa. Sudan comprises 18 states over a total area of 1,886,068 sq km, making it the 16th largest country in the world. Until 2011, Sudan was composed of territory which currently makes up both present-day Sudan and the Republic of South Sudan. Following decades of conflict between forces from the north and south of Sudan, a peace agreement was reached in 2005. A referendum on independence for South Sudan was held in 2011 and South Sudan officially gained independence on 9 July 2011.

The population of Sudan is estimated, on the basis of the last census of 2008, at between 35 and 38 million people. Throughout its ancient and contemporary history, Sudan has been characterised by its immense ethnic diversity, but no credible estimates exist for the number of ethnic groups in Sudan today, as no census has been conducted since before the secession of South Sudan. According to UNDP estimates, Muslims comprise 97% of the population of post-secession Sudan. The Interim National Constitution states that Sudan “shall have as its sources of legislation Islamic sharia and the consensus of the people”. Sudan recognises two official state languages: Arabic and English.
Despite the multiplicity of local languages spoken in the country, in practice Arabic is the common language of government and business.

World Bank estimates of Sudan’s Gross Domestic Product for 2013 stood at $66.55 billion (in current US$), with Gross National Income per capita estimated at $1,130. In 2013, the Human Development Index value for Sudan was 0.473, putting it at 166th place out of 187 countries ranked. Outcomes in education and healthcare reflect the country’s low level of development.

Sudan declared its independence from the Anglo-Egyptian condominium in December 1955, and the British and Egyptian governments recognised it as independent shortly afterwards, on 1 January 1956. The country has experienced numerous military coups, some followed by popular uprisings. Sudan’s constitutional development since 1956 reflects the country’s turbulent recent history: in the 58 years since independence, the country has had eight different constitutions.

In 1983, then-President Nimeiry declared Sudan an Islamic state. A package of new laws, widely known as the “September laws”, introduced principles based on sharia law into the Sudanese legal system. In 1989, another Islamic Movement coup established the current regime of Omar al-Bashir, a strong supporter of the application of sharia law.

Civil conflict between northern and southern Sudan began before independence and continued throughout the 1950s and 1960s. In 1972, the government and southern rebel groups signed the Addis Ababa peace agreement, establishing the Southern Sudan Autonomous Region. Conflict began again in 1983, following the introduction of sharia law, and continued until the signing of a Comprehensive Peace Agreement in 2005.

In 2003, violent conflict erupted in the region of Darfur. The war in Darfur and the resulting human rights violations have been widely documented by many international bodies and organisations. The scale of the violations was such that it prompted two arrest warrants by the International Criminal Court in 2009 and 2010 against President al-Bashir and others on charges of war crimes, crimes against humanity and genocide. After the secession of South Sudan, other conflicts broke out between the government and the Sudan People’s Liberation Movement – North (SPLM-N) in disputed
areas along the border with South Sudan, in the South Kordofan and Blue Nile states.

The Islamist National Congress Party (NCP) (al-Mu’amar al-Waṭanī) has governed Sudan since coming to power in the 1989 coup and dominates the political landscape. In the 2010 election, the party received over 68% of the vote and 323 out of the 450 seats in the National Assembly, the lower house of Parliament. Since 2012, the opposition parties in coordination with SPLM-N have been calling for regime change. In 2011, 2012 and 2013, public protests and demonstrations were organised in Khartoum, in an effort to build popular support for change. The government responded with oppressive measures and long after the protests, continued to arrest and harass protesters and members of groups who may have represented any form of political opposition to the regime.

Despite a Constitution that calls for the protection of human rights and basic freedoms, Sudan fares poorly in terms of its human rights record. The country has received scores of 7 (the lowest level of freedom) in both “Political Rights” and “Civil Liberties” in the Freedom House rankings in 2014, earning it the status “Not Free”.

Part 2: Patterns of Discrimination and Inequality

Part 2 of the report identifies and discusses what the Equal Rights Trust’s research identified as the principal patterns of discrimination and inequality in Sudan. It is based on original direct testimony collected from a wide range of individuals, interviews with academics and experts, together with analysis of published research undertaken by international organisations, government bodies, non-governmental organisations and academics. The report also uses information from credible media reports and statistical data. It does not seek to create an exhaustive picture, but rather to provide an insight into what appear to be the most significant issues.

This part of the report presents evidence of discrimination and inequality on grounds of, inter alia, religion or belief, race and ethnicity, political opinion, gender, disability, sexual orientation and health status. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws,
actions of state actors carrying out public functions, exposure to discriminatory violence and discrimination in areas such as employment, education and access to goods and services. While there are clear differences between the problems experienced by those suffering discrimination and inequality on each of the grounds covered – and unique problems affecting some groups – the research identifies a number of common patterns and inter-relationships between the forms of discrimination experienced on different grounds. This makes it possible to highlight several key themes in this study.

The first key theme is the role played by the identity politics of the current Sudanese regime aimed at empowering an Arab Islamic identity in creating, perpetuating and metamorphosing patterns of discrimination in Sudan. While for the sake of an equality law analysis it is necessary to distinguish forms of discrimination on different grounds, in the Sudan, discrimination often occurs on a blend of grounds in which ingredients of religion, ethnicity and political opinion are almost inevitably found, albeit in varying proportions. President al-Bashir came to power in a coup in 1989 and has maintained a strong grip on power since that time. His National Congress Party has imposed a conservative Islamist ideology, centred on the application of sharia law through the secular legal system, and has restricted the freedoms of those who advocate or are associated with alternative visions.

Somewhat contrary to Islamic tradition which emphasises religious belonging over ethnic origins, the al-Bashir regime has developed a dualist ethno-religious ideology in which ethnicity plays an equally important part with religion. Influences from the secular pan-Arab movement and Arab nationalism of the earlier decades have been interwoven with Islamic principles. As the struggle for power in Sudan since independence has been severe and marked by violence and brutality, the need for ideological justification has been particularly acute. This has resulted in a strong politicisation of the central ideological values around ethno-religious identity: ethno-religious questions in today’s Sudan are not a matter of academic cultural interest but of life and death.

As a result, religious minorities and those promoting more moderate versions of Islam experience discrimination on the basis of their religion or belief and severe restriction on their religious freedoms, but their experience is strongly influenced by the political context. Furthermore, the regime has clamped down on the freedoms of those who challenge the imposition of an Islamist
ideology for purely political reasons, rather than because of religious doctrine. Members of opposing political movements, together with social activists, members of civil society organisations, academics and students, journalists and others face discrimination on the basis of their political opinion, both in the exercise of their political freedoms and in other areas of life. Members of ethnic groups which are, or are perceived to be, in conflict with the regime are subjected to armed violence in their homelands, and to other forms of discrimination when residing elsewhere in the country, again because of the politicisation of race and ethnicity.

A closely related theme of this part of the report is the role of the state in creating and perpetuating the conditions for discrimination. Discrimination based on gender is legitimised and institutionalised by a number of laws which discriminate against women, and laws which are applied disproportionately against women. While racial/ethnic discrimination is found less in law and predominantly in practice (with the exception of nationality law which discriminates explicitly on the basis of ethnicity), the chief ethnic discriminator is the state, acting through such state agents as the armed forces, the police and the security services. Their actions – and their passivity in the face of violations by private actors – in the course of the last two decades have built a culture of impunity in which discrimination thrives.

Finally, the third key theme is the gender dimension running through all patterns of discrimination discussed in this part of the report. There are cases of discrimination, of course, where gender plays no role, but these are rare. The vast majority of cases identified for this report, if seen in context, will reveal the deep-seated gender bias. For example, discrimination on grounds of political opinion can overlap with discrimination on grounds of ethnicity, as certain ethnic groups are perceived to support certain political opposition parties or resistance movements. But looking deeper and broader, one would see that politically or ethnically motivated conducts are not gender neutral. They are as gendered, as gender and sexuality are politicised.

Part 2 of the report attempts to disentangle the various forms of discrimination and arrange them in categories according to recognised grounds, while keeping in mind their interrelatedness. It begins by examining those patterns of discrimination which are most closely tied to the ethno-religious ideology promoted by the government: discrimination on the basis of religion or be-
lief, race and ethnicity and political opinion. It then examines the situation of women, who experience severe discrimination as a result of discriminatory laws and the actions of state agents, but who also suffer discrimination and violence at the hands of private actors. The report then examines the situation of persons with disabilities, lesbian, gay and bisexual persons and persons experiencing discrimination on the basis of their health status.

With respect to **discrimination and inequality on the basis of religion or belief**, section 2.1 of the report identifies a significant number of discriminatory legal provisions, which exist despite constitutional guarantees of freedom of religion and non-discrimination on the basis of religion or belief. Since 1983, many criminal and civil statutes have been amended or replaced to make them compliant with a particular, narrow interpretation of sharia law, with the result that certain laws discriminate on the basis of religion and gender. Section 125 of the Criminal Law Act has been applied as a *de facto* blasphemy provision, while section 126 explicitly prohibits apostasy; both provisions limit religious freedom and freedom of expression and constitute discrimination on grounds of religion or belief. Section 152 of the Criminal Law Act prohibiting “indecent conduct” or the wearing of indecent dress has been applied in ways which indirectly discriminate against non-complying Muslims. This section also presents evidence of discrimination against Christians, who have faced increased pressure since the secession of South Sudan at the hands of both state and non-state actors, with cases involving attacks on religious buildings, the closure of churches and Christian educational institutions, arrests for proselytisation and the confiscation of religious literature. It also identifies a number of recent cases in which Christians were subject to religiously-motivated violence. A few cases of persecution on other religious minorities, such as Baha’i and Shia, are briefly presented. Finally, the section comments on religious discrimination in employment and education.

Section 2.2 of the report examines **discrimination and inequality on the basis of race and ethnicity**. In a country where ethnicity is highly politicised, and where ethnic conflict continues to determine the lives of millions of people, this form of discrimination – if one was under obligation to assign ratings – should be rated as perhaps the most serious. The entire future of the country, in our view, critically depends on whether or not stakeholders will address pervasive and systemic racial/ethnic discrimination effectively. This section argues that inequality in general and racial/ethnic inequality in
particular is the root cause of the ethno-religious conflicts in the south (prior to 2011), Darfur, the East and latterly in South Kordofan and Blue Nile states. The section presents evidence of ethnic discrimination and violence committed by state actors, which is essentially legitimised by immunity laws with impunity consequences. The report touches upon the impact of the amendments made to the Nationality Act in 2011 revoking the nationality of persons who originally came from today’s South Sudan but have an established presence in Sudan. The law has put an estimated 300-350,000 persons of South Sudanese origin at risk of statelessness. This section of the report goes on to present evidence of ethnic discrimination in access to resources, political participation, employment and education.

The section of the report dealing with **discrimination on the basis of political opinion** (section 2.3) presents cases in which the abuse suffered is best described as being based on political opinion, despite the difficulty of disentangling the political from the ethnic, gender and other dimensions of discrimination in the Sudanese context. Political discrimination is presented here as an element of a range of other human rights abuses – including extrajudicial killings, torture and ill-treatment, arbitrary and prolonged detention and the denial of political freedoms – directed at those who oppose, or are perceived to oppose the regime. The report presents first-hand testimony from individuals arrested for their participation in protests against the regime in 2011, 2012 and 2013, and estimates the number of people killed and detained during the most recent wave of protests. It finds compelling evidence of discriminatory torture and ill-treatment of those involved in the protest movements. The section further discusses the discriminatory denial of freedoms of expression, assembly and association, through restrictions on media freedom and the freedoms of civil society organisations to convene meetings and undertake activities. Finally, we identify patterns of political discrimination in the allocation of land and in the areas of employment and education.

Section 2.4 of the report examines **gender inequality** in Sudan, finding that two principal factors inform the experience of women and girls: the existence of a significant number of discriminatory laws and the continuing prevalence of conservative social perceptions of women, which are enhanced by official ideology. This section identifies a wide range of discriminatory legal provisions. Particularly significant problems are identified in the Muslim Personal Status Act, which reflects patriarchal conceptions of women’s role in society, and the
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Criminal Law Act, which provides ineffective protection from sexual violence and contains a provision on indecent dress which has been used to prosecute many hundreds of women. The most serious allegations we have made in this section relate to gender-based violence, in particular sexual violence in conflict zones and at the hands of state agents. The section presents a number of distressing cases of women who have been subjected to violence by the police and security services. The Equal Rights Trust welcomes the steps taken by the government to tackle female genital mutilation, but notes that the practice remains legal in large parts of the country and enforcement of existing laws is not effective. The last portion of section 2.4 comments on patterns of discrimination and inequality affecting women in employment and education, and welcomes progress made in increasing women’s participation in public life.

The section focused on the position of persons with disabilities (section 2.5) acknowledges the steps taken by the government to improve their situation. Nevertheless, the Equal Rights Trust is concerned that cases of direct discrimination in both employment and education are widespread. The report finds little evidence of public or private actors taking reasonable accommodation measures, even where required to do so by law. What is missing from this section may be as important as that which is included: unfortunately, we have not been able to include information about the treatment of persons with mental disabilities. These are the invisible victims who should have been, but are not, highlighted in this study. While this omission reflects the invisibility of this group in Sudanese society, it also creates an obligation for the Equal Rights Trust to return and focus on them in a future initiative.

There is effectively no openly homosexual population in Sudan, and international human rights and LGBT organisations have not had much to say about the situation facing this community. Even making contact with the underground LGB community in the country is a serious logistical challenge. Indeed, in order to include the brief section in this report covering discrimination based on sexual orientation (section 2.6), the Equal Rights Trust took substantial security risks. The section provides a first-hand insight into the recent experience of a group of gay Sudanese men, discussing the discrimination and other serious human rights abuses which they face, motivated by their sexuality. The legal environment of Sudan is uncompromisingly hostile to this community. Same-sex conduct between men is explicitly criminalised, while other provisions in the Criminal Law Act have been used to prosecute members of the LGB com-
munity. LGB persons face extremely high levels of social stigma and a high risk of discriminatory violence. Those who are exposed as gay, lesbian or bisexual can hardly enjoy a normal life in Sudan.

The final section of Part 2 examines patterns of discrimination on the basis of health status (section 2.7). It finds that, despite a number of welcome policy measures, persons living with HIV/AIDS and tuberculosis face discrimination and disadvantage. Unlike with sexual minorities however, the government, aligned with and supported by the international community, appears to be on their side.

**Part 3: Legal and Policy Framework Related to Equality**

Part 3 of the report discusses the legal and policy framework related to non-discrimination and equality in Sudan, in order to assess its adequacy in providing protection from discrimination and the extent to which Sudan is in compliance with its international law obligations in this regard. It discusses both the international legal obligations of the state and the domestic legal and policy framework which protects the rights to equality and non-discrimination. In respect of domestic law, it examines the Interim National Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. It also examines government policies which have an impact on inequality. The final section assesses the system of implementation and enforcement, including a review of the national human rights institution and the jurisprudence of the Sudanese courts.

Section 3.1 assesses Sudan’s record of participation in international instruments. It finds that Sudan, having acceded to only five of the nine core UN human rights treaties, has a poor record of international participation. Sudan has ratified neither the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, nor the Convention on the Elimination of Discrimination against Women. The state has also resisted calls to ratify the optional protocols which allow individual complaints under the international instruments to which it is party. At the regional level, Sudan has ratified both the African Charter on Human and Peoples’ Rights and the African Charter on the Rights and Welfare of the Child, but has notably failed to ratify the Protocol on the Rights of Women in Africa. Article 27(3) of the Interim National Constitution, which provides for the direct effect of
international human rights instruments to which Sudan is party, has not been applied in practice.

Section 3.2 analyses Sudan’s domestic legal system, starting with the 2005 **Interim National Constitution**. It finds that, despite providing arguably the best level of human rights protection of any of Sudan’s eight constitutions since independence, the Interim National Constitution provides weak protection for the rights to equality and non-discrimination. The principal equality and non-discrimination provision – Article 31 – does not prohibit discrimination in the enjoyment of human rights, as required by both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, nor does it provide a general prohibition on discrimination in all areas of life governed by law, as required by Article 26 of the ICCPR. Instead, it guarantees only equal protection of the law without discrimination on a strictly limited list of grounds, leaving the material scope of protection unclear. The personal scope of protection from discrimination is limited, omitting grounds such as disability, sexual orientation and health status. Article 32, which prohibits discrimination against women, is broader in scope than Article 31, but is undermined by a large number of gender-discriminatory laws that remain in force today and have not been found unconstitutional. The report argues that Article 45 which protects persons with “special needs” and the elderly is problematic, not least in the lack of definition of “special needs”. We further commend the inclusion of a provision on the rights of ethnic and cultural minorities, but express concern about the absence of a constitutional prohibition of advocacy of national, racial or religious hatred.

Sections 3.2.2 and 3.2.3 deal with protections from discrimination in national legislation. These sections find that beyond the Constitution, Sudanese legislation provides very little protection from discrimination. Section 3.2.2 looks for **specific anti-discrimination laws** but does not find any that would deserve such description. Despite its obligations under international law to adopt such laws, Sudan has introduced neither comprehensive anti-discrimination legislation, nor any specific anti-discrimination laws. The National Disability Act – the only piece of legislation targeted at the needs of a group commonly exposed to discrimination – does not prohibit discrimination on grounds of disability and does not provide a general obligation of reasonable accommodation. The Act falls far short of the standard required by the Con-
vention on the Rights of Persons with Disabilities, a treaty to which Sudan became party in 2009.

Section 3.2.3 assesses **non-discrimination provisions in other areas of law**. Again, its findings are disappointing. Legislation governing nationality and citizenship, family law, and education and healthcare laws contain no guarantees of non-discrimination. The Criminal Law Act contains a single provision prohibiting the promotion of hatred on the basis of ethnicity, colour or language. In the area of employment, the Labour Act provides no protection from discrimination, but the National Civil Service Act contains both a provision on equal pay for equal work and a positive action provision in favour of persons with disabilities.

Section 3.3, which examines **government policies**, finds that these do not fill the gaps in protection which result from the absence of a legislative framework. Most significantly, the National Human Rights Action Plan adopted in 2013 does not set out concrete targets and provides no mechanisms to allow civil society, the media or the public to hold state actors accountable. However, the government has adopted several specific policies that are relevant to equality. These include policies on internally displaced persons, persons with HIV/AIDS, and the empowerment of women, among others. As a general rule, recent government policies are adequate and comprehensive, but aspirational: they do not appear to be related to resources or to create specific powers for the stakeholders.

The final section of Part 3 analyses the enforcement of laws and implementation of policies related to equality. It finds that the absence of effective constitutional and legislative protections for the rights to equality and non-discrimination is exacerbated by **weak and ineffective enforcement procedures and implementation practices**. Necessary measures to ensure access to justice – including clear procedure rules, rules permitting standing for interested parties, legal aid and specific provisions governing evidence and proof – are absent from the legal framework. Members of the National Human Rights Commission were not appointed until 2012, despite the Commission having been established by statute in 2009. At the time of writing, the Commission has not been rated by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, but its constituting legislation clearly falls short of the standards required by the Commit-
tee in respect of independence. Our analysis of Sudanese jurisprudence finds that the Constitutional Court, which is empowered to receive complaints of discrimination under the Constitution, has a weak record.

In sum, this part of the report finds that Sudan's legal and policy framework is manifestly inadequate to address the patterns of discrimination and inequality identified in part 2.

**Part 4: Conclusions and Recommendations**

Part 4 of the report presents its conclusions and makes recommendations to the Sudanese government. Section 4.1 sums up the conclusions of parts 2 and 3. It reiterates the view that the root cause of Sudan’s multitude of past and current conflicts is inequality, and that the key discriminator on grounds of religion, ethnicity, political opinion and gender is the state. Rather than standing as a guarantor and protector of equality rights, the state recycles disadvantage through the enactment and enforcement of discriminatory laws, or through the activities of the armed forces, security services, police or other state actors. We also state, in conclusion of our legal analysis, that the system of laws, policies and practices in Sudan is manifestly inadequate to effectively combat discrimination and advance equality.

Thus, the overall conclusion of this report is that the government of Sudan is **failing in its obligation to respect, protect and fulfil the rights to equality and non-discrimination.**

Section 4.2 of the report presents the Equal Rights Trust’s recommendations, whose purpose is to strengthen protection from discrimination and to enable Sudan to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The report makes recommendations in ten areas:

- Mainstreaming of equality principles in conflict resolution, peace building and development policies;
• Ensuring justice for victims of serious cases of past discrimination;
• Strengthening of international commitments related to equality;
• Repeal or amendment of national legislation which violates the rights to equality and non-discrimination;
• Enactment of substantive law protecting the rights to equality and non-discrimination;
• Enforcement of the rights to equality and non-discrimination;
• The duty of the government to gather and disseminate information relevant to equality;
• Policies to respect and promote the rights to equality and non-discrimination;
• Education on equality; and
• Prohibition of regressive interpretation, derogations and reservations.
1. INTRODUCTION

1.1 Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in Sudan and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities of many different forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. Part 1 sets out its purpose and structure, and the conceptual framework which has guided the work and the research methodology. It also provides basic information about Sudan, its history and current political and economic situation.

Part 2 presents patterns of discrimination and inequality, beginning with those patterns where actual or perceived opposition to the current regime is a key factor in causing and perpetuating inequality: inequalities based on religion or belief, race and ethnicity and political opinion. This part then reviews the situation of women, who suffer discrimination both as a consequence of government policy, and the actions of private actors. It then turns to groups experiencing discrimination and inequality on the basis of their disability, sexual orientation and health status.

Part 3 begins by reviewing the main international legal obligations of Sudan in the field of equality and non-discrimination within the frameworks of the United Nations and the African Union human rights systems. It then discusses Sudanese national law related to equality and non-discrimination, starting with the Interim National Constitution before examining national legislation. Part 3 also reviews state policies relevant to equality. The potential for the realisation of the rights to equality and non-discrimination is illustrated through a review of judicial practice, and a review of the operation of government and independent bodies responsible for the implementation of human rights laws.
Part 4 contains the report’s conclusions and recommendations, which are based on the analysis of patterns of inequality and discrimination examined in Part 2 and the assessment of Sudanese legislation and state policies in Part 3.

1.2 Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, provision of goods and services, among others; and
- status inequalities and socio-economic inequalities.

The Unified Human Rights Framework on Equality

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world. The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has been used as the basis for those developing anti-discrimination legislation in a number of countries and has received increasing support at the international and regional levels. In 2008, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its General Comment 20: Non-discrimination in economic, social and cultural rights. In 2011, the Parliamentary Assembly of the Council of Europe adopted a Recommendation call-
ing on the 47 Council of Europe member states to take the Declaration into account when developing equality law and policy.

Principle 1 of the Declaration defines the right to equality:

*The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination. The right to equality has as its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the interconnectedness of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond poorer notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while insisting that the right to equality requires states to address unfair inequalities, however “innocuous” their cause. Thus the unified framework makes *de facto* unfair inequalities, whether or not they result from discrimination, a relevant subject for this report.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to non-discrimination as sub-

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sumed in the right to equality. Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

*Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.*

*Discrimination based on any other ground must be prohibited where such discrimination

1. causes or perpetuates systemic disadvantage;
2. undermines human dignity; or
3. adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.

*Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.*

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Discrimination may be direct or indirect.

**Direct discrimination** occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

**Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

An act of discrimination may be committed intentionally or unintentionally.³

This definition takes a broad view regarding the list of protected characteristics. It contains both a list of explicitly prohibited grounds of discrimination and a “test” for the inclusion of further grounds, according to which “candi-

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date grounds” should meet at least one of three listed conditions. Thus, the definition provides a foundation for tackling the full complexity of the problem to be addressed – a person’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified perspective acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The definition of discrimination, reflecting best practice in outlawing discrimination on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of religion or belief, race and ethnicity, political opinion, gender, disability, sexual orientation and health status. Furthermore, the report examines some patterns of discrimination – such as the discrimination suffered by women involved in political activism – which do not fall within one specified ground, but which it is felt need to be covered because they are important forms of multiple discrimination. Furthermore, analysis of certain types of discrimination, notably those suffered by children, non-citizens and IDPs is interwoven throughout the report, rather than considered separately. This is not because they are less important or widespread, but because they appear to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender, ethnicity and religion.

The Declaration defines three forms of prohibited conduct which constitute discrimination: direct discrimination, indirect discrimination and harassment.

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4 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in Declaration of Principles on Equality, The Equal Rights Trust, London, 2008, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground’. This approach is inspired by the solution to the open versus closed list of ‘prohibited grounds’ dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000).”
All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and equality law. They are used throughout Part 2 to assess the patterns of discrimination identified by the research against the state’s obligation to respect the right to non-discrimination, and in Part 3 as a basis against which to assess the adequacy of legal provisions intended to protect people from discrimination.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report employs the definition of reasonable accommodation provided in Principle 13 of the Declaration:

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.

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6 See above, note 1, Principle 13, pp. 10–11.


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Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life.” Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of positive action provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon emerging approaches in international and regional human rights law, in this case with regard to the concepts of special measures in the various instruments, whereby “it should be noted that the Declaration captures the growing tendency of interpreting “special measures” as part of, rather than an exception to, equal treatment.” Principle 3 states:

To be effective, the right to equality requires positive action.

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. As previously discussed, the right to equality extends beyond a right to be free from discrimination and contains an element of participation on an equal basis with others in all areas of life regulated by law. Positive action is key to addressing

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8 See above, note 4, p. 39.


10 See above, note 4, p. 32.

11 See above, note 1, Principle 3, p. 5.
those inequalities which are not attributable solely to discrimination. Having identified patterns of substantive inequality in Part 2, Part 3 of this report analyses the adequacy of positive action measures to address these.

The review of laws and policies in Part 3 of this report is based on an assessment against those parts of the Declaration which set out the obligations of the state with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, as explained, inter alia, in General Comment 3 of the CESC R and General Comment 31 of the UN Human Rights Committee. As stated in the commentary on the Declaration:

> By analogy with the interpretation of States’ obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.\(^{12}\)

### Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality has a number of implications for the content, structure and methodology of this report. The first implication is reflected in the subject and scope of the report – the presentation of inequality on a number of different grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground,

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\(^{12}\) See above, note 4, p. 38.
the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Sudanese context. In respect of certain grounds, it has not been possible to include every group which is vulnerable to discrimination and inequality on that ground: the examination of racial and ethnic discrimination, for example, does not look at the position of all of Sudan’s ethnic groups, but instead makes use of case studies involving specific communities to illustrate important patterns of racial and ethnic discrimination.

Presenting patterns of discrimination and inequality alongside each other also requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups, and disaggregated data on the position of different groups in particular areas of life, which was available in some areas, but limited in others. For example, there is a lack of credible and recent statistical data on the levels of participation of different ethnic groups in employment, making it difficult to establish the levels of substantive inequality in this area. In this and other areas where pre-existing research was unavailable, the Equal Rights Trust has relied more heavily on direct testimony from individual victims, or interviews with professionals working on behalf of particular groups. The evidence obtained through field research and desk research has been assessed and contextualised, with a view to presenting patterns of discrimination and disadvantage in a way which is as representative of Sudanese reality as possible. In so doing, it is hoped that the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The second implication of applying the unified human rights framework relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to cover, in respect to the selected groups and categories of people, their experience of inequality across a range of areas of life, such as interactions with the state, personal safety, employment, education and healthcare. But in this respect, too, the evidence is uneven: there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area of life, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report contains only limited evidence
of discrimination on grounds of sexual orientation in areas other than the administration of justice and exposure to discriminatory violence. As same-sex sexual activity is prohibited in Sudan, and stigma against sexual minorities is very high, there are few openly gay, lesbian and bisexual people, and thus no analysis of sexual minorities’ experience in education or employment could be undertaken.

The **third implication** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality by looking at the element of “participation on an equal basis with others in economic, social, political, cultural or civil life”, thereby extending beyond experiences of discrimination.

The **fourth implication** of this approach is the presentation of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality, which results in the report’s basic logical structure. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of these rights. As protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights, we seek to match an assessment of the lived experience of discrimination and inequality with a review of Sudan’s legal and policy framework, in order to establish how well the state has met its obligation.

The analysis of patterns of discrimination in Part 2 of the report gives rise to significant concerns about the adequacy of laws and policies designed to address discrimination and inequality in Sudan. Part 3 of this report assesses the legal and policy framework in the light of the Declaration’s principles relating to access to justice for discrimination victims, evidence and proof in discrimination proceedings, and other elements of enforcement of equality rights.\(^\text{13}\) While the necessity of effective enforcement of the rights to non-discrimination and equality is illustrated by the findings in Part 2 of this report,\(^\text{13}\) See above, note 1.
these issues are discussed in more detail in Part 3, and Part 4 formulates recommendations about legal and policy reform, implementation and enforcement. Thus, it is hoped that the information contained in Part 2 provides a strong evidence base for analysing the effectiveness of the laws and policies discussed in Part 3, and therefore ensuring that the conclusions and recommendations in Part 4 are relevant and robust.

**Research Methodology**

This report is the outcome of a long engagement by the Equal Rights Trust in Sudan. Between 2010 and 2014, the Equal Rights Trust and the Sudanese Organisation for Research and Development (SORD) worked in partnership on a project designed to empower civil society to combat discrimination and inequality in Sudan. Throughout this project, the partners undertook research on discrimination and inequality by gathering direct testimony, as well as by reviewing research conducted by others. The Equal Rights Trust has also worked with the Journalists for Human Rights network, supporting its efforts to promote human rights in Sudan, emphasising the importance of non-discrimination and equality in this struggle. In the context of this work, the Trust had further opportunities to consult and conduct research on patterns of discrimination and inequality in Sudan. We have also independently reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the legal and policy framework related to non-discrimination and equality in Sudan.Drafts of this report were the subject of an extensive validation exercise, in which its findings and conclusions were exposed to scrutiny by experts and stakeholders from civil society, academia and the media.

The Equal Rights Trust and its partners undertook research on discrimination and inequality through semi-structured interviews, focus groups, roundtables and consultations with organisations working with those exposed to discrimination in Sudan, as well as through reviewing publications and data produced by others. Research for Part 2 of the report also included desk-based research of existing sources, helping to identify the major patterns of discrimination in Sudan. In 2011, we commissioned researchers to undertake in-depth field research in five of Sudan’s states: Kassala, Khartoum, River Nile, South Darfur and White Nile. In Kassala, interviews were conducted in New Halfa and Kassala city, involving a total of 52 persons. In Khartoum, a total of
63 persons participated in focus groups and interviews in Omdurman, Soba and the south of the city. In River Nile state, 69 persons participated in focus groups or individual interviews, in Shandi, Almatama and Altaragma. In South Darfur, 19 persons were interviewed in Rihaid Albirdy and Nyala. In White Nile, research involving 57 persons was undertaken in three localities: Kosti, Rabak and Azilait. In total, 260 persons shared their experience during our field research in the five states, with a slight gender imbalance favouring women (145 women against 115 men).

Following this phase of field research, the Equal Rights Trust undertook interviews and consultations at various points throughout 2012 and 2013, meeting with human rights defenders, NGOs, academics and journalists working on human rights issues, at events held both inside and outside Sudan. A further 20+ interviews and two focus groups were conducted during a validation visit by Equal Rights Trust staff to Khartoum in early 2014.

Throughout the report, in presenting the first-hand testimony of victims of discrimination, certain names have been withheld, to ensure the personal safety of those interviewed, or respect their wishes for confidentiality. Information on the identities of all persons whose names have been withheld is kept on file by the Equal Rights Trust.

Alongside the field research, desk research continued throughout 2011, 2012 and 2013. This involved a review of relevant literature on discrimination and inequality in Sudan, including reports by both the government and NGOs to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media organisations. The literature review covered relevant aspects of human rights and equality, as well as a number of related issues in fields such as development studies, economics and conflict studies. Given the need to look beyond discrimination and assess equality of participation, traditional methods of human rights documentation were complemented by sociological research, in particular related to employment, education and healthcare.

Wherever possible, statistical data was relied on to improve understanding of inequalities. It should be stressed however that accurate and up-to-date statistical data on Sudan is extremely limited, given that no national census has
been conducted since before the secession of South Sudan in 2011. The result is that many of the figures on Sudan which are available, whether produced by the state or by intergovernmental organisations, relate to the pre-secession situation, and thus to a country with a larger and more diverse population than Sudan today. Where available, statistics collected post-2011 have been used; where such data was not available, the authors have attempted to derive figures applicable to Sudan through the use of regional and state-level breakdowns. In many cases however, it has not been possible to find or derive accurate and up-to-date figures. Where statistical data has been used, it has come from reports and publications produced by the government, complemented by and compared to data from the World Bank, the World Health Organisation, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organisation and other sources. The scarcity of relevant statistical data – in particular data disaggregated by protected characteristics such as gender, ethnicity, age or religion – presented a challenge to effective quantitative research on discrimination and inequality. This in itself is a cause for concern, as the government should ensure the collection of disaggregated data to allow it to assess and address inequalities.14

Legal research on law and policy for Part 3 was undertaken by the Equal Rights Trust, with assistance from SORD. Research on Sudan’s international legal obligations benefited from the United Nations Treaty Collection database15 and the website of the Office of the High Commissioner for Human Rights.

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14 States have an obligation to collect data on different groups in certain areas of life under the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, an obligation which is frequently invoked by treaty bodies when reviewing state compliance. See, for example, the United Nations Committee on the Elimination of Racial Discrimination, General Recommendation 24: Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art. 1), UN Doc. A/54/18, annex V, 1999, Para 1, in which the Committee states: “[I]t is essential that States parties provide as far as possible the Committee with information on the presence within their territory of [races, national or ethnic groups or indigenous peoples].” Under the Declaration of Principles of Equality, the obligation to collect disaggregated data covers all characteristics relevant to identifying structural disadvantage. Principle 24 states: “To give full effect to the right to equality States must collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality.” (See Declaration of Principles on Equality, The Equal Rights Trust, London, 2008, Principle 24, p. 14.)

Rights.\textsuperscript{16} Research on Sudanese laws, including the Constitution and national legislation, consisted of reviewing primary sources, accessed via the website of the Sudanese Ministry of Justice. Research on government policies was undertaken through review of state reports to the UN treaty bodies and documents gathered from government websites. Research on the role, functions and operations of the National Human Rights Commission was undertaken by review of the relevant legislation, together with commentaries and reports produced by the Commission and by independent organisations.

In order to ensure the accuracy of the report’s findings and conclusions, a draft of this report was exposed to a validation process. In early 2014, the Equal Rights Trust visited Sudan to present and discuss a draft of the report with interested parties from civil society, government, academia, the media and other fields. In these meetings, and in correspondence thereafter, the report was subjected to critical evaluation by a range of stakeholders, with the aim of validating its findings and conclusions. The comments, criticisms and other feedback from these stakeholders were incorporated into the draft.

As part of its validation process, on 20 January 2014, the Equal Rights Trust met with the Advisory Council for Human Rights, a government agency which brings together representatives of all government ministries and which is hosted and chaired by the Ministry of Justice. During the meeting, the Council representatives discussed the draft report, provided initial feedback and agreed to provide detailed feedback in writing after the meeting, following consultation with other government departments and agencies, as necessary. In February and March 2014, we wrote to the Council, reiterating our request for feedback on the draft report, but at the time of publication, no further comments had been received. We also sought to meet with the National Human Rights Commission, but were unable to schedule a meeting either in person or via telephone, despite numerous attempts. Nevertheless, we have sought wherever possible to reflect the initial feedback provided by the Advisory Council, and to include the government’s perspective on the issues discussed in the report, based on policies and public statements, including in particular official reports to UN treaty bodies.

Scope and Limitations of the Report

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Sudan itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 2 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in the Sudanese context. Analysis of certain types of discrimination, notably those suffered by children, non-citizens and IDPs, is interwoven in the report, rather than presented separately. The decision to not devote separate sections to these groups is motivated not by their lesser significance in the country context, but by our opinion that, from the point of view of equality and non-discrimination law, discrimination against these groups appears to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender, ethnicity and religion. For example, the discrimination against ethnic minority girls from the periphery is better understood through the prism of ethnicity and gender, rather than age.

As noted above, the research for this report was severely constrained by a lack of disaggregated statistical data pertaining to the situation of certain groups, and certain areas of life. Consequently, certain issues, which would usually fall within the scope of a report addressing equality and discrimination, do not feature in the report at all. Further, the absence of disaggregated data in relation to certain areas of life, such as housing, education, employment, criminal justice, etc., has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report. For example, while the report discusses the experiences of some groups in the education system, or employment, it has not been possible to examine all groups’ experiences in these areas of life.

These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by a lack of
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Evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience in the terms of unfair inequality.

Finally, while the desk research for this report involved an extensive review of relevant literature in both Arabic and English, the majority of sources which are directly quoted or referenced are English-language publications. This is a result of the scarcity of Arabic language sources and the prevailing availability – particularly online – of research on discrimination and inequality in Sudan in English, and should not be interpreted otherwise.

1.3 Country Context

The Republic of the Sudan (Sudan) is a large country located in Northeast Africa. Divided into east and west by the River Nile, Sudan comprises 18 states over a total area of 1,886,068 sq km, making it the 16th largest country in the world. Sudan is bordered by Egypt to the north, Libya to the northwest, Chad to the west, South Sudan to the south, and Eritrea and Ethiopia to the east. To the northeast, Sudan has a coastline of 853 km on the Red Sea. The capital city is Khartoum, home to over 5 million people.

Until 2011, Sudan covered territory which currently makes up both present-day Sudan and the Republic of South Sudan. Following decades of conflict between forces from the north and south of Sudan, an agreement was reached between the two sides in 2005. One of the conditions of this agreement was the holding of a referendum on independence for South Sudan, which was eventually held in January 2011, and in which 98.83% of those participating voted in favour of independence. South Sudan officially became an independent state on 9 July 2011, with 10 former Sudanese states forming part of the new nation.

There are no accurate figures on the population of Sudan following the secession of South Sudan and estimates differ. The government of Sudan has stated that, prior to the secession of South Sudan, the population of the territory which

constitutes present-day Sudan was 30,900,000 people in 2008.\textsuperscript{18} Data for 2013 produced by the Population Division of the UN Department of Economic and Social Affairs estimated that approximately 37,964,000 reside in post-secession Sudan.\textsuperscript{19} The Central Intelligence Agency World Factbook, which estimates current population based on census and other survey data and makes projections based on “assumptions about future trends” provided a July 2014 figure of 35,482,233,\textsuperscript{20} while the World Population Review provided a 2014 estimate of 38,186,902, based on population growth trends in the country.\textsuperscript{21}

Throughout its ancient and contemporary history, Sudan has been characterised by its immense diversity. Figures from 1999 indicate that pre-secession Sudan consisted of an estimated 600 ethnic groups speaking about 300 languages and dialects.\textsuperscript{22} Unfortunately, no credible estimates exist for the number of ethnic groups in the Republic of Sudan today, as no census has been conducted since before the secession. Dr Mohammed Yousif of the Department of Social Anthropology at the University of Khartoum told the Equal Rights Trust that it is “extremely difficult if not impossible” to find up-to-date statistics on the country’s ethnic make-up, in part because any attempt at classification was actively resisted by the authorities at the time of the last census in April 2008.\textsuperscript{23} Major ethnic groups, in addition to those who claim to be Arabs, include the Nubians in the far north, the Beja in eastern Sudan, the Fur in Darfur and western states, the Nuba in South Kordofan state and the Ingessana in southern Blue Nile.\textsuperscript{24} Other large ethnic groups include the Kababish of Northern Kordofan; the Ja’alin and Shaigiyya, which are settled tribes along the rivers; and the semi-nomadic Baggara of Southern Kordofan and Darfur.\textsuperscript{25}

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\textsuperscript{22} Sudanese Studies Centre, \textit{Ethnicity, Race Relations and Human Rights}, 1999, p. 182.

\textsuperscript{23} Equal Rights Trust interview with Prof Mohammed Yousif, 19 January 2014, Khartoum.

\textsuperscript{24} \textit{Ibid.}

\textsuperscript{25} Sudanese Studies Centre, \textit{Disadvantaged Areas and Self Determination}, 1999, p. 169.
\end{flushleft}
A number of ethnic groups have suffered – and in some cases continue to suffer – as a result of armed conflict in their homelands. The Fur, Masalit and Zaghawa people have historically inhabited the western region of Darfur. Though each is a distinct group, they are strongly connected through shared ancestry and common cultural practices.\textsuperscript{26} The conflict in the Darfur region, which started in 2003 and continues today, despite a 2011 peace agreement, caused huge loss of life and resulted in the biggest humanitarian crisis in the country since the end of the North-South war in 2005.\textsuperscript{27} Sources indicate that the Nuba, who originate in the Nuba Mountains in South Kordofan state, were persecuted by successive regimes, and that they continue to be discriminated against on grounds of race and colour.\textsuperscript{28} Today, the Nuba Mountains are the focus of a major armed conflict, with devastating consequences for the Nuba people.

Previous and on-going wars especially in the regions of Darfur, South Kordofan and Blue Nile have resulted in increased migration and internal displacement to the areas in and around Khartoum and other regional cities. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), in 2014 there are 1.8 million internally displaced persons in the country.\textsuperscript{29} The UNHCR also estimates that there are between 300,000 and 350,000 people of South Sudanese origin who are at risk of statelessness.\textsuperscript{30} In addition, and despite being a refugee-generating country, Sudan also hosts refugees from neighbouring countries. According to UNHCR planning figures, a total of 215,810 refugees, people in refugee-like situations, asylum seekers and other persons of concern reside in the country.\textsuperscript{31}

According to United Nations Development Programme (UNDP) estimates, Muslims comprise 97% of the population of post-secession Sudan,\textsuperscript{32} while President Omar al-Bashir announced in October 2011 that 98% of the popu-

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\textsuperscript{26} Cultural Survival, ”The Peoples of Darfur”, \textit{Cultural Survival Quarterly}, Volume 3.2.
\textsuperscript{27} Ibid.
\textsuperscript{28} Ibid.
\textsuperscript{29} United Nations High Commissioner for Refugees, \textit{2014 UNHRC country operations profile – Sudan}.
\textsuperscript{30} Ibid.
\textsuperscript{31} Ibid.
lation was Muslim.\textsuperscript{33} No credible data is available on the numbers or denominations of non-Muslim minorities in post-secession Sudan. However, in its 2012 report to the UN Human Rights Committee, the government stated that “Christianity and traditional beliefs have a substantial number of followers” in the country, and that institutions “belonging to over 10 Christian denominations” are active in the country.\textsuperscript{34} The Interim National Constitution – adopted before secession, but still in effect in Sudan today – states that legislation having effect only in the north of the country “shall have as its sources of legislation Islamic Sharia and the consensus of the people”.\textsuperscript{35}

Sudan has two official state languages: Arabic and English.\textsuperscript{36} The Constitution states that Arabic is a “widely spoken national language” and the “major language at the national level”. In practical terms, Arabic is the common language of government and business, and in urban life throughout the country. Various ethnic groups have their own languages, and the Constitution states that “[a]ll indigenous languages of the Sudan are national languages and shall be respected, developed and promoted”.\textsuperscript{37} It is notable that almost all non-Arabic speaking groups use one or more versions of Arabic to conduct official business or for communication with other groups.

The country’s economy largely depends on agriculture, which accounts for around one third of Gross Domestic Product. Oil production started in the late 1990s and contributed substantially to boosting the economy. However, with the secession of South Sudan in 2011, Sudan lost its access to a number of oil fields, and with them an estimated 36.5% of its oil revenue.\textsuperscript{38} World Bank estimates of Sudan’s GDP for 2013 stood at $66.55 billion (in current US$),\textsuperscript{39} with Gross National Income per capita in the

\begin{itemize}
  \item \textsuperscript{34} See above, note 18, Para 141.
  \item \textsuperscript{35} Interim National Constitution 2005, Article 7 and Article 5(1).
  \item \textsuperscript{36} Ibid., Article 8.
  \item \textsuperscript{37} Ibid., Article 8(1).
  \item \textsuperscript{38} Sudan Tribune, “Sudan’s economic uncertainty grows ahead of succession”, sudantribune.com, 15 June 2011.
  \item \textsuperscript{39} World Bank, \textit{Data: Sudan}, 2014.
\end{itemize}
same year at $1,130.00.\textsuperscript{40} This places Sudan in the lower middle income group of countries.

In 2013, the Human Development Index value for Sudan was 0.473, putting it at 166th place out of 187 countries ranked.\textsuperscript{41} According to the UNDP’s 2012 Sudan National Human Development Report, “[w]hile the human development trend over time at the country level in Sudan shows signs of recovery and growth (...) significant disparities exist between Sudan’s states and regions”.\textsuperscript{42} Sudan’s Gini Income coefficient for 2013, measuring inequality in the distribution of wealth, was 35.3.\textsuperscript{43} The ratio of the average earnings of the richest 20% to those of the poorest 20% was 6.2.\textsuperscript{44} According to the UNDP office in Sudan, estimates indicate that in 2012, 46.5% of the Sudanese population fell below the consumption poverty line,\textsuperscript{45} but a much smaller proportion – 8.5% – were categorised as being in “multi-dimensional poverty”.\textsuperscript{46} In this latter respect, Sudan fares significantly better than its sub-Saharan neighbours, though worse than its northern neighbour, Egypt.\textsuperscript{47}

Outcomes in education and healthcare reflect the country’s low level of development. According to the Sudan National Human Development Report produced by the UNDP, gross enrolment in primary education was “just two-thirds of the school age population” in 2009-2010.\textsuperscript{48} There was also a significant regional disparity: in 2008, enrolment in Khartoum State was in excess of 85%, compared to less than 50% in South Kordofan.\textsuperscript{49} In respect of health outcomes, UNDP indicates an increase in life expectancy at birth from 49.3 years to 60.2 between 1980 and 2007, an increase of 10.9 years, a rate of im-

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\item \textsuperscript{40} \textit{Ibid.}
\item \textsuperscript{42} United Nations Development Programme, \textit{Sudan National Human Development Report 2012: Geography of peace: Putting Human Development at the Centre of Peace in Sudan}, 2012, p. 34.
\item \textsuperscript{43} See above, note 41, p. 170.
\item \textsuperscript{44} \textit{Ibid.}, p. 170.
\item \textsuperscript{45} See above, note 42, p. 39.
\item \textsuperscript{46} \textit{Ibid.}, p. 40.
\item \textsuperscript{47} \textit{Ibid.}, p. 41.
\item \textsuperscript{48} \textit{Ibid.}, p. 36.
\item \textsuperscript{49} \textit{Ibid.}, p. 37.
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\end{footnotesize}
provement which is significant but nevertheless falls behind Sudan’s neighbours Egypt and Ethiopia.\textsuperscript{50} According to the UNDP Human Development Report 2014, in 2013, life expectancy at birth in Sudan reached 62.1 years.\textsuperscript{51}

\textit{Recent History}

Sudan declared its independence from the Anglo-Egyptian condominium in December 1955, and the British and Egyptian governments recognised Sudan as independent shortly afterwards, on 1 January 1956. Sudan became a member of the United Nations in 1957. The first post-independence parliamentary elections took place in 1958. However, a military coup on the day before the new parliament was due to convene led the elected Prime Minister, Abdallah Khalil, to transfer power to the coup leader General Ibrahim Abboud.

In October 1964, democracy was restored following a popular uprising against the regime. A provisional government was formed, and a new parliament was elected in 1965. The Constitution of 1964 guaranteed, \textit{inter alia}, freedom of expression and belief under Article 5(2). However, despite a constitutional court ruling to the contrary, parliament passed an amendment to Article 5, severely limiting freedom of expression and belief. Members of Parliament representing the Sudanese Communist Party were then dismissed from parliament on account of their alleged atheism. This led in turn to a communist-backed coup by members of the armed forces under the command of Jaafar Nimeiry, who took power in May 1969. The Constitution was suspended and Nimeiry ruled by Presidential Order. By 1971, all political parties were banned with the exception of the ruling party. A new Permanent Constitution was introduced in 1973, which acknowledged basic human rights and established the rule of law as an abiding principle for governance.

Civil conflict between northern and southern Sudan had begun before independence and continued throughout the 1950s and 1960s. In 1972, the government and southern rebel groups signed the Addis Ababa peace agreement, establishing the Southern Sudan Autonomous Region. The relative peace ushered in by the Addis Ababa agreement did not last long however, and by the early 1980s, the ruling regime in Khartoum was showing signs of the growing

\textsuperscript{50} Ibid., p. 38.
\textsuperscript{51} See above, note 41, p. 162.
influence of regional and national Islamist movements which advocated for the introduction of an Islamic constitution, an aspiration which drew apart the northern and southern parts of Sudan.

In 1983, President Nimeiry declared Sudan an Islamic state, thus breaching the Addis Ababa agreement. This was a critical juncture in Sudan’s political and constitutional development, as the ideology providing the basis for governance and legislation shifted radically to reflect Islamic principles and the pre-eminence of sharia law. A package of new laws, widely known as the “September laws” of 1983, introduced principles based on sharia law into the Sudanese legal system. These laws did not spare Muslims who attempted to oppose them by peaceful means. Partly in response to these changes, in September 1983, the civil war between North and South began once again, with the formation of the Sudan People’s Liberation Army (SPLA) in the South which declared resolute opposition to the September laws. The regime in the North responded by declaring *jihad* (holy war) against the SPLA.

From 1983 onwards, the country’s political and human rights situation became increasingly characterised by conflict and volatility. In 1989, another Islamic Movement coup established the regime of Omar al-Bashir, a strong supporter of the application of sharia laws. The North-South war continued unabated until 2005, when the al-Bashir regime was persuaded by the international community and the strength of the SPLA on the ground to sign a Comprehensive Peace Agreement (CPA), bringing an end to the war. The CPA granted the people of South Sudan the right to vote for or against independence from Sudan. A referendum on self-determination was held in January 2011, resulting in an overwhelming vote in favour of independence. The new nation of South Sudan was born in July 2011, and Sudan’s geography and demography changed.

The CPA also established the Interim National Constitution 2005, which remains in force in Sudan today, despite the secession of South Sudan. For the first time in the country’s history, the Constitution contained a comprehensive Bill of Rights which includes an extensive set of provisions on a wide range of internationally-recognised human rights. The Bill of Rights has been widely praised by Sudanese legal scholars who see its introduction as a significant
event in Sudan’s constitutional history.\textsuperscript{52} Significantly, the 2005 Constitution recognised international treaties ratified by Sudan as forming part of the Bill of Rights, making such treaties binding on Sudanese courts.\textsuperscript{53}

In 2003, violent conflict erupted in the region of Darfur. The war in Darfur and the resulting human rights violations have been widely documented by many international human rights bodies and organisations.\textsuperscript{54} The Fur and other African ethnic groups who inhabit the region were subject to severe humanitarian crises and human rights abuses. The total number of people affected by the conflict in Darfur is contested, but in 2008, the United Nations estimated that between 200,000 and 300,000 people had died,\textsuperscript{55} while in May 2014, the UN Office for the Coordination of Humanitarian Affairs estimated that 3.5 million people remained in need of humanitarian assistance.\textsuperscript{56} Government forces were involved in forcibly disarming non-Arab groups, leaving them largely defenceless against government sponsored militias, including the infamous \textit{Janjaweed}, who used violence, mass rape and branding to ethnically cleanse non-Arabs.\textsuperscript{57} The scale of the violations was such that it prompted two arrest warrants by the International Criminal Court (ICC) in 2009 and 2010 against President al-Bashir and others on charges of genocide, war crimes and crimes against humanity.\textsuperscript{58} President al-Bashir was the first serving head of state to


\textsuperscript{53} See above, note 35, Article 27(3).


\textsuperscript{56} United Nations Office for the Coordination of Humanitarian Affairs, \textit{Sudan: Darfur profile}, May 2014.

\textsuperscript{57} Jok, J.M., \textit{Sudan: Race, Religion and Violence}, 2007, p. 145.

be indicted by the ICC. At present, despite a number of peace accords, violence continues in Darfur, and the local population continues to face discrimination and other human rights abuses.\(^{59}\)

After the secession of South Sudan, other conflicts broke out between the government and the Sudan People’s Liberation Movement – North (SPLM-N) in disputed areas along the border with South Sudan, in the South Kordofan and Blue Nile states. As with the other conflicts, the humanitarian and human rights impact is very severe.

### 1.4 Government and Politics

Sudan is a Presidential Republic, where the executive is composed of the Presidency (itself composed of the President and two Vice-Presidents) and the National Council of Ministers.\(^{60}\) As noted above, the Interim National Constitution which was adopted before the secession of South Sudan remains in force today, despite the fact that the structure of government which it establishes is now redundant in a number of ways. For example, the Constitution establishes the two Vice Presidents as Presidential appointees, one from southern and one from northern Sudan; Article 62 states that where the President is elected from northern Sudan, the position of Vice President “shall be filled by the person who has been elected to the post of President of Government of Southern Sudan, as the President’s appointee to the said position”.\(^{61}\)

The Constitution recognises the President as both Head of State and Head of Government.\(^{62}\) It also sets out an extensive list of functions and powers vested in the Presidency, including the powers to appoint holders of constitutional and judicial posts; summon, adjourn or prorogue the National Legislature; declare war; declare and terminate states of emergencies; and have initiative for and give assent to constitutional amendments and legislation.\(^{63}\) The

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60 See above, note 35, Articles 49, 50 and 51.


President appoints the National Council of Ministers and sits as a member of the Council, together with the two Vice Presidents.\textsuperscript{64} The National Council of Ministers is recognised as the “national executive authority in the State”\textsuperscript{65} and has functions which include: planning state policy; initiating national legislation; adopting the national budget and international agreements; and receiving reports on the performance of both ministries and states.\textsuperscript{66}

The Constitution establishes a National Legislature, composed of a National Assembly and a Council of States.\textsuperscript{67} The National Assembly is composed of 450 members,\textsuperscript{68} to be “elected in free and fair elections”.\textsuperscript{69} The Council of States is composed of two representatives from each state, elected by the state legislature, plus two observers elected by the Abyei Area Council.\textsuperscript{70} Following the secession of South Sudan, the mandate of the 20 representatives from the 10 southern states was terminated, with the result that the Council is now made up of 32 members.\textsuperscript{71} The Council of States is largely restricted to matters concerning the decentralised system of government and the protection of the interests of states;\textsuperscript{72} its function in respect of legislation passed by the National Assembly is restricted to consideration of whether such legislation “affects the interests of states” and to introducing amendments accordingly.\textsuperscript{73}

Article 24 of the Constitution establishes the country as a “decentralised state” with four levels of government: national government; the government of South Sudan; state government; and local government.\textsuperscript{74} While the provisions related to South Sudan are now redundant, those related to state government remain in effect. The Constitution establishes that each state should

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\textsuperscript{64} Ibid., Article 70(1) and (2).

\textsuperscript{65} Ibid., Article 70(4).

\textsuperscript{66} Ibid., Article 72.

\textsuperscript{67} Ibid., Article 83(1).

\textsuperscript{68} Inter-Parliamentary Union, Sudan: Majlis Watani (National Assembly): Last Elections.

\textsuperscript{69} See above, note 35, Article 84(1).

\textsuperscript{70} Ibid., Article 85.

\textsuperscript{71} Inter-Parliamentary Union, Sudan: Majlis Welayat (Council of States): Last Elections.

\textsuperscript{72} See above, note 35, Article 91(4).

\textsuperscript{73} Ibid., Article 91(5).

\textsuperscript{74} Ibid., Article 24.
have its own state governor, legislature, and two representatives on the Council of States. The state governor is empowered to appoint of a Council of Ministers and, with this Council, to exercise executive powers. State governments have power in an extensive list of areas, including inter alia: state police and prisons; state media; state land and natural resources; the provision of healthcare and primary and secondary education; traditional and customary law; and direct and indirect taxation to raise revenue for the state. Following the secession of the 10 states which now compose South Sudan, there are 18 states in Sudan, together with the Abyei area, which has special administrative status.

In addition to establishing these arrangements for states, the Constitution makes specific provision for South Kordofan and Blue Nile states and the Abyei area. In respect of Abyei, the Constitution provided for a referendum to take place alongside the referendum for South Sudan, in which residents would have the choice to retain special administrative status within Sudan or become part of Sudan. In respect of South Kordofan and Blue Nile, the Constitution provided for “popular consultation” for the people of these states “through their respective democratically elected legislatures” on their respective future, in accordance with the Agreement on the Resolution of the Conflict in Southern Kordofan and Blue Nile States. The failure to hold the referendum in Abyei – ostensibly over concerns with voter eligibility – and the suspension of the popular consultation process in South Kordofan and Blue Nile were key catalysts for the conflicts which persist in those regions.

President al-Bashir’s National Congress Party (NCP) (al-Mu’tamar al-Waṭanī) has held the majority in the National Assembly since the coup in 1989. In the last elections for the Presidency in April 2010, al- Bashir received 68.24% of

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75 Ibid., Article 178.
76 Ibid., Article 85.
77 Ibid., Article 179.
78 Ibid., Schedule D.
79 Ibid., Article 183.
80 Ibid., Article 182.
the vote, on a 62% voter turnout,\textsuperscript{81} while in simultaneous elections for the National Assembly, the NCP took 323 of the 450 seats.\textsuperscript{82} These elections were criticised by international observers including the Carter Centre\textsuperscript{83} and Human Rights Watch.\textsuperscript{84}

Opposition parties are widely considered to have little chance of gaining influence. The most successful opposition party prior to the secession of South Sudan in 2011 was the Sudan People’s Liberation Movement (\textit{Al-Haraket Al-Sha’ebiyet Li-Tahrir Al-Sudan}). After secession, the branches of the party which remained in Sudan re-formed into the Sudan People’s Liberation Movement-North (SPLM-N), now a banned organisation currently in active conflict with the Sudanese Armed Forces. Other political parties represented in the National Assembly in 2014 include the People’s Congress, Democratic Unionist Party, Federal Umma Party, Umma Party for Reform and Development, Democratic Unionist Party – Origin, Sudan People’s Liberation Movement (SPLM)-Democratic Change, Umma Collective Leadership, National Umma Party, Umma Party, and the Muslim Brotherhood.\textsuperscript{85} Many of the opposition parties have formed an umbrella organisation called National Democratic Alliance (NDA).

Despite a Constitution that calls for the protection of human rights and basic freedoms, Sudan fares very poorly in terms of international rankings on political freedom. The country has received scores of 7 (the lowest level of freedom) in both “Political Rights” and “Civil Liberties” in the Freedom House rankings in 2014, earning it the status “Not Free”.\textsuperscript{86} Sudan has received the same scores each year since its first ranking in 1999. In terms of freedom of the press, the World Press Freedom Index 2014 produced by Reporters without Borders ranked Sudan in 172\textsuperscript{nd} place of 180 states, with an index of 71.88 out of 100.\textsuperscript{87}


\textsuperscript{82} See above, note 68.


\textsuperscript{85} See above, note 68.


Since 2012, the opposition parties in coordination with SPLM-N have been calling for regime change. This call has also been supported by youth and women’s groups across the country.\textsuperscript{88} In 2012 and 2013, peaceful public protests and demonstrations were organised in Khartoum, in an effort to build popular support for change. The government typically responded with oppressive measures and continued to arrest and harass protesters and members of groups who may have represented any form of political opposition to the regime.

In the period 2011 to 2014, armed groups continued their struggle for regime change by force. In January 2013, the umbrella organisation of these groups, the Sudan Revolutionary Front (SRF), signed an agreement, known as the New Dawn Charter for democratic change, with a coalition of opposition parties united in the National Consensus Forces. In April 2013, SRF offensives on several areas of Northern and Southern Kordofan states led to further deterioration of the humanitarian situation there. The armed conflicts in the Darfur region and Blue Nile states also continue to date. Intensified fighting in these areas, including inter-tribal fighting in Darfur, has led to the displacement of thousands of additional people throughout 2013. The government continued to prevent most humanitarian agencies from assisting civilians affected by the armed conflicts. The Sudanese army continued to resort to indiscriminate aerial bombing in South Kordofan and Blue Nile, generating massive displacements of civilians, many of whom have fled their villages and sought refuge in South Sudan.

In a welcome development, in January 2014 the President issued a reform document which specified a four-point “national agenda”, focused on: peace and security; political reforms and democratisation; economic reforms; and national identity.\textsuperscript{89} Al-Bashir invited opposition parties to join a “national dialogue” to debate this agenda and the need for constitutional and political reform. The Independent Expert on the situation of human rights in the Sudan reported that during a visit to Sudan in February 2014, government officials expressed enthusiasm for the dialogue, while the main opposition parties were supportive, all of which “raised general optimism for an open all-inclusive national dialogue”.\textsuperscript{90}

\textsuperscript{88} Abdelaziz, K., “RPT-Sudanese Opposition Calls for Mass Protests against Bashir”, Reuters, 8 June 2013.

\textsuperscript{89} See above, note 59, Para 49.

\textsuperscript{90} Ibid., Paras 50.
Unfortunately however, this optimism was short-lived. On 15 April, the President issued a decree prohibiting meetings by political parties without prior approval and ordering the media to “maintain strict neutrality”. On 1 May, the Sudanese Republican Party was denied the opportunity to register as a political party by the Political Parties Affairs Council, which argued that its ideology was in conflict with the constitutional provision that Sudanese law should be based on sharia. In May and June, Sadiq al-Mahdi, leader of the National Umma Party, and Ibrahim al-Sheikh, leader of the Sudanese Congress Party, two leading opposition figures, were arrested and detained for “making public statements against attacks conducted in Darfur by the Government’s Rapid Support Force”, further damaging trust in the proposed national dialogue.

Relations between Sudan and South Sudan are largely defined by issues of oil income. In April 2013, South Sudan resumed using Sudan’s pipelines in exchange for the payment of transit fees, but Khartoum made repeated threats to stop exports in protest at what it said was South Sudan’s ongoing support of armed rebels in Sudan. Meetings between al-Bashir and his South Sudanese counterpart, Salva Kiir, in April, September, and October 2013 resulted in agreements on oil trade across the border and on non-interference in each other’s internal conflicts. Reportedly, no progress was made on the contested border area of Abyei, whose inhabitants have been promised a referendum. As the latter has been repeatedly delayed, residents of Abyei belonging to the Ngok Dinka tribe conducted an unofficial referendum in October 2013, boycotted by the Misseriya tribe, in which they chose to join South Sudan. However, the referendum results were not recognised by either Sudan or South Sudan.

92 Ibid.
93 See above, note 59, Para 46.
2. PATTERNS OF DISCRIMINATION AND INEQUALITY

This part of the report discusses the principal patterns of discrimination and inequality in Sudan. It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in Sudan and translate them into concepts that can be dealt with in the frameworks of human rights and equality law. This part of the report is based on original direct testimony collected from a wide range of individuals, as well as interviews with experts. We have also analysed research undertaken by authoritative sources in the last decade, and where necessary, have referred to news reports. We have sought to corroborate all facts and provide accurate attribution of statements.

This part of the report does not seek to provide an exhaustive picture of all of the observed patterns of discrimination. Rather, it aims to provide an insight into what appear to be the most significant issues pertaining to the most significant discrimination grounds in the country (religion, gender, ethnicity, etc.). In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the actions of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

The research found substantial evidence of discrimination and inequality on grounds of, *inter alia*, religion or belief, race and ethnicity, language, political opinion, gender, disability, sexual orientation and health status. While there are clear differences between the problems experienced by those suffering discrimination and inequality on each of the grounds covered – and unique problems affecting some groups – the research identifies a number of common patterns and inter-relationships between the disadvantages experienced on different grounds.

The first key theme identified in the report is the role which the political and religious ideology of the current Sudanese regime plays in generating and perpetuating patterns of discrimination in the country. Because of this factor, religious, political and ethnic discrimination in Sudan are strongly intertwined and intersecting. As discussed in section 1.4 above, President al-Bashir came to power in a coup in 1989 and has since maintained a strong grip on power. His National Congress Party has imposed a conservative Is-
lamist ideology, centred on the application of sharia law through the secular legal system, and has restricted the freedoms of those who advocate or are associated with alternative visions. Religious minorities and those promoting more moderate versions of Islam experience discrimination on the basis of their religion or belief and severe restrictions on their religious freedom. More broadly, the regime has clamped down on the freedom of all those – regardless of their religious beliefs – who challenge the imposition of an Islamist ideology for political reasons. Strictly speaking, such persecution discriminates against opponents on political, rather than religious grounds; this is so because, even if someone fully agrees with the official interpretation of Islam but disagrees with the government’s interference with and full control of all social life in promoting this official interpretation, they are at risk of political discrimination. Many in Sudan – including members of anti-government political movements, civil society organisations, academics and students, journalists and others face discrimination on the basis of their political opinion, both in respect to their political rights and in other areas of life. Members of ethnic groups which are, or are perceived to be, in conflict with the regime are subjected to armed violence in their homelands, and to other forms of discrimination when residing elsewhere in the country.

A closely related theme of this part of the report is the role of state actors as perpetrators of discrimination. For example, discrimination based on gender is legitimised and institutionalised by a number of laws which discriminate against women, and laws which are applied disproportionately against women. While discrimination in law on grounds of racial and ethnic characteristics is not found in Sudan, discrimination in fact is no less prevalent than in the case of gender, and the role played by state actors is a leading one. Racial and ethnic discrimination is in many cases perpetuated by the actions of state agents, or their passivity in the face of violations by private actors. This should be understood in light of the role which race and ethnicity has played in Sudanese politics throughout its history, notably in the conflict between northern and southern Sudan, in Darfur, and in the conflicts which continue today in the Nuba Mountains and Blue Nile state.

Finally, it will be apparent from the evidence presented in this part of the report that two types of discrimination – those based on gender and ethnicity – are closely linked to all other forms of discrimination in Sudan. While there are many cases of discrimination which are unrelated to either ethnic-
ity or gender, the majority of cases reported here can be regarded as multiple discrimination involving a protected characteristic in combination with ethnicity or gender or both. For example, discrimination on grounds of political opinion can overlap with discrimination on grounds of ethnicity, as certain ethnic groups are perceived to support certain political opposition parties or resistance movements. The Equal Rights Trust found evidence that some of these groups experienced discrimination on the basis of perception or association, regardless of their actual political opinion and whether or not they in fact hold any political opinion at all.

2.1 Discrimination and Inequality Based on Religion or Belief

Islam has been the dominant religion in Sudan for centuries and is recognised today as effectively the state religion, both by virtue of the special status afforded to Islam by the al-Bashir regime, and a Constitutional requirement that sharia shall be one of the sources of national legislation. While prior to the secession of South Sudan the country had a substantial Christian population, the population of Sudan today is believed to be almost entirely Muslim. As noted above, there are no official figures on the religious composition of post-secession Sudan. However, the United Nations Development Programme (UNDP) estimates that Muslims comprise 97% of the population, while in 2011, President al-Bashir, in motivating a call for the adoption of a new Constitution based on sharia, stated that 98% of the population was Muslim.

Discriminatory Legal Provisions

The legal regulation regarding religion in Sudan is complex and lacking in congruence. A number of provisions in the Interim National Constitution provide protections for religious freedom. Article 1 proclaims that Sudan is a “multi-religious country” and an “all embracing homeland where religions and cultures are sources of strength, harmony and inspiration”. Article 6 provides a right to religious freedom. Religion is one of the grounds included in Article 31, which guarantees equal protection of the law, without discrimination.

94 United Nations Development Programme, About Sudan.
However, the Constitution also reflects a profound contradiction: Article 5 elevates Islam to a position of legal primacy. Article 5(1) states that legislation having effect only in the north of the country (present day Sudan) “shall have as its sources of legislation Islamic sharia and the consensus of the people”. M., a leading Sudanese expert in human rights law, interviewed by the Equal Rights Trust for this report, stated that in this respect, the Constitution reflects the results of a long-term shift in the Sudanese legal system, away from the secular, common law system which Sudan inherited on independence. Since 1983, when then-President Nimeiry announced the imposition of sharia and introduced nine new laws in a single day by presidential decree, a significant number of criminal and civil laws have been amended or replaced to make them compliant with a particular, narrow interpretation of sharia law. As a result, immigration law, personal status law and criminal law all include provisions which discriminate on the basis of, inter alia, gender and religion. Moreover, according to Prof Abdullahi An-Na’im, a prominent Sudanese scholar of Islam and human rights, the weakness of the legal profession in Sudan is also a significant factor in the discriminatory application of laws:

_This legal system is not only in the statutes, but in the legal personnel. We have lost more than a generation of any serious legal training. We have very poor quality lawyers, who are totally isolated from international law and jurisprudence. I am almost reduced to tears when I go to the University of Khartoum._

In October 2011, President al-Bashir stated that Sudan should adopt an Islamic constitution, enshrining sharia law as the main source of legislation. This means that if the current conservative interpretation of sharia persists, restrictions on the religious freedoms of Christians, other religious minorities and heterodox Muslims can be expected to remain in place.

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97 Equal Rights Trust interview with Prof Abdullahi An-Na’im, 11 February 2014.
98 Ibid.
99 Abdelaziz, K., “Bashir says Sudan will adopt entirely Islamic constitution”, Reuters Faith World, 13 October 2011. Al-Bashir is reported to have re-iterated the claim in 2012: see Abdallah, M. “Sudan constitution to be ‘100 percent Islamic’: Bashir”, Reuters, 8 July 2012.
In its 2014 review of Sudan's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee (HRC) asked Sudan to indicate “what mechanisms are used to prevent sharia law from being applied in a manner that would be incompatible with the Covenant”\(^{100}\). Sudan responded angrily, stating that the point had been raised in “a degrading way” and arguing that “there is no contradiction between the sharia law and this Covenant”\(^{101}\). However, the state notably failed to give a substantive answer to the enquiry, leading the Committee to express concern over the “lack of clarity on the primacy of the Covenant over conflicting domestic law” and the fact that “forms of discrimination against non-Muslims are embodied in legislation or exercised in practice”\(^{102}\).

At present, various laws, reflecting the regime’s narrow interpretation of Islam, discriminate on different grounds, notably gender. A number of provisions in the Criminal Law Act 1991 discriminate directly and indirectly on the basis of religion. Section 125 of the Act provides:

\[
\text{Whoever, by any means, publicly abuses, or insults any of the religions, their rites, or beliefs, or sanctities or seeks to excite feelings of contempt and disrespect against the believers thereof, shall be punished, with imprisonment, for a term, not exceeding one year, or with fine, or with whipping which may not exceed forty lashes.}^{103}\]

There is evidence that section 125 has been applied as a *de facto* blasphemy provision, criminalising expression which is seen as insulting God or the Prophet Muhammad, thus discriminating on basis of belief. In 2007, in a case which received a good deal of publicity, a British teacher, Gillian Gibbons, was charged under section 125. Gibbons, a newly-appointed teacher at Unity High School, a British-run school in Khartoum, had asked her class of 6 and 7 year olds to

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name a teddy bear and take turns in taking it home, keeping a diary of the bear’s activities. The children chose to name the bear Muhammad and, while the parents of the children in the class raised no objection, another parent of a child at the school lodged a complaint with the school and the Ministry of Education was informed. Gibbons was charged under section 125 of the Criminal Law Act. Gibbons was arrested and held for five days before being put on trial on 29 November 2007. She was found guilty and sentenced to 15 days in jail. Following advocacy on her behalf by British Muslim politicians and pressure from the British government, Gibbons was pardoned by President al-Bashir.

Reports by NGOs indicate that the Gibbons case is not isolated. According to a report to the UN Human Rights Council by the Jubilee Campaign, “blasphemy laws (...) have reportedly been used to intimidate those expressing perspectives different from those of the Islamic government”. Similarly, a report by the International Humanist and Ethical Union, published in December 2013, stated that:

All the laws restricting freedom of religion are actively enforced. (...) In practice, the government not only enforces the restrictions on freedom of religion and belief, but also uses extra-legal violence to violate the rights of its citizens.

Section 126 of the Criminal Law Act makes ridda (apostasy) a criminal offence punishable by death. Section 126(2) states that anyone committing the offence “shall be given a chance to repent, during a period to be determined by the court; where he insists upon apostasy, and not being a recent convert to Islam, he shall be punished with death”. Section 126(3) states that the pen-

106 Day, E., “I was terrified that the guards would come in and teach me a lesson”, Observer, 9 December 2007.
107 See above, note 95, p. 2.
alty for apostasy shall be remitted if the apostate recants.¹⁰⁹ While there have been no recorded executions under section 126 of the Criminal Law Act since it was introduced in 1991,¹¹⁰ in May 2014, Meriam Yehya Ibrahim Ishag was prosecuted for apostasy, in a case which drew international attention.

On 15 May, Ms Ishag, who was eight months pregnant at the time of her trial, was sentenced to death by hanging.¹¹¹ Ms Ishag was charged because she was married to a Christian man, Daniel Wani, with whom she had two children,¹¹² and found guilty because she refused to recant within the time allocated by the court. In addition to being sentenced for apostasy, she was sentenced to 100 lashes for adultery, as marriage between a Muslim woman and a non-Muslim man is illegal.¹¹³ While Ms Ishag has a Muslim father, her mother is Christian and she considers herself to be a Christian; during the trial, Ms Ishag reportedly stated, “I am a Christian and I never committed apostasy”.¹¹⁴ The judge reportedly said, “[w]e gave you three days to recant but you insist on not returning to Islam”.¹¹⁵ Ms Ishag gave birth in a prison hospital on 27 May, reportedly while shackled.¹¹⁶ Sudanese media reported that the sentence would not be carried out for two years, in order to allow Ms Ishag to nurse her new-born baby, as required under the Criminal Law Act.¹¹⁷ On 31 May, a spokesperson for the Sudanese Foreign Ministry announced that Ms Ishag would be freed imminently.¹¹⁸ On 23 June, Ms Ishag was freed, but was re-arrested while trying to board a flight for the USA.¹¹⁹ Two days later, she was again freed and was able to take refuge in the US embassy,¹²⁰ following

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¹⁰⁹ See above, note 103, section 126.
¹¹⁰ Sudan Tribune, “Sudan downplays death sentence against woman accused of apostasy”, 16 May 2014. However, see the case of Alustadh Mahmoud Mohammed Taha further in this section.
¹¹² Amnesty International, Stop Execution of Mother in Sudan, June 2014.
¹¹³ Ibid.
¹¹⁴ See above, note 111.
¹¹⁵ See above, note 112.
¹¹⁷ See above, note 112.
diplomatic negotiations, Ms Ishag finally left Sudan on 24 July, flying to Italy en route to the USA.\footnote{Day, M., “Meriam Yahia Ibrahim Ishag’s release and safe arrival is a diplomatic triumph for Italy”, \textit{The Independent}, 24 July 2014.}

In a report to the UN HRC in June 2014, REDRESS and the African Centre for Justice and Peace Studies (ACJPS) stated that another woman had been charged with apostasy in Al Gadarif in May 2014, but that the charges were dropped “after she recanted her Christian faith and converted to Islam to avoid the death penalty”\footnote{See above, note 100, Para 23.}. In its consideration of Sudan’s efforts to implement the ICCPR, the HRC asked Sudan to “indicate whether the crime of apostasy has been abolished”\footnote{See above, note 101, Para 24.}. As with the broader question of the application of sharia law, the state’s response was dismissive, stating that it did not intend to take such measures and arguing that the Committee “should really make attempts to understand the Islamic religion in its totality”\footnote{See above, note 102, Para 20.}. In its Concluding Observations, the Committee expressed concern that apostasy remained a criminal offence\footnote{See above, note 102, Para 20.}.

Sections 125 and 126 of the Criminal Law Act clearly restrict religious freedom and freedom of expression. They also promote discrimination on the grounds of religion or belief. In practice, blasphemy and apostasy provisions which prohibit the “abuse or insult” of religions or the denial of one’s religious belonging by their very nature discriminate against all those who profess alternative views of a particular religion, whether this be on the basis of their alternative religion, their atheism, or their belief in a heterodox interpretation of that religion. In Sudan, such persons are all those who challenge the narrow interpretation of Islam promoted by the current regime. In another sense, apostasy provisions discriminate directly against Muslims, compared to members of other religions and atheists, preventing them – on pain of death – from abandoning Islam, while leaving those of other religions free to change their religion.
The historic case of Alustadh Mahmoud Mohammed Taha, his family and followers, illustrates the discriminatory impact of the criminalisation of blasphemy and apostasy on dissidents, over many decades and continuing to date. This case is indispensable to understanding the underpinnings of the current situation around religious intolerance in Sudan. (See Box 1.)

**Box 1**  
*Alustadh Mahmoud Mohammed Taha and his Legacy*

Alustadh Mahmoud Mohammed Taha was involved in the struggle for national independence from the late 1930s onward, though always critical of the educated elite for submitting to populist religious leaders. In 1945, Taha formed the Republican Party, which promoted a strongly modernist Islamic philosophy. Taha was arrested twice in 1946 and 1948 for his political activities, and after he went through *khalwa* (religious ascetic seclusion), he began to develop a new religious and political ideology that had started during his imprisonment. By the early 1950s, Taha had developed a new school of thought on Islam – an ideology that would balance informed individual freedom with the needs of society, expressed in his book *Say This is My Path* – and transformed the Republican Party into a vehicle for the promotion of this philosophy. Taha argued against the application of sharia in the legal system. He advocated the inapplicability of sharia in the twentieth century and the need for a new civilisation built on Islam that would supersede communism and capitalism.

Following the 1958 coup, the Republican Party was banned, as were all other political parties. After the re-establishment of multi-party politics in the 1960s, Taha published numerous books promoting heterodox visions of Islam and challenging prevailing political ideologies. This engendered

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opposition, culminating in 1968, in an attempt to accuse him of ridda (apostasy). The Khartoum sharia court found him guilty of the offence, but did not impose formal punishment. Taha boycotted the court on the basis that it had no jurisdiction as it was a court focused on family law matters. The court, working within its jurisdiction, could not compel Taha to appear for trial and failed to execute its judgment.

From 1969, after another coup led to the banning of all political parties, including the Republican Party, Taha continued to lecture and promote his philosophy until 1973, when President Nimeiry banned his public activities. Following the ban, supporters of the Republican Party suffered restrictions on their freedom of religion and freedom of expression, but nevertheless supported the Nimeiry regime as the only realistic alternative to an Islamic fundamentalist government.

In 1983, ostensibly in response to the publication of a Republican pamphlet criticising the government’s failure to tackle the incitement of religious hatred by Muslim extremists, Taha and a number of his followers were arrested. Shortly after their detention, Nimeiry announced the imposition of sharia law. Taha and his fellow Republican Party leaders were eventually released in December 1984. A week after their release, the Republicans published a pamphlet calling for the repeal of the new sharia-inspired laws and the guarantee of civil liberties.

On 5 January 1985, Taha was again arrested and charged, together with four other Republican Party members, with a combination of offences including sedition, and unlawful opposition to the constitution and to the government. Taha and his colleagues boycotted the trial, which concluded two days later. The judge declared the five defendants guilty on all charges and sentenced them to death, adding that they could be reprieved if they recanted their views. On 15 January, a Special Court of Appeal considered the original decision, finding Taha guilty of apostasy – a charge which had not even been discussed at the original trial – and denying the possibility of reprieve. Two days later, President Nimeiry announced his confirmation of the conviction, again basing his reasoning on apostasy, rather than the original charges. At dawn on 18 January, Taha was executed.

The other four Republican Party members were allowed to recant, which they did. They were brought to the national TV studio in handcuffs and
forced to denounce Taha and their ideas. A few months after the execution, a popular uprising ousted Nimeiry, and in 1986 the Supreme Constitutional court overturned the original convictions. However, in 1989, Islamist forces regained control with the coup which brought President al-Bashir to power. In the years since, Taha’s family and his supporters have suffered persecution and severe restrictions on their religious and political freedoms, as apostasy remains a crime in the Criminal Law Act 1991.

The Taha family left the country after the 1989 coup and many have not returned since. Asma Taha – Taha’s eldest daughter and the founder of the Alustadh Mahmoud Taha Centre – returned to Khartoum in 2009. She told the Equal Rights Trust that despite the court decision of 1986 which overturned the conviction of her father, he has not been posthumously rehabilitated, and his followers are still persecuted. The National Intelligence and Security Services (NISS) regularly question and harass her over failure to register events the Centre is organising. Ms Taha maintains that this is unnecessary, as the Centre is registered with the Ministry of Culture. In 2013, at an event to mark the anniversary of her father’s execution, security agents came to the Centre and threatened to take those present into their cars, whip them and beat them. Those who were present insisted on continuing with the event, while the officers stood outside the Centre for 3–4 hours, but then left, taking no action.

Ms Taha told the Equal Rights Trust that much harassment has been focused on her individually, given the high profile which she has, both as Taha’s daughter and founder of the Centre. Indeed, a few days after her interview with the Equal Rights Trust, Ms Taha was summoned for questioning by the NISS. Ms Taha explained to the Trust that the majority of former Republican Party members and followers of Taha’s philosophy keep a low profile, for fear of harassment or arrest by the police or security services. However, in January 2014, the organiser of a Sudanese Writers Union event to discuss Taha had been summoned for an interview with the NISS and told that he had breached a new order prohibiting all discussion of Taha.

"The main religious issue", Ms Taha told the Equal Rights Trust, "is our view that 7th century Sharia laws should be updated from inside Islam to reflect today’s world, for example on women's rights issues. Religious discrimination in Sudan today targets all such views. In addition to Sunni Muslims who do not share the government’s conservative perspective, Baha’i and Shia people are also discriminated against, as are Christians and other religious followers."
Other criminal law provisions indirectly discriminate against non-Muslims and Muslims who do not adhere to strict interpretations of Islam. Section 78 prohibits the drinking of alcohol. Section 78(1) imposes a penalty of forty lashes for any Muslim who drinks, possesses or manufactures alcohol. Thus, this section directly discriminates against those Muslims who choose not to obey the religious prohibition on the consumption of alcohol. Non-Muslims are not prohibited from drinking but are prohibited from possessing alcohol, whereas section 78(2) criminalises the drinking of alcohol by all persons, irrespective of their religion, where this:

\[ P \]rovokes the feelings of others, or causes annoyance, or nuisance thereto, or drinks the same in a public place, or comes to such place, in a state of drunkenness.

This vague provision gives broad discretion to the police to target and harass non-Muslims, and thus generates indirect discrimination on the grounds of religion.

Section 79 of the Criminal Law Act outlaws dealing with alcohol:

\[ B \]y storing, sale, purchase, transport, or possess[ing] it with the intention of dealing therein with others, or mixing the same with food, drink or in any substance used by the public.

Of great concern is section 152 of the Criminal Law Act, which prohibits “indecent and immoral acts”. Section 152 reads:

1. Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent, or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes, or with fine, or with both.
2. The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.
Section 152 indirectly discriminates against all those who profess various versions of Islam not complying with the official version; and against Muslims generally, as it imposes more strict conduct or dress requirements than apply to Christians and other minority faith groups in Sudan. The section is vaguely worded, permitting wide discretion to security and police officers and the judiciary to apply their own views of appropriate conduct.

Section 152 has been used to prosecute women who dress in ways which do not conform to strict local Islamic dress codes. Two high-profile cases – of Lubna Hussein, convicted for wearing trousers in 2009, and of Amiera Osman, charged for refusing to cover her head in public in 2013 – show how these laws are applied in a way which discriminates against women. However, both cases also illustrate that vaguely-worded indecency provisions can constitute indirect discrimination on the basis of religion, again impacting upon both non-Muslims and those choosing to interpret Islam in a way contrary to the official interpretation by the al-Bashir regime. Reports on the Hussein case indicate that some of the women arrested alongside Ms Hussein were not Muslim, despite the supposed protection provided for non-Muslims by paragraph (2). Conversely, Ms Osman is reported to have stated, on her arrest, “I’m Muslim, and I’m not going to cover my head”.

In a report to the UN HRC in June 2014, REDRESS and the ACJPS highlighted the fact that the vague wording of section 78, section 152 and other criminal offences provides significant discretion to law enforcement officials, with the result that these provisions are disproportionately applied to marginalised groups:

> Available evidence (...) points to the following typical practice: many of those subjected to whipping appear to belong to marginalised groups, such as impoverished women, tea-sellers, and those from certain backgrounds, including Southern Sudanese and Darfurians, particularly for alcohol related offences or for alleged adultery (...) Gender and

127 See case summaries in section 2.4 below.
certain types of conduct, often in combination, appear crucial factors. Arrests for public order offences are frequently carried out by the public order police who come to know about what they consider ‘morally deviant’ behaviour.\textsuperscript{130}

It is a serious violation of international human rights norms related to cruel, inhuman and degrading punishment that Sudan has not abolished corporal punishment based on sharia law. The penalty of amputation remains on the statute books, though there has been an unspoken moratorium on its use for over a decade. However, to quote a senior legal practitioner, “flogging is everywhere, every day”, being used most frequently against “people from the periphery”.\textsuperscript{131}

**Discrimination against Christians and Other Religious Minorities**

As a party to the ICCPR, Sudan has duties to respect and protect the right to religious freedom and the right to non-discrimination on the basis of religion for all persons within its jurisdictions, including Christians and other religious minorities. Failure to provide protection from violence and the destruction of property which is motivated by religious hatred represents a most serious denial of equal rights.

In its recent report to the UN HRC, Sudan highlighted “the presence of churches and socio-educational institutions belonging to over 10 Christian denominations” as evidence of the “de facto religious tolerance in the country”.\textsuperscript{132} Yet evidence suggests that, since the secession of South Sudan in 2011, Christians have faced increased pressure at the hands of both state and non-state actors, with cases involving attacks on religious buildings, the closure of churches and Christian educational institutions, arrests for proselytisation and the confiscation of religious literature.

Participants at an Equal Rights Trust focus group meeting with members of the media, held in January 2014, provided a number of examples of

\textsuperscript{130} See above, note 122, Para 113.

\textsuperscript{131} Equal Rights Trust interview with Dr Amin M. Medani, 22 January 2014, Khartoum.

\textsuperscript{132} United Nations Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fourth periodic reports of States parties: Sudan*, UN Doc. CCPR/C/SDN/4, 16 October 2012, Para 142.
closures of churches, religious schools and other institutions in the three years since the secession of South Sudan. Examples included the closure of a Catholic religious school in Omdurman and the Evangelical Cultural Centre in Khartoum immediately after independence in 2011, and the government’s failure to prevent the burning down of a church in south Khartoum in 2012. Reports by Christian campaigning organisations also highlight cases of churches being shut down and in some cases demolished. The organisation Release International reported in January 2013 that the Sudan Pentecostal Church in the Soba Al Aradi district of Khartoum had been “pulled down without warning”. Release International reported that while “officials say the demolitions took place because South Sudanese are there illegally: the suburb was originally a refugee camp for southerners”, Christians saw the action as “further evidence of a government bid to make Sudan purely Islamic”.

In addition to the forced closure of Christian religious buildings, there are indications that the government does not permit the building of new churches. In April 2013, Christian Solidarity Worldwide reported that the Minister of Guidance and Endowments, Al-Fatih Taj El-sir, had announced that:

[N]o new licenses for building churches will be issued (...) The Minister explained this decision by claiming that no new churches had been established since the secession of South Sudan in July 2011 due to a lack of worshipers and a growth in the number of abandoned church buildings. He added that there was therefore no need for new churches, but said that the freedom to worship is guaranteed in Sudan.

The Equal Rights Trust has also gathered evidence of discriminatory violence (hate crime) against Christians by both state and non-state actors. Our field research found cases of assaults on Christian buildings and destruction of icons. In White Nile state, respondents testified to religiously-motivated

133 Equal Rights Trust focus group with journalists, 22 January 2014, Khartoum.
135 Christian Solidarity Worldwide, Sudan: Government Minister Announces No New Church Licences to be Issued, 18 April 2013.
property destruction, and lack of engagement by the police, as illustrated by the testimony of E., a Christian of South Sudanese origin:

I’m from the Dinka tribe from South Sudan. I am a priest. There was a statue of the Virgin Mary in the Catholic Church in Rabak which was found totally smashed. We went to the police and the perpetrator was not found. I feel that the police are not taking this matter as seriously as they should since we are Christians.136

In 2014, A., a journalist working for a popular Sudanese newspaper, told the Equal Rights Trust that he had witnessed the aftermath of an arson attack on a church in south Khartoum by religious extremists in December 2012.137 A. stated that bystanders had informed him that the police did not intervene to prevent the arson attack from taking place. This case bears strong similarities to another case in April 2012, reported on the Sudan Tribune news website:

Supporters of the group led by hard-line figure Muhammad Abdel-Kareem gathered at 60th Street, a main road of Khartoum, and marched towards the Evangelical Church located in the Sawafī area.

They were met by Sudanese security forces which surrounded the church and prevented the group from entering it by imposing a cordon. However, some individuals from the group managed to sneak through the barrier and set the church on fire (...)

Three worship halls that served as public churches were also destroyed, [the Pastor] Kodi said, blaming the attack on Islamic extremists.138

136 Equal Rights Trust interview with E., August 2011, Rabak.
137 See above, note 133.
138 Sudan Tribune, “Pastor confirms attack by Islamic fundamentalists on Sudan church”, sudantribune.com, 23 April 2012.
A 2011 report by the UN Mission in Sudan expressed concern about attacks on Christians in South Kordofan, stating that “[t]he Church and membership, many of whom are Nuban, have been subjects of targeted attacks by the SAF [Sudanese Armed Forces] and Government of Sudan police since the violence erupted in Southern Kordofan”. A more recent report by the Jubilee Campaign related evidence of violence against religious minorities by both state and non-state actors in 2012:

Both the Sudanese Armed Forces (SAF) and the paramilitary Popular Defence Front (PDF) have been accused of targeting Christian pastors and attacking churches in northern Sudan. Recently, these attacks have included the demolition of Saint John Episcopal Parish Church in Haj Yousif and group-violence against two independent churches in the same district. In the latter case, although Sudanese civilians were responsible for the attacks, the authorities’ commitment to preventing this violence is highly debatable, as demonstrated by the police forces’ subsequent prevention of members of the church from clearing the damage. Indeed, police forces in northern Sudan can be seen to fundamentally undermine religious freedom through their actions. (…) More alarming still, Church groups and other minority groups have reported “ethnic cleansing” in South Kordofan, following the large-scale killing of rebels there by Sudanese government forces.

Recent reports indicate that Christians are also vulnerable to harassment, arrests and abuse by state actors applying laws which restrict religious freedom. In April 2013, Christian Solidarity Worldwide stated that since December 2012, there had been an “increase in arrests, detentions and deportations of Christians and of those suspected of having links to them, particularly in

140 See above, note 95, p. 3.
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Khartoum and Omdurman, Sudan’s largest cities”. In September 2013, a statement submitted to the UN Human Rights Council by a coalition of non-governmental organisations (NGOs) asserted that the authorities:

[H]ave shut down Christian educational institutes and harassed and arrested employees and church members. Four Christian education institutes were closed down and had their assets seized on 15 January 2013.\(^{142}\)

Throughout 2013, the ACJPS, in its bi-monthly Sudan Human Rights Monitor, documented cases of the NISS intervening to prevent Christians from manifesting their religion. In February 2013, the organisation reported a case from 22 December 2012 in which a Sudanese youth group had their vehicle, bibles and Christmas gifts confiscated by NISS agents when travelling from Khartoum Um Rawaba and El Obeid towns in North Kordofan to celebrate Christmas.\(^{143}\)

It also reported that on 31 December 2012 the authorities “announced the ‘privatization’ of certain Christmas festivities or acts of celebration, stating that they are not to be carried out in public”. There were also arrests of members of the New Life Church in Omdurman:

At 7 am on 2 March armed forces of the NISS raided the New Life Church in Omdurman Town using 7 cars and 11 motorcycles. They arrested Mamdani, (m), a member of the church who also had keys to the offices, and Stephan Yagoub, (m), a church member who was present when the raid took place. The NISS agents took the two men to their offices in Khartoum on Abid Khtim Street, where they interrogated them about the source of funds for the church and if the church had any foreigners as members. They were released at 6 pm that evening. While at the

\(^{141}\) Christian Solidarity Worldwide, Sudan: Government Minister Announces No New Church Licences to be Issued, 18 April 2013.

\(^{142}\) United Nations Human Rights Council, Joint written statement submitted by the East and Horn of Africa Human Rights Defenders Project, Amnesty International, the Cairo Institute for Human Rights Studies, Human Rights Watch, the International Federation for Human Rights, non-governmental organisations in special consultative status, 3 September 2013, A/HRC/24/NGO/64, p. 4.

NISS offices, Mr. Yagoub reportedly witnessed at least eight members of the Evangelical Church of Omdurman who were also being interrogated. (...) Since the raid on the New Life Church, church members have reportedly been afraid to enter the church to worship.\textsuperscript{144}

These assertions were supported by the Independent Expert on the situation of human rights in Sudan, who stated in his September 2013 report to the UN Human Rights Council that he had received complaints of discrimination against non-Muslims by state agents including “incidents of arrests of individuals, raiding of churches and seizure of Christian literature by security agents due to allegations of Christian proselytisation in the country”.\textsuperscript{145}

The Equal Rights Trust also heard allegations that Shia and Baha’i communities are also persecuted: in Khartoum, ten Baha’i persons were arrested in 2013; a Shia village in North Kordofan, Omruaba, was raided and many arrests were made by police in 2013.\textsuperscript{146} The Sufi community in Omdurman is also sometimes harassed, even though their weekly dervish dancing ceremony is one of the city’s tourist attractions. A newspaper journalist told the Trust: “Sufi people in Omdurman were arrested over a land dispute – I reported on this and was arrested.”\textsuperscript{147}

The above examples indicate that, despite the government’s assertions that it respects religious freedom, and that there is “de facto religious tolerance in the country”,\textsuperscript{148} Christians and other religious minorities face increasing restrictions on their freedom “to manifest [their] religion or belief in worship, observance, practice and teaching”.\textsuperscript{149} These cases also indicate a failure on the part of the state to respect the right to non-discrimination on the basis of religion or belief, as protected by Articles 2(1) and 26 of the ICCPR. Moreover,

\begin{itemize}
  \item \textsuperscript{144} African Centre for Justice and Peace Studies, \textit{Sudan Human Rights Monitor}, May-June 2013, pp. 11–12.
  \item \textsuperscript{146} See above, note 133.
  \item \textsuperscript{147} \textit{Ibid.}
  \item \textsuperscript{148} See above, note 132, Para 142.
  \item \textsuperscript{149} International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966. Article 18(1).
\end{itemize}
these examples represent a breach of the obligation, arising under Article 27 of the ICCPR, to ensure that religious minorities are not “denied the right (...) to profess and practice their own religion”.

**Religious Discrimination in Employment and Education**

In addition to restrictions on their freedom of religion and belief and the threat of discriminatory violence, religious minorities in Sudan face discrimination in other areas of life. National government offices and businesses follow the Islamic workweek, with Friday as a day of prayer. Employers are required by law to give their Christian employees two hours off before 10:00 a.m. on Sunday for religious purposes, but in practice many employers do not.\(^{150}\) According to a 2007 report by the International Labour Organisation, “Christian job applicants are required to deny their faith or to convert to Islam if they want to be employed.”\(^{151}\)

The state school curriculum provides for Islamic education classes but not for education about other religions. According to the International Humanist and Ethical Union:

> Public schools must provide religious instruction to non-Muslims, but some public schools excused non-Muslims from Islamic education classes. Private schools, including Christian schools, must hire a special teacher to teach Islamic subjects, but non-Muslim students are not required to attend those classes.\(^{152}\)

Refusal to employ a person on the basis of their religion constitutes direct discrimination. Differential treatment in employment or education on the basis of religion or belief may constitute discrimination as prohibited by international law. Failure to accommodate the religious needs of practicing Chris-

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tians in employment may, if it cannot be shown to be “objectively justified by a legitimate aim, and the means of achieving that aim [to be] appropriate and necessary”, constituting discrimination on the basis of religion or belief.

### 2.2 Discrimination and Inequality Based on Race and Ethnicity

Sudan is a country of significant ethnic diversity. Indeed, in its recent report to the Committee on the Elimination of Racial Discrimination (CERD), Sudan stated that as the country has one of the “largest geographical areas of all African countries (...) its vastness is therefore such that its inhabitants have different ethnic characteristics and differing customs, origins and colours”. However, while there is general agreement on the country’s ethnic diversity, no accurate data exists on the ethnic composition of the country. Estimates from 1999 indicate that pre-secession Sudan was home to approximately 600 ethnic groups speaking approximately 300 languages and dialects. The last census was conducted in 2008, prior to the independence of South Sudan, and questions about race and ethnicity were not included because of official resistance to the collection of data disaggregated by ethnicity.

CERD has stressed that states should collect and provide “information on the demographic composition of the population” in their reports to the Committee. In 2001, in its Concluding Observations on Sudan, CERD expressed regret at “the lack of details in the report concerning the demographic composition of the population” and recommended that in its next report, Sudan provide “detailed information on the composition of the population”. Twelve years later, in its report to the Committee, Sudan responded to this recommendation, arguing that the collection of data disaggregated by ethnic-

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154 United Nations Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under Article 9: Twelfth to sixteenth periodic reports of Sudan, UN Doc. CERD/C/SDN/12-16, 2013, Para 114.


ity was not necessary because “[t]he current ethnic mix in the Sudan came about through the intermarriage of different ethnic groups and what we have is a matter of tribes and not racial ethnicities”.\textsuperscript{159} The report went on to explain the government’s reluctance to collect data which would be “liable to draw attention to factors that might lead to division, such as race, colour and so on”, and its policy of omitting anything from census and survey forms which “might give rise to ethnic distinctions (...) which therefore points to harmony, tolerance and the exercise of freedoms and rights”.\textsuperscript{160}

As the statements by the government suggest, Sudan is a country where questions of ethnicity are highly politicised, and where inter-ethnic issues are not addressed by the government through the prism of equality and non-discrimination. The need to present a clear picture of the ethnic composition of Sudan is not based on an academic interest but on the fact that without statistics broken down by ethnicity it is very difficult to introduce equality policies, including remedial positive action.

\textit{The Meaning of “Race”, “Ethnicity” and “Racial/Ethnic Discrimination”}

While stressing the need for collecting ethnic statistics, the Equal Rights Trust acknowledges the difficulty of this task, arising from the complexity of definitional and conceptual issues related to ethnicity. In Sudan, race, ethnicity, tribe, colour of skin, culture, place of residence, and political affiliation are fused in a way that defies simple classifications. Tribal belonging (\textit{gabila}) is extremely important, but tribal lines are political and tribes are political entities.\textsuperscript{161} The Nubians, for example, who are descendants of the ancient indigenous people of Sudan and who live north of Khartoum, are experiencing a process of assimilation into the Arab identity promoted by the regime, resulting in widely disparate estimates of their numbers.

Despite the complexity of ethnic identification in a country where aspects of race, ethnicity, tribe and political affiliation are mixed, a significant emphasis is placed on identifying a person’s tribe. It is noteworthy that national identity cards include the names of the father, grand-father and great-

\textsuperscript{159} See above, note 154.
\textsuperscript{160} \textit{Ibid}.
\textsuperscript{161} See above, note 156.
grand-father, which is a customary way of identifying a person’s tribe. Even in Khartoum – a city of over 5 million – tribal belonging is frequently the first question people ask of each other when they meet. Accent is also an indicator of a person’s tribe.

In acknowledging the complexity and specificity of the very notions of race and ethnic identity the Sudanese context, this report uses the terms “race”, “ethnicity” and “racial/ethnic discrimination” in a strictly legal rather than anthropological sense, following the meaning these terms are given in international human rights law, as expressed in the International Convention on the Elimination of All Forms of Racial Discrimination and the interpretations and jurisprudence of its supervisory body, CERD. The same understanding is reflected in the Declaration of Principles on Equality, which takes a non-essentialist approach to the definition of race, ethnicity and discrimination based on these characteristics. Race, ethnicity, and a host of related concepts such as colour, descent, national or ethnic origin, etc., are understood as socio-cultural and historic constructs rather than as natural biological characteristics and the use of these terms does not mean accepting any theories that “race” or “ethnicity” exist as natural phenomena. What matters in defining racial/ethnic discrimination is the perceived identity of the victim, which is the reason for the discriminatory conduct, rather than any “scientific” truth about the victim’s race or ethnicity.

Ethno-regional Conflicts as Manifestations of Ethnic Discrimination

Sudan has a long history of ethno-regional conflicts, a number of which continue today. In each of these conflicts, the root causes are a combination of ethnic, religious and political discrimination promoted by the Khartoum regime against populations in the periphery regions. The long-running civil conflict between northern and southern Sudan – in which racial and religious

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162 See above, note 131.
164 See above, note 131, Principle 5, p. 6–7.
165 For a detailed analysis of the meaning of “race”, “ethnicity”, and “racial/ethnic discrimination” see, for example: Schiek, D., Waddington, L., and Bell, M., Non-discrimination Law, Hart Publishing, 2007, pp. 41–70.
discrimination against the “African” southerners played a key role – formally came to an end with the signing of a Comprehensive Peace Agreement (CPA) in 2005. Following a referendum in 2011, South Sudan seceded, causing a massive change to the geography and demography of Sudan. The ethno-regional conflict in Darfur, rooted in decades of discriminatory policies targeting the region’s non-Arabs, formally came to an end with a ceasefire in 2011, though inter-ethnic violence continues to this day. Other ethno-regional conflicts – notably in South Kordofan and southern Blue Nile – have increased in severity since the secession of South Sudan. In the Eastern states, although there has been no active fighting in the last years, tensions rooted in historic discrimination against people in these areas remain to date.

It should be reiterated that the racially discriminatory nature of Sudan’s conflicts cannot be isolated from their political underpinnings, i.e. the Arabisation and Islamisation policies of the Nimeiry and al-Bashir regimes. Still, while the role of ethnicity (as opposed to religion, politics or economics) in causing these conflicts is open to question, the discriminatory effects on the ethnic/tribal communities in each conflict area are not. In each of the conflict areas, the Sudanese army has engaged in direct armed conflict against rebel forces which are largely composed of members of ethnic/tribal populations constituting majorities within the respective conflict regions. It appears, from numerous expressions of concern by many parties over the last decade, that attacks on rebel-held positions have had little regard for limiting the number of civilian casualties from the local communities. In addition, the government has supported tribal militias in South Sudan and Darfur throughout the conflicts there, and is continuing to do so today in South Kordofan and Blue Nile states, exploiting existing tribal differences to fuel conflict.

The Equal Rights Trust interviewed a number of respected Sudanese academics and experts, who spoke of the role which the al-Bashir regime has played in fuelling racial, ethnic and tribal discrimination, the latter becoming in its turn a cause of further conflicts. According to Prof Mohammed Yousif of the Department of Social Anthropology at the University of Khartoum:

*The ideology of the regime is that Sudan is an Arab, Islamic land and anyone residing here should submit to this vision. The Arabs are the owners and all others are intruders, refugees, outsiders. The regime consid-
Dr Amin M. Medani, a Sudanese lawyer, human rights activist and President of the Confederation of Sudanese Civil Society Organisations, spoke to us of what he called a “dichotomy between those who say ‘I descend from the Prophet’ and other groups” as being the fundamental factor motivating the conflicts between Sudan and South Sudan, and between the regime and those residing in Darfur, South Kordofan and Blue Nile states.167 Another expert, Dr Mudawi Ibrahim Adam, Director of Sudan Social Development Organization, told the Equal Rights Trust that “Sudan is a diverse country (...) but the problem is that the government has used and exploited the differences”.168 In each case, the respondents highlighted the role of the government’s policies and actions, particularly in marginalised conflict areas, in promoting ethnic discrimination. However, as Prof Abdullahi An-Na’im pointed out, current ethnic discrimination cannot be explained in a reductionist framework, simply as being the effect of the regime’s policy: “in some senses at least, the regime is more of an outcome than a cause” which reflects the “deep racism and religious bigotry among northern Sudanese Muslims at large”.169

South Sudan

Though South Sudan gained independence in July 2011, and thus no longer forms part of the state of Sudan, an understanding of this long-running conflict is important for understanding race/ethnic relations in modern-day Sudan. As noted in Part 1 above, the conflict had two distinct phases. The first phase began before independence, fostered by the failed agreement to form a federation which northern and southern leaders had reached in Juba in 1947, and continued until the signing of the Addis Ababa peace agreement in 1972. The second phase began largely in response to the 1983 declaration by President Nimeiry that Sudan would become an Islamic state, and the adoption, by presidential decree, of a number of laws reflecting sharia law principles. The Sudan People’s Liberation Army (SPLA) formed in the South, objecting to the impos-

166 See above, note 156.
167 See above, note 131.
168 Equal Rights Trust interview with Dr Mudawi Ibrahim Adam, 12 February 2014, London.
169 See above, note 96.
tion of sharia law, and the Khartoum regime responded by declaring *jihad* (holy war) against the SPLA. Conflict continued until 2005, when President al-Bashir, in response to international pressure, agreed to sign the CPA, which included provision for a referendum on the independence of South Sudan. As noted, the referendum, held in 2011, resulted in an overwhelming majority in favour of independence, and South Sudan became an independent state in July 2011.

Prior to the secession of South Sudan, a significant economic divide existed between northern and southern Sudan. In the colonial era, the British administered North and South Sudan as separate entities, fostering cultural, religious and linguistic tensions between the two. As Savo Heleta states in an overview of the history of the conflict, this approach directly contributed to the creation of an Arab versus African rhetoric:

> [P]rior-twentieth century conflicts should not be labelled strictly “Arab” versus “African” but more conflicts between different tribes over resources and territory. Strict ethnic and regional separation in Sudan happened only in the twentieth century, helped by the ideological influences brought in by the colonisers.¹⁷⁰

On Sudan’s independence from British colonial rule, the predominantly Arab population in northern Sudan inherited a more economically developed territory, and northern Arabs eventually came to dominate many spheres of public life, including, in particular, the army, security services and civil service. Infrastructure was concentrated in the Nile valley and the educational opportunities in the South were very limited. Thus, the roots of this conflict pre-date independence. Yet a number of commentators have argued that the historic, economic, religious and racial differences between North and South were exacerbated in later years by deliberate Arabisation policies pursued by suc-

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cessive governments in Khartoum.\textsuperscript{171} Assessing the situation in 1991, Yongo-Bure found that the more favourable treatment of persons of Arab ethnicity and speakers of the Arabic language had:

\[ M \]arginalised non-Arabic speakers from access to education and employment (...) [and] led to the complete economic, social, religious and ethnic marginalisation of the South, with sharia law designating the Southern Sudanese as second class citizens.”\textsuperscript{172}

As Prah explained in a paper for the United Nations Research Institute for Social Development, while the conflict between North and South had both regionalist and religious dimensions, racial differences between the two populations were fundamental. These differences were based on the fact that Arabs, while less numerous than Africans – as demonstrated by the only census that assessed the Arab and African populations (the census of 1956, which put the Arab population at 39% of the total) – have held state power since independence and used it to “Arabise” non-Arab African groups:

\textit{The Sudanese conflict is often explained as simply a regionalist confrontation. This view is as erroneous as the suggestion that it is largely a religious conflict. While the problem bears both regionalist and religious dimensions, those features of the conflict belie the more fundamental character of the contradiction which is that the Sudan is largely made up of Africans who are homogeneously more concentrated in the South where their cultural features are also less Arabised.}\textsuperscript{173}


The systemic discrimination, which is both a cause and consequence of the North-South conflict, resulted in enormous harm for the ethnic groups residing in South Sudan, predominantly “black African” peoples. In 2001, four years before the end of the conflict, it was estimated that two million people had died as a result of the conflict from war-related famine, disease and casualties, while a further four million had been forced to flee their home at one time or another.\textsuperscript{174} Moreover, while the war between North and South has ended, its consequences can still be traced, both in the ongoing ethnic conflicts in border regions such as the Nuba Mountains and in discrimination against those of South Sudanese origin currently residing in Sudan and facing statelessness (issues which are discussed below).

\textit{Darfur}

The civil war in Darfur began in 2003, and ostensibly ended with a formal peace agreement (also known as the Doha agreement) in 2011, though inter-ethnic conflict continues to this day. As noted above, human rights violations which occurred during the Darfur conflict have been widely documented.\textsuperscript{175}

Based on deeply-rooted historic discriminatory policies implemented by the Khartoum authorities, the armed conflict in Darfur was triggered in part by a struggle between two factions of the ruling Sudanese Islamist Movement, which split in 1999. In 2003, the Justice and Equality Movement (JEM), led by opponents of President al-Bashir, appealed to Islamist youths in Darfur, calling on them to fight against the Khartoum government which was marginalising the region. Prominent Arab Darfuris joined the call for greater autonomy, while a number of marginalised groups were attracted by the JEM’s secular ‘Black Book’\textsuperscript{176} policy which stipulated that Islamic law should not be imposed on non-Muslims.

\textsuperscript{174} United States Committee for Refugees, \textit{Sudan: Nearly 2 million dead as a result of the world’s longest running civil war}, U.S. Committee for Refugees, 2001.


\textsuperscript{176} Wallis, W., “The Black Book history or Darfur’s darkest chapter”, \textit{The Financial Times}, 20 August 2004.
A number of views have been put forward to explain the genesis and subject of the Darfur conflict. Experts interviewed by the Equal Rights Trust stressed the ethnic dimensions of the conflict. According to Prof Mohammed Yousif, the modern conflict has its roots in long-standing tensions over land and other resources between settled agriculturalists from predominantly “African” groups, and nomadic pastoralists from “Arab” tribes. These tensions had historically been addressed through traditional conflict arbitration bodies known as ajawid councils, but the government suppressed them and actively fuelled the conflict by promoting an Arab Islamic way of life.\textsuperscript{177} Dr Amin M. Medani stressed the persistent economic marginalisation of the area, stating that “all the infrastructure, services, investment, etc., is in the Nile Valley”, a point that was also made by Dr Mudawi Ibrahim Adam.\textsuperscript{178} Salih Mahmoud Mohamed Osman, a lawyer and former MP, told the Equal Rights Trust:

\begin{quote}
The simple answer is that this was a racial, ethnic conflict, caused by racial discrimination. Darfur has always been a marginalised region, as a result of a policy, pursued since independence, through which the region was denied its rights. When demands for change started in the 1960s, Darfuris were accused of promoting racism (…) Government retaliation against local rebels was the source of the violations. The response was unbalanced and the methods used were in violation of international human rights and humanitarian law – aerial bombardment, extra-judicial killings, and rape as a weapon of war.\textsuperscript{179}
\end{quote}

The ethnic dimensions of the conflict are however in dispute, with some analysts challenging the ethnically-centred narrative. For example, Alex De Waal complained that the region’s “complex identities have been radically and traumatically simplified, creating a polarised ‘Arab versus African’ di-

\footnotesize\textsuperscript{177} See above, note 156. Recently, the government has been trying to revive the traditional local arbitration councils, but without success, as this system has been quite completely destroyed.
\footnotesize\textsuperscript{178} See above, notes 156 and 168.
\footnotesize\textsuperscript{179} Equal Rights Trust interview with Salih Mahmoud Mohamed Osman, 21 January 2014, Khartoum.
chotomy that is historically bogus but disturbingly powerful”. According to Chikhi:

[Darfur] could be considered as an ethnic dispute against a backdrop of political, social and economic marginalization... It also could be seen as the combination of three overlapping conflicts: a war of variegated rebelling factions against the government, hostilities between Sudan and Chad and the land property claims arising between sedentary tribes and nomads. (...)

The ethnic dimension of the dispute is not to be considered as a “historical leftover”. It must be understood as a consequence of modernisation. It is also to be perceived as a “re-tribalising” process to face an uneven distribution of the resources. This conflict has, indeed, transformed from a mere resources conflict into an identity one where all the tribes are re-centring around affiliation, origins and even religion.¹⁸¹

The Equal Rights Trust approaches the analysis of the Darfur conflict from the unified human rights framework on equality. It is the Trust’s position that inequality is the root cause of the Darfur war, but that inequality is itself a complex set of intersecting ethnic, economic, environmental, religious and cultural disadvantages which combine to create an overall disadvantage for certain groups of people, defined primarily by their ethnicity. While inequality – understood in this holistic way – is the root cause of the conflict, it is critical to understand that at the heart of this inequality is discrimination: behaviours or policies that have as their purpose and effect the denial or restriction of human rights to persons of certain identities in Darfur. Although each individual act of discrimination should be characterised separately, we regard the general pattern of discrimination suffered by people in Darfur to be best described as systemic multiple discrimination, with race/ethnicity


being the key characteristic on which it is based, while religion, political affiliation, place of residence and other characteristics also play a role. Indeed, discrimination, although normally grasped by the law as occurring on separate grounds, in order to make addressing it easier, in reality is very often an integral phenomenon related to a number of different characteristics.

The conflict in Darfur continues to this day, and multiple discrimination, with ethnicity at its core, continues to be the daily reality of people in the region. The situation in the region remains in turmoil, leaving millions of displaced persons residing in camps, unable or unwilling to return to their homes because of the ongoing violence. Those who have settled in the North outside Darfur, in the big cities, in large informal settlements such as the one in Khartoum, are not willing to go back as in the North they at least have electricity and other basic goods and are not faced with armed militias. But these internally-displaced persons (IDPs) are victims of continuing discrimination. Being in denial of the ongoing massive displacement, the government has not allowed Darfuris to establish formal camps in the North. As to the situation in Darfur itself, Dr Osman stated:

*The violence is continuing today in Darfur. Even the referral to the International Criminal Court has not acted as deterrent. On the contrary, the army and the militias rejoice in the failure of the ICC [International Criminal Court] to make any arrests. The situation today is not safe (...) villages are occupied by Janjaweed militias from Chad and other countries, who operate with the local militia. The various agreements signed between the government and the rebels had a security component, but this has never been implemented. The local justice system is not functioning. The special court in al-Fashir established by the 2011 Doha Agreement is not working, and the prosecutor based there has not charged any perpetrator of human rights abuses. The main obstacle to justice is that the army and the NISS are protected by immunity laws.*

This position is also supported by the 2013 report of the UN Independent Expert on the situation of human rights in Sudan, who stated that:

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182 See above, note 179.
Darfur continues to be characterised by widespread human rights violations and large-scale civilian displacements due to the persistence of fighting between the Sudanese Armed Forces and armed opposition groups in the region.\textsuperscript{183}

To complicate matters, armed conflict has currently spread inside Arab tribal groups, who – armed to the teeth by the government – are fighting each other over resources in Darfur.\textsuperscript{184}

Since February 2014, discriminatory violence and displacement have increased in Darfur, as a result of the deployment of the “Rapid Support Force” (RSF) in a counter-insurgency campaign named “Decisive Summer”.\textsuperscript{185} The RSF is widely considered to be a “renamed Janjaweed militia”\textsuperscript{186} and is reportedly commanded by former Janjaweed militia leader Mohamed Hamdan.\textsuperscript{187} In his September 2014 report to the UN Human Rights Council, the UN Independent Expert on the situation of human rights in the Sudan summarised the situation as follows:

\begin{quote}
The activities of rebel movements and the response of government forces, particularly the Rapid Support Force, led to many human rights violations in those States, including killings, sexual and gender-based violence, rampaging of villages as well as destruction of property. (...) The trajectory of the armed conflicts has been at three interconnected levels: tribal violence over land and natural resources, attacks by armed movements against government positions and vice versa, and aerial bombardments of areas under rebel control by the Sudanese Air Force.\textsuperscript{188}
\end{quote}

\textsuperscript{183} See above, note 145, Paras 38–39.
\textsuperscript{184} See above, note 156.
\textsuperscript{185} See above, note 122, Para 44.
\textsuperscript{187} See above, note 122, Para 57.
On 25 May 2014, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that over 355,000 people had been affected by the renewed conflict in Darfur since January, with almost 322,000 newly internally displaced.\textsuperscript{189} In June 2014, Amnesty International reported that in the first months of the year, the RSF had razed 35 villages, displacing more than 40,000 people in South Darfur alone,\textsuperscript{190} while Human Rights Watch provided evidence of civilian casualties during these attacks.\textsuperscript{191} In Central Darfur, Amnesty found that the government had “failed to protect civilians from abuses during a surge in fighting between predominantly Arab tribes” which involved the deliberate targeting of civilians and their subjection to unlawful killing and sexual violence.\textsuperscript{192} In addition to the involvement of government forces in violence against civilians and the failure to protect civilian populations, Amnesty reported that the government had restricted access to the affected zones by the UN Mission in Darfur and humanitarian organisations.\textsuperscript{193} In its Concluding Observations of June 2014, the UN HRC expressed concern at “reports of serious human rights violations, including rape, torture, arbitrary detention, large-scale displacements and extrajudicial killings” in Darfur and other conflict areas.\textsuperscript{194}

\textit{South Kordofan and Blue Nile}

Conflict between groups in South Kordofan – in particular in the Nuba Mountains region – and the authorities in Khartoum began shortly after the secession of South Sudan and was, in the words of one commentator, “widely perceived as a first step towards President Omar al-Bashir’s stated goal of suppressing ethnic and cultural diversity in favour of a rigid Arab-Islamic regime, following South Sudan’s decision to separate from the North”.\textsuperscript{195} Others


\textsuperscript{190} See above, note 186, p. 13.


\textsuperscript{192} See above, note 186, pp. 5–6.

\textsuperscript{193} \textit{Ibid.}, p. 8.

\textsuperscript{194} See above, note 102, Para 8.

\textsuperscript{195} Flint, J., “UN mission accuses Sudan of shelling and torturing civilians in Nuba war”, \textit{The Guardian}, 26 July 2011.
have attributed the conflict to the marginalisation of the Nuba people by the Sudanese government, and their consequent affiliation with the southern rebels during the civil war,\textsuperscript{196} as well as discontent over the failure to hold the popular consultation to determine the future of South Kordofan and Blue Nile after secession, which was required by the CPA.\textsuperscript{197}

The ongoing conflict between rebel forces in South Kordofan and the government leaves people belonging to the Nuba and other ethnic groups in these regions vulnerable to discrimination which is ethnically based, as well as discrimination by association with the government’s political and military opponents. Continued outbreaks of violence over many years have resulted in a lack of effective government in the region, resulting in ineffective law enforcement, lack of access to basic services and a reliance on traditional forms of justice. The UN Independent Expert on the situation of human rights in the Sudan has expressed his serious concern about the impact of the conflict on the local population:

\textit{The human rights situation in South Kordofan state remains precarious, with civilians bearing the brunt of sporadic cycles of fighting between Government and rebel forces. (...) A significant number of civilians remain trapped in rebel-controlled areas as a result of continued fighting in the region. Indiscriminate aerial strikes by SAF are of particular concern. The Independent Expert could not visit these areas, but received reports indicating that the humanitarian situation there continues to deteriorate. Many displaced and vulnerable civilians have been forced to move further south without access to basic necessities like water and food. United Nations and humanitarian agencies are unable to make a humanitarian assessment or deliver assistance in SPLM-N [Sudanese People’s Liberation Movement – North] controlled areas. Talks between the Government of the}


\textsuperscript{197} Jal, E., “We must act to stop South Kordofan becoming the next Darfur”, The Guardian, 8 August 2011.
On 21 January 2014, the Equal Rights Trust interviewed K., an activist and journalist originally from the Nuba Mountains. K. worked with community organisations providing education and support to those who have fled the region for Khartoum, and also had been documenting and publicising their stories, working with the media. K. told the Trust that the SAF continued to launch ground and air offensives against villages which they suspected to be sympathetic to the SPLM-N, with no regard for civilian casualties. His own village had been attacked around 10 January 2014, forcing the local people to flee to the mountains. K. said that it was difficult to estimate total casualties, as local people regularly fled areas which were attacked, and there is no credible reporting from official sources. However, he estimated that approximately 30 bombing raids had been carried out in the previous six months, with his village alone subjected to four such raids.

In June 2014, Human Rights Watch reported that it had “received credible reports that the Sudanese government deployed the Rapid Support Forces” in the region and that aerial bombardment had intensified in May and June “with reportedly hundreds of bombs dropped on civilian areas”. Amnesty International reported similar findings, highlighting the bombing of the Mother of Mercy Hospital on 1 May 2014. As in Darfur, there are credible reports that the government blocked humanitarian assistance to South Kordofan and Blue Nile, leading the OCHA to conclude in May 2014 that the situation was “potentially catastrophic”. In its Concluding Observations on Sudan, the UN HRC expressed concern at both the escalation of fighting in South Kordofan and Blue Nile states and the reports that the authorities had denied access

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198 See above, note 145, Paras 46 and 50.
200 See above, note 191, pp. 4–5.
201 See above, note 186, p. 7.
to humanitarian assistance in some areas, “particularly those controlled by rebel groups”.

*The Eastern Periphery*

Eastern Sudan – mainly the Red Sea state bordering on Eritrea – is another zone of recurrent conflict resulting from discriminatory policies, with a long history of exclusion and marginalisation of ethnic groups residing in the eastern periphery. Ethnic and tribal groups in Red Sea and Kassala states, such as the Beja and the Rashaida, have high rates of severe acute malnutrition, while poverty rates in the area are similar to those of the poorest areas of South Darfur and South Kordofan, despite the fact that Sudan’s biggest port, Port Sudan, is in Red Sea state. The Beja and other tribes living in the East were among the first victims of climate change-induced desertification which has deprived them of water and arable land and has led to severe rural poverty. The situation has been exacerbated by a government policy of exclusion and discrimination in resource allocation. As one expert, himself from the Red Sea State, told the Equal Rights Trust:

> In our country, if you take up arms, then the government listens to you. Eastern Sudanese people took up arms repeatedly, in 1995–2000, and then again in 2005–2006. The 2006 Eastern Sudan Peace Agreement between the government of Sudan and the rebel Eastern Front, signed in Asmara, Eritrea, has not been implemented, so this conflict area remains a high risk.

The Asmara Peace Agreement envisaged sharing of resources, including oil revenue, and sharing of power at the central and local levels, as well as development investment, but the government has failed to implement the agreement. In January 2011, the Federal Alliance of East Sudan, a splinter group of the former rebel Eastern Front, merged with the Justice and Equality Movement which operates in Darfur, uniting in a bid to step up the offensive to overthrow al-Bashir’s government.

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203 See above, note 102, Para 8.
Inequality, Discrimination and Armed Conflict: Conclusion

In view of the foregoing, the Equal Rights Trust reiterates that the root cause of the conflicts in Sudan’s periphery is inequality, in particular the systemic discriminatory practices of the regime based on multiple grounds, among which ethnicity is the pivotal one. Far from being a distinct cause in a linear chain of causality, however, inequality is also a consequence of the conflict, creating a vicious cycle that can only be broken by a radical comprehensive reform based on equality principles.

Among the most obvious manifestations of the lack of political will to respect equality is the failure of the government to fulfil its obligations under the 2011 Doha Document for Peace in Darfur and provide for a referendum on the administrative status of Darfur. Disenfranchisement of people based on their race or ethnicity is an extremely serious form of racial discrimination that is bound to lead to further conflicts. Similarly, the ongoing aerial bombing of civilian areas in South Kordofan and Blue Nile states and the failure of the government to deliver on its CPA promise of popular consultations on the status of these states, as well as the continuing marginalisation of the Eastern periphery, undermine the legitimacy of the regime and fundamentally question its ability to take equality seriously.

Discrimination by the Army, Security and Police Forces

As the history of these ethno-regional conflicts indicates, racial and ethnic discrimination and other human rights violations by state actors – including in particular the police, security services and armed forces – has long been a central feature of the human rights record of Sudan, and remains so today. While there are no directly discriminatory provisions in Sudanese legislation on grounds of race, ethnicity or colour, apart from the citizenship law which discriminates directly against persons of South Sudanese ethnic origin (see below), laws and policies create a framework in which discriminatory acts by state agents are not effectively prevented, and in some cases are promoted.

The National Security Act 2010 provides effective immunity from prosecution for members of the security services. Its Article 52 states:
1. There shall not be deemed a crime an act done by any NSS [National Security Service] member in good intention while or by reason of performing his/her functions or any duty assigned thereto or any act he/she did as part of any power bestowed on him/her pursuant to this Act or any other applicable Act, regulation or orders issued thereunder provided that this Act is within the limits of the works and duties assigned thereto in accordance with the powers bestowed thereon pursuant to this Act.

(…)

3. Without prejudice to the provisions of this Act and any right to claiming compensation against NSS, no civil or criminal procedures may be brought against a member or associate unless upon the approval of the Director. The Director shall give such approval whenever it appears that the subject of such accountability is not related to official business, provided that the trial of any staff or associates shall be before a closed criminal court, during their service or after its termination, with regards to acts committed by them.\(^{205}\)

As the UN Mission in Sudan reported, legislation governing the armed forces also provides effective immunity from prosecution for soldiers who commit human rights abuses:

*The Armed Forces Act of 2007 (…) grants members of the armed forces substantive and procedural immunity for acts, including human rights violations committed in the course of their duties. They can only be subjected to a full investigation and prosecution if the head of the respective forces explicitly lifts their immunity. In practice, this is tantamount to immunity in that the military commands rarely lift the immunity of their soldiers.*\(^{206}\)

\(^{205}\) National Security Act 2010, Article 52.

\(^{206}\) See above, note 196.
Salih Mahmoud Mohamed Osman, a human rights lawyer and politician from Darfur, also confirmed that in practice, members of the SAF and NISS have enjoyed full immunity from prosecution, irrespective of whether acts are in the performance of their duties.\textsuperscript{207} He added that the state extends immunity to paramilitaries and \textit{Janjaweed} militia members, on the basis that they are members of the “border forces” or “Popular Defence Forces”.

Reports from intergovernmental and non-governmental organisations provide numerous examples of the armed forces either failing to protect or violating the rights of those residing in conflict zones such as Darfur and South Kordofan. In 2011, for example, the UN Mission in Sudan reported on the outbreak of violence, stating that:

\begin{quote}
[I]nstead of distinguishing between civilians and combatants and accordingly directing their military operations only against military targets, the SAF and allied paramilitary forces have targeted members and supporters of the SPLM/A, most of whom are Nubans and other dark skinned people.\textsuperscript{208}
\end{quote}

A few months later, at a meeting of the UN Security Council, the Anglican Bishop of Kadugli, South Kordofan’s capital, accused the Sudanese army of “ethnic cleansing”.\textsuperscript{209} As noted above, the Equal Rights Trust was able to verify allegations that the SAF attacked areas with little regard for civilian casualties, in interviews with K., a Nuban activist and journalist,\textsuperscript{210} as well as other IDPs who had fled South Kordofan.

Similarly, a September 2013 report to the UN Human Rights Council by the East and Horn of Africa Human Rights Defenders Project and others illustrated the role of the armed forces in the recent violence in Darfur:

\begin{flushleft}
\textsuperscript{207} See above, note 179.
\textsuperscript{208} See above, note 206.
\textsuperscript{209} Minority Rights Group International, Evidence of ethnic killings in South Kordofan, Sudan. Khartoum must cease violations immediately says MRG, 12 August 2011.
\textsuperscript{210} Equal Rights Trust interview with K., 20 January 2014, Khartoum.
\end{flushleft}
The government failed to protect civilians from this fighting, and its forces have participated in the conflicts. In one example, pro-government militia leader Ali Ko-sheib, charged with war crimes by the International Criminal Court in 2007 and now a commander in the government’s Central Reserve Forces, participated in large-scale attacks on ethnic Salamat villages in Central Darfur in April 2013. The attacks destroyed dozens of villages and forced more than 30,000 people to flee across the border to Chad. He remains at liberty.\(^\text{211}\)

Members of the police and security services are also accused of discriminating against those ethnic groups which are believed to be in opposition to the Khartoum regime, harassing, arresting and detaining persons on the basis of their ethnicity. Thus, the previously cited NGO report to the UN Human Rights Council stated that, following fighting in South Kordofan in April 2013:

\[\text{[T]he authorities in Khartoum arrested and detained dozens of ethnic Nuba and Darfuri activists suspected of ties to the coalition of armed opposition groups known as the Sudan Revolutionary Front (SRF) and particularly members of the SPLA-North.}^{\text{212}}\]

The testimonies of K., a Nuban activist and journalist, and D., a Darfuri journalist, presented in Box 2,\(^\text{213}\) provide an insight into the use of ethnic profiling by the police and security services, and apparent ethnic discrimination in detention facilities.

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\(^{211}\) See above, note 142, p. 3.

\(^{212}\) Ibid.

\(^{213}\) The testimonies in Box 2 are derived from interviews conducted by Equal Rights Trust in January 2014: Equal Rights Trust interview with K., 20 January 2014, Khartoum; and Equal Rights Trust interview with D., 21 January 2014, Khartoum. Some names and dates have been withheld to protect the identities of the individuals concerned.
Box 2

K. and D. – Ethnic Discrimination by the Police and Security Services

K. told the Equal Rights Trust that he was arrested in August 2013, because a “local spy”, recruited by the NISS from within the Nuban community in the area in which he lived, had reported him to the security services. He believes that he was arrested on suspicion of being involved in supporting the SPLM-N in its fight against the government, though he was never told of the charges against him. During many interrogation sessions, he was asked about his political affiliation, and urged to name members of the SPLM-N whom he was working with.

K. was taken to Kobar prison, and held for slightly over three months in a small room with 13 others, all of either Nuban or Darfuri descent. The room was big enough only to fit a mattress for each person, lined up in rows, with a narrow “corridor” between them.

The mattresses were dirty, there were no pillows or sheets, and the toilet was a hole in the corner of the room. The toilet sometimes flooded the room. There were two small windows, and two lights which got very hot, further worsening the conditions. The prisoners were not allowed to take a walk or exercise outside, and were only permitted to leave the cell for questioning. Whenever he was taken out of the cell, K. was blindfolded and shackled. K. showed the Equal Rights Trust the deep scars from where the shackles had been tightly fastened to his arms and legs.

K. stated that he was not given adequate health care while in prison, despite his age and apparent health problems. When he asked to see a doctor, it took 15 days for his request to be granted. He was taken to a hospital where blood and urine tests were performed, and it was established that he was suffering from high blood pressure. Drugs were prescribed and he was returned to the prison. The drugs were administered by prison guards, but at irregular intervals. When he was released, a doctor examined K. and told him he had developed diabetes as a result of failure to take his drugs on a regular basis.

K. was never officially charged, and never given access to a lawyer. He told the Equal Rights Trust that he had not asked for a lawyer out of fear – anyone who asked too many questions was threatened with solitary confinement. He was repeatedly interrogated, but the interviews were not re-
corded and he was never asked to sign anything. He was repeatedly asked by the interrogators whether he knew why he was detained, and was expected to provide them with an answer. When in his turn he asked why he was held and what he was being charged with, he was told, “You must confess what you did, or we will force you to confess”. After three months, K was again summoned for an interview, during which he was pressured to become a spy for the NISS. He refused, and a short while later, he was released without charge.

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D. is a journalist, originally from Darfur, now living in Khartoum. He was arrested in September 2013 in connection with his reporting on the mass anti-government protests occurring in Khartoum at the time. D. told the Equal Rights Trust that he was arrested from the offices of the newspaper where he worked. Like K., he was never told the reason for his arrest, and when he asked, the NISS agents who were holding him threatened to press false charges against him. Despite this, D. believes that his ethnicity was a central factor in his arrest, as many non-Darfuri journalists, both at his newspaper and at others, reported on the protests but were not arrested.

D. told the Equal Rights Trust that he was held for more than 80 days, much of which he spent in solitary confinement. He stated that this was normal practice for Darfuris, who were frequently held in solitary confinement.

According to human rights activist Dr Mudawi Ibrahim Adam, cases such as those of K. and D. are typical of a pattern of ethnic profiling used by the police and NISS.\(^\text{214}\) Dr Adam confirmed that members of ethnic minorities are vulnerable to arrest and prolonged detention due to their perceived association with rebel movements in Darfur, South Kordofan and Blue Nile. He further stated that there are many such cases, though estimating total numbers is difficult because of the lack of official records on the activities of the NISS.

The Equal Rights Trust interviewed a number of other people in different parts of the country who had experienced or witnessed harassment, arrest

\(^\text{214}\) See above, note 168.
and detention by the police which they believed to be racially or ethnically motivated. In 2013, the Equal Rights Trust interviewed students from Darfur studying and living in Khartoum and other main cities in the North, who reported that they were routinely targeted because of their ethnic origin, complexion and colour. Their cultural activities were banned or severely restricted and their rooms at university campuses were regularly ransacked and burned down. They believed that this was because government-supported Arab groups within the university simply wanted them out.

In a focus group discussion in New Halfa, respondents identifying themselves as being of “African” origin, such as Darfuris and Hawsa, stated that people belonging to these tribes were vulnerable to police harassment. In an interview, one man said:

*We are always suspects in the eyes of the police. They arrest a person and torture him and when they find nothing against him, they release him. (...) Where is the dignity of humans? (...) I personally know that the law is on one side and reality is on the other side.*

A., a man from White Nile State, spoke of his personal experience of arrest, which he believed was racially motivated:

*I am from Nuba, and I am Muslim. I speak both Arabic and an African language. I live in Kosti. I’m from the Nuba Mountains and work as a farmer and a trader. One day I took the bus to Khartoum and when we got to the check point before entering Khartoum, I was searched by the police just because of my ethnicity and colour. They found the 16,000 Sudanese pounds (around 5000 US dollars) I had and I was taken to a police station because they wanted to inquire about the source of the money which they suspected was illegally attained. I was detained for 12 hours and released because there

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215 Equal Rights Trust interviews with Darfur Students’ Union leaders from four different Khartoum universities, 2013, Khartoum.

were no legal grounds of suspicion. All of this happened because of my ethnicity and colour. The incident affected me a great deal and left me frustrated and insecure.217

Alongside the escalation in levels of violence and displacement which resulted from operation “Decisive Summer” in the first half of 2014, human rights organisations documented the continued use of ethnic profiling by state security agencies. For example, in May 2014, the ACJPS reported that it “was aware of at least 92 individuals detained incommunicado in North Darfur”.218 Discriminatory torture and ill-treatment of people from the periphery also continued in 2014. The Equal Rights Trust received information that three Darfuri men arrested in March 2014 believed that they had been deliberately infected with Hepatitis C while in detention at NISS cells in Bahri near Shendi station in Khartoum.219

Ethnic Discrimination in Relation to Citizenship

One of the most significant patterns of direct ethnic discrimination in Sudan’s recent history is the removal of Sudanese citizenship, by virtue of amendments to the Nationality Act which were passed shortly before South Sudan became independent in 2011. Section 10(2) of the Nationality Act, as amended in 2011, provides that: “Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan”. This provision appears to be in direct conflict with Article 7(2) of the Constitution, which states that “every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship”.

Prof Mohammed Babiker, of the Faculty of Law, University of Khartoum, writing in the period immediately after South Sudan seceded, raised the prospect that as a result of the amendments to the Nationality Act, “many individuals may be rendered stateless in this context if north or south Sudan failed to adopt ap-

217 Equal Rights Trust interview with A, August 2011, Kosti.

218 African Centre for Justice and Peace Studies, Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan’s conflict-affected areas, 19 May 2014.

propriate legislations to prevent loss of nationality". Prof Babiker went on to analyse the impact of the amendments to the Nationality Act, concluding:

*The introduction of this vague and unconstitutional amendment provided for in Article 10(2) in the 2011 Sudan Nationality Act simply means that southerners would ‘de facto’ lose [sic] their current Sudanese nationality after South Sudan secession. This author believes that this Article discriminates against southern Sudanese (...) While the law grants dual nationality for all other nationalities, ironically Article 10 singles out southern Sudan as the only nationality that will not be able to acquire dual Sudanese nationality. Furthermore, the Act does not provide for a ‘transitional procedure’ between the loss of Sudanese nationality and acquisition of South Sudan nationality.*

As Prof Babiker points out, the amendments introduced to the Nationality Act in 2011 had the potential to render millions of persons of south Sudanese descent stateless, through the use of the phrase “acquired (...) de facto, the nationality of South Sudan”. This phrase has the effect of leaving a wide area of discretion in the evaluation of whether a person has acquired an alternative nationality. As Refugees International stated in reviewing the Act in 2012:

[R]estricting the rights of southerners because they may have automatically acquired South Sudanese nationality through birth or descent violates international law as it occurs regardless of the person’s preference or whether they will in fact be recognised as South Sudanese.

Moreover, by using the words “de facto”, the Act created the conditions for widespread discrimination on the basis of ethnicity, inviting officials to use

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221 Ibid.

ethnic characteristics, rather than current or former residence, or any other criteria, as the basis for deciding whether a person had acquired South Sudanese citizenship. The result is the possibility of removal of citizenship, based solely on ethnic characteristics, and without consideration of the potential statelessness which might result. Furthermore, the exclusion of a possibility to have dual citizenship for persons of South Sudanese nationality singles out South Sudanese nationals alone, as all other nationals are able to acquire dual citizenship. As Refugees International has argued, this means that the Act is discriminatory on its face.\textsuperscript{223}

In response to questions put to it by the UN HRC at its 2014 review, the Sudanese government set out its position with respect to the citizenship status of persons of South Sudanese origin, stating that it was working with the government of South Sudan and the International Organisation on Migration to "facilitate their voluntary repatriation to their homeland".\textsuperscript{224} It stated that:

\begin{quote}
The South Sudan Government has the onus to provide identification documents for all South Sudanese citizens in Sudan in order to facilitate their repatriation, or legalisation of their residence status in the Sudan.\textsuperscript{225}
\end{quote}

In January 2014, the Equal Rights Trust interviewed X., a doctor residing in Khartoum who was born in the southern part of Sudan before the country gained independence from the Anglo-Egyptian Condominium in the 1950s. X. told the Trust that he had been resident in Khartoum since 1951, studying at one of the universities before establishing a medical practice. X. was keen to downplay the difficulties which he faced at the time of South Sudan's secession, but went on to describe the ethnic discrimination which he experienced:

\begin{quote}
I was born in 1951 in the South, but have lived here in Khartoum almost all my life. I lived in Austria for some time, went to a couple of specialisations abroad, but graduated from medical school here and have practiced here for decades. I have been a citizen of Khartoum for
\end{quote}

\textsuperscript{223} Ibid.
\textsuperscript{224} See above, note 101, Para 29.
\textsuperscript{225} Ibid.
longer than most people in the current government. My children were born here too.

When the country split, anyone with a southern name or origin was no longer a citizen. The South Sudanese government sent a team here to register people from Sudan, and I was able to get South Sudanese nationality. However, I went to South Sudan in order to help my children obtain South Sudanese passports – never mind that they were born here and had no connection with the South. When I came back to Khartoum, I was not allowed through border control. I was arrested at the airport, as I needed a visa in order to enter Sudan. After some time, I was issued with a two-month permit. Now I am a foreigner, living here in my family home with a resident’s permit.\textsuperscript{226}

This seemingly absurd case appears like a minor inconvenience when compared to the situation facing persons of Southern origin who do not enjoy the privileged social status of X. who could, at least, acquire a South Sudanese passport and a Sudanese residence permit with relative ease. The United Nations High Commissioner for Refugees estimates that hundreds of thousands of people may have been rendered stateless by the 2011 changes to the law:

\begin{quote}
Between 300,000 and 350,000 South Sudanese live in Sudan and are at risk of statelessness. The “Four Freedoms” agreement signed between Sudan and South Sudan in September 2012, which allows citizens of both States to enjoy freedom of residence, movement, economic activity and property ownership, has yet to be fully implemented.\textsuperscript{227}
\end{quote}

Persons of South Sudanese ethnic origin are not the only group who experience difficulties in retaining or acquiring citizenship because of their ethnicity. Human Rights Watch and the International Refugee Rights Initiative have found that persons belonging to tribes with roots or present-day populations

\textsuperscript{226} Equal Rights Trust interview with X., 22 January 2014, Khartoum.

\textsuperscript{227} United Nations High Commissioner for Refugees, 2014 UNHRC country operations profile – Sudan.
in other countries, and children with a Sudanese mother and a foreign father can also face discrimination in acquiring Sudanese nationality. Moreover, the Open Society Initiative for Eastern Africa found that children can experience discrimination and disadvantage, in particular in education, as a consequence of not having Sudanese nationality.

Interviews conducted by the Equal Rights Trust identified a number of communities where persons experienced difficulties in acquiring nationality documents. Individuals from these communities spoke of their belief that the responsible institutions were not objective, being subject to tribal prejudice and corruption. This situation is exacerbated by the practical difficulties faced by those without citizenship in holding police officers accountable for their actions.

T., who is originally from Darfur, spoke to the Equal Rights Trust’s researchers about the actions of the police when he challenged them about their refusal to register a relative’s citizenship. T. said that he went to register his aunt’s citizenship, but the police officer told him to go to issue it in his own country. When T. replied that Sudan is his country, the police officer slapped him. T. slapped the officer back. The officer issued a legal notice against him. T. was detained and beaten. In his view, a tribal conflict nearly erupted and was only resolved internally when the police officer dismissed his accusation.

**Ethnic Discrimination in Access to Resources, Investment and Land**

Many of those interviewed by the Equal Rights Trust expressed their belief that the al-Bashir regime allocates government investment, services and infrastructure spending towards areas dominated by ethnic groups perceived to be pro-government. In a recent article, Dr Medani provides a cogent analysis of the interplay between the government’s approach to “non-Arab” communities, the socio-economic deprivation of areas dominated by these groups and the persistence of armed conflict:

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Perhaps one of the most crucial shortcomings in Sudan’s political history, which strikes at the very essence of the meaning of human rights, is the continual marginalisation of citizens of the periphery in all aspects of human rights: political, civil, economic, social and cultural. The so-called pluralistic political parties have manipulated these differences between the centre and the periphery, thus depriving populations of areas outside the Nile valley who, in most cases, happened not to be of the so-called “Arab” descent, or not wholly belonging to the Islamic faith, or both. Only at times of general elections would political leaders seem to pay attention to those “citizens” until the polls are over. Then, the socio-economic exclusion sets in again until the next round of general elections. Under military regimes the lawful claims of marginalised people are considered as rebellious warfare that have been suppressed by armed and security forces. One does not have to look back long to recall the North/South conflict, ending in the recent separation of the South, and one also continues to ponder what fate awaits the beleaguered Sudan – what is left of it – in Darfur, South Kordofan and Southern Blue Nile.\(^{231}\)

The 2011 Doha peace agreement required, along with the disarmament of armed groups, justice and compensation for victims, also the creation of a Darfur Reconstruction Fund. This has not been implemented, and unequal development remains a crucially important form of ethno-regional discrimination of which the government is responsible. In addition, Salih Mahmoud Mohamed Osman, a human rights lawyer and politician from Darfur, told the Equal Rights Trust that Darfuri IDPs in Khartoum living in informal settlements had been victims of the floods that swept the area in the summer months of 2013:

They had been given plots of land in flood areas and, having received absolutely no assistance from the government, thousands of Darfuri people remained homeless. International humanitarian donations that arrived from Arab countries were distributed only among Arabs, never to Darfuri.\textsuperscript{232}

Prof Yousif told the Equal Rights Trust that the al-Bashir regime would “divert resources for its own benefit”, and analysed the case of the Beja people in East Sudan.\textsuperscript{233} The region is extremely poor in resources, and has been almost completely neglected since the decline of cotton production established in the region by the Ottomans. Since Sudan’s independence, the Beja have been almost completely marginalised. Lack of representation in government in its turn led to limited investment in the region, and a consequent lack of education and health services, poor infrastructure and chronic malnutrition among the people. All this led to armed conflict between the government and the Eastern Front, a coalition of rebel groups including the Beja Congress and the Rashaida Free Lions. As part of the Eastern Sudan Peace Agreement, signed in 2006 in Asmara, Eritrea, the government agreed to invest US $5 billion in the development of Eastern Sudan. However, due to a combination of mismanagement and corruption, to date none of this funding has been allocated. In Prof Yousif’s view, at present the government is trying but is not capable of developing the region, which has arguably the worst levels of poverty, and as a result Beja leaders have recently renewed attempts at armed resistance.

Dr Adam, Director of the Sudanese Social Development Organisation, indicated that investment and development in the country is focused on Khartoum and the surrounding areas, which has an adverse impact on ethnic groups residing elsewhere.\textsuperscript{234} He said that, while the annual budget does not provide a breakdown of expenditure by region or state, evidence gathered by his organisation’s network of monitors strongly indicates disproportionate investment in parts of the country dominated by certain pro-government groups. Other respondents went further, with one journalist who participated in an Equal Rights Trust focus group in January 2014 stating that

\textsuperscript{232} See above, note 179.
\textsuperscript{233} See above, note 156.
\textsuperscript{234} See above, note 168.
the al-Bashir regime wanted to create a new map, with an “Arab triangle” centred on Khartoum and the areas to its immediate north receiving greater investment and services.\textsuperscript{235}

There is also evidence to suggest that within particular states or regions, inter-ethnic competition over scarce resources has manifested itself in discrimination in the distribution of land, with both formal and informal decision-making bodies appearing to favour certain ethnic groups. A UNDP report from 2006 found that in North Kordofan, outsiders could not settle in the area without the consent of the leadership from the dominant local group, while in North Darfur, the head of a \textit{hakura}\textsuperscript{236} group is said to hold title in the land in a locality, and may allocate uncultivated land to outsiders in return for payment in kind.\textsuperscript{237}

In River Nile State, the Equal Rights Trust’s researchers found evidence that residents in the Hababna area – in particular in the Misiktab village – refused to live near members of the Hasania tribe. Interference with the work of the committees responsible for land distribution in the area has led to conflicts arising from alleged racial and ethnic discrimination. In Kassala, we found evidence of discrimination against the Bani Amer, an indigenous sub-group of Beja, in the allocation of land and resources, as illustrated by the following testimony from B.:

\textit{The people from Halfa call our residences squatter housing and we have been asking for planning permission for our residences since 1980. The minister approved it, but his decisions are broken here. (...) This has happened three times, the last one occurred in 1993 and we asked to meet the President. (...) The area was then...}

\textsuperscript{235} See above, note 133.

\textsuperscript{236} \textit{Hakura} is a system of land tenure which has traditionally operated among settled agricultural tribes in Darfur, to the exclusion of nomadic pastoralist groups, and has thus been a key factor in perpetuating the conflict between ethnic groups in the region. For further discussion of the role of the \textit{hakura} in inter-ethnic conflict, see, for example: Unruh, J, \textit{Opposed Sets of Collective Action in a Conflict Context: Land Rights in Darfur}, McGill University, available at: http://www.landandpoverty.com/agenda/pdfs/ppt/unruh_jon_powerpoint.pdf.

\textsuperscript{237} United Nations Development Programme, \textit{Share the Land or Part of the Nation: The Pastoral Land Tenure System in Sudan (Study 3)}, 2006.
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granted planning permission but no services were offered, because the population are from the Hadandawa and Shukria and other herding tribes. The Halfa people do not consider us as belonging to the area and see us as riffraff.²³⁸

Ethnic Discrimination in Education, Employment and Political Participation

Around the world, direct discrimination on the basis of language is frequently at the same time indirect ethnic discrimination. Sudan is not an exception. As noted in section 1.3 above, the official languages of Sudan are Arabic and English. In practice however, Arabic is the only language used by government departments and agencies. As a result, non-Arabic speakers can experience disadvantage in access to education, employment and other areas of life. The role of Arabic as the effective language of government, and the impact which this has on non-Arabic speakers cannot be overstated, particularly in view of the ethnic, cultural and religious significance of the language. Arabic is the language of the Qur’an, and there is a strong perceived connection between the use of Arabic and the Islamic cultural project which celebrates Arab and Muslim identities to the exclusion of other groups. Similarly, language interconnects with ethnicity and tribe: if a person cannot speak fluent Arabic, there is a perception that this person belongs to an “African” ethnic group.

Arabic is the language of primary and secondary education, with English being taught as a second language in secondary schools and as the language of instruction at selected departments in a few universities. In order to be admitted to university, students completing high school are required to pass examinations in four subjects: English language; mathematics; Arabic language; and religious studies. The lack of instruction in native languages effectively forces children from ethnic minority communities to learn to communicate and receive instruction in Arabic. In 2011, for example, a traditional leader of the Otoro tribe in the Nuba Mountains told the Guardian newspaper about how the use of Arabic was enforced in local schools, stating that after Sudan’s independence from Great Britain:

²³⁸ Equal Rights Trust interview with B., October 2011, New Halfa.
[L]ocal languages were forbidden in schools, where offenders were caned in front of other students and forced to carry the image of a donkey on their back. The only way to get rid of it was to find someone else making the same “mistake” and pass it to them.\textsuperscript{239}

During the Equal Rights Trust’s research for this report, cases of discrimination on grounds of language were shared by focus group participants in the towns of New Halfa and Kassala in Eastern Sudan. New Halfa is occupied predominantly by Nubians who migrated from Wadi Halfa in Northern Sudan, having been displaced by dam construction. Kassala is the capital city of Kassala state, and is home to large numbers of internally displaced persons from different parts of Sudan, as well as refugees from Eritrea and Ethiopia. Interviews in these two towns showed that discrimination based on language was rampant in administrative bodies, courts, media, cultural and educational institutions. A number of those interviewed typically reported inability to access basic services due to lack of translators from and to the local languages in the administrative bodies and the courts. Students whose native language is not Arabic suffer exclusion and are denied their right to learn in their own languages.

But regardless of their fluency in Arabic, ethnic origin is a stand-alone barrier to employment, education and services. There are very few non-Arabs in the civil service, the army, the police and the security services. Darfuri students are reportedly often discriminated against merely because of their ethnic origin. Unlike Arab students, they do not get any financial assistance with their student fees and when they fail to pay on time, they are excluded from universities.\textsuperscript{240}

Ethnic discrimination in employment, which has been noted by the International Labour Organisation (ILO),\textsuperscript{241} was also evidenced in the Equal Rights Trust’s field research in a number of places. For example, N., from the New Thawra neighbourhood in New Halfa, stated that:

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{239} Fagotto, M., “Nuba mountains bear scars of Sudan’s forgotten war”, \textit{The Guardian}, 3 July 2011.
\item \textsuperscript{240} See above, note 179.
\item \textsuperscript{241} See above, note 151.
\end{itemize}
\end{footnotesize}
In the last forty years in the region of Halfa, even though there are uncountable numbers of Nubian graduates, there are very few who are employed by the council – four employees and three workers.\textsuperscript{242}

Z., a man interviewed in South Darfur, spoke of corruption and discrimination along political and ethnic lines:

\begin{quote}
I’m a 51 years old man from the Zagawa tribe in Darfur. Discrimination in the work place is frequent and some are lucky because they have a connection with an important person or because they belong to the right tribe. (...) Job interviews are just procedural. There are certain jobs that are intended for specific people or tribes, e.g. Sudan TV, security agency, energy and mining. Border guards are from one specific tribe. That is why I chose to work as a freelance businessman so that no one can control or insult me.\textsuperscript{243}
\end{quote}

The Equal Rights Trust also found evidence of ethnically based harassment overlapping with gender prejudice in the workplace, including the following example from a Nuba woman in South Darfur:

\begin{quote}
I sell tea at the market place to feed my five daughters and four sons. All of my children go to school. Their father gives us half of his pay check but I also have to work. Because I am a Nuba woman selling tea, Arabs think I am not a decent woman and that is why anyone who buys tea from me considers himself to have liberty to speak inappropriately to me, and asks me to do things with him. This is very frustrating and demeaning. If I was an Arab woman, I would not have been treated this way. The officials don’t treat us respectfully and think of us the same way and if anything happens the police treat us as if we are already criminals.
\end{quote}

\textsuperscript{242} Equal Rights Trust interview with N., October 2011, New Halfa.

\textsuperscript{243} Equal Rights Trust interview with Z., November 2011, Nyala.
Every day I go to the market is a day where I have to endure injustice.\textsuperscript{244}

The electoral system, including the national and state level, favours the larger national parties and effectively disenfranchises ethnic minority groups. According to the Sudan Democracy First Group, this is achieved through single seat constituencies, a minimum threshold for parties, and the majoritarian voting system for both the Presidency and governorships.\textsuperscript{245} Their detailed analysis leads them to argue strongly against holding of the next general election scheduled for 2015:

\textit{The exclusionary nature of the electoral system is exacerbated by the decision-making systems and powers within the executive and legislative bodies, such as the National Assembly and the State Legislatures, which are based on a majoritarian system. Therefore, under the current system, even participating in elections would not give minority groups the opportunity to influence national decision-making processes. Without major political change and widespread reforms, not only will elections in 2015 most likely reinforce an undemocratic system, they will feed the divisions in the country and the fundamental driver of decades of conflict: the exploitation and marginalisation of the periphery.}\textsuperscript{246}

\section{2.3 Discrimination and Inequality Based on Political Opinion}

In March 2009, the Sudanese government gave a 24 hour notice to ten international humanitarian aid agencies to leave the country, revoking their registration. This was a reaction to the arrest warrant for President al-Bashir issued by the International Criminal Court which had charged him with genocide, crimes against humanity and war crimes in Darfur. Organisations including Save the Children, Oxfam, CARE, Médecins sans frontières, Mercy Corps, and the International Rescue Committee, among others, were kicked out of the

\begin{footnotesize}
\textsuperscript{244} Equal Rights Trust interview with W., November 2011, Nyala.
\textsuperscript{245} Sudan Democracy First Group, \textit{Sudan’s 2015 elections: an ominous déjà vu?}, 6 May 2014.
\textsuperscript{246} Ibid.
\end{footnotesize}
county unceremoniously. By definition, such organisations are non-political and their mission is limited to ensuring basic necessities and alleviating the suffering to people in humanitarian crises, regardless of their causes or location. The fact that the Sudanese government found it possible to close them illustrates the depth and strength of its oppressive nature. Exposing hundreds of thousands of Sudanese people to hunger, disease and death, and causing indignation across the world, this expulsion remains the signature act in the al-Bashir regime’s recent history, and even the subsequent return of some of the organisations to Sudan could not remove the stain.

If international humanitarian organisations with their strict political neutrality cannot enjoy safe space to do their indispensable work in Sudan, it is no wonder that people who do take sides in politics and voice political positions not aligned to those of the government face problems in al-Bashir’s Sudan. Their political opinion is the basis on which they are discriminated against. This section looks into the range of patterns of political discrimination in Sudan.

The Interim National Constitution provides for a range of fundamental civil and political rights, including the rights to freedom of expression, association and assembly, in ways which are broadly consistent with the ICCPR. Indeed, in its recent report to the UN HRC, the government of Sudan was keen to stress its adherence to these rights, stating that “freedom of opinion and expression is one of the most fundamental freedoms and is essentially the starting point for other freedoms” and affirming that the right to freedom of assembly is “a human right that must be enjoyed by all”. In addition to the protection of these freedoms, the Constitution states that all persons are “entitled without discrimination, as to (...) political opinion (...) to the equal protection of the law”.

In practice, however, political freedom remains limited in Sudan and politically based discrimination is extensive. Evidence collected by the Equal Rights Trust and other organisations indicates that agents of the state – in particular the NISS – seek to repress dissent, with the effect that discrimination on grounds of political opinion is a significant problem, affecting not just those

248 See above, note 132, Paras 143 and 157.
249 See above, note 247, Article 31.
directly involved with opposition political parties, but also independent media, civil society organisations and social campaigners.

International non-governmental organisations have criticised the Sudanese regime for its treatment of political opponents and dissidents, both real and perceived. Freedom House, which produces an annual assessment of political freedom in the countries of the world, has given Sudan a seven, the worst possible rating, in both the civil liberties and political rights categories of its assessment.\textsuperscript{250} Sudan is one of only nine countries in the world that have the lowest ranking for both categories, an indication of the climate of repression in the state. In its 2013 report on Sudan, Human Rights Watch stated that the authorities:

\begin{quote}
[H]arassed, and arbitrarily arrested and detained other perceived opponents of the government, including suspected members of the Sudan People’s Liberation Movement/North – which was banned in September 2011 – members of other opposition parties, civil society leaders, and journalists.\textsuperscript{251}
\end{quote}

**Suppression of Political Protests**

The repressive tactics of the security services are most clearly evidenced in their response to public protests, such as those which arose in 2011, 2012 and 2013. In response to these protests, activists were arbitrarily arrested and detained, in some cases for long periods, and there is evidence of beatings and other forms of torture and ill-treatment. A statement to the UN Human Rights Council by the East and Horn of Africa Human Rights Defenders Project, Amnesty International, the Cairo Institute for Human Rights Studies and others describes the events of June 2012, when the authorities sought to quell protests by students and others angry at the ending of government subsidies on food and fuel:

\begin{quote}
The Sudanese authorities again responded to demonstrators’ demands through suppression, including campaigns
\end{quote}

\textsuperscript{250} Freedom House, *Freedom in the World 2014: Sudan.*

\textsuperscript{251} Human Rights Watch, *World Report 2013: Sudan.*
of arbitrary arrests carried out against students and youth leaders, human rights defenders, civil society and political activists, and opposition leaders. Indeed, an estimated 1,500 protesters were arrested, and detainees frequently reported being subjected to torture and other forms of ill-treatment while being held by the Sudanese National Security Services (NSS). In suppressing demonstrations, the Sudanese police and security forces frequently beat and harass protesters, and female demonstrators, who play a major role in mobilising the population, are particularly targeted for sexual and verbal abuse. In this context, over 100 female demonstrators have been detained.252

During a field mission to Sudan in January 2014, the Equal Rights Trust interviewed many people who had been involved in the most recent protests – in September and October 2013 – and who had been arrested and abused as a result. Some of those with whom the Trust spoke had been held for prolonged periods and subjected to torture and other forms of ill-treatment. Others testified to the shooting of protesters by security services. Prof Ebtisam Sanhouri Elrayh, a Lecturer of Constitutional Law and Human Rights at the University of Khartoum, told the Trust that she had been arrested with her niece on 4 October 2013 for protesting about the killing of her cousin, Salah Sanhouri, who had been shot while taking part in the protests against fuel price rises a few days earlier.253 Salah, a pharmacist, was one of at least 34 people killed between 23 September and 1 October 2013.254

Estimates of the total number of people killed in the 2013 protests vary. According to the Sudan Tribune newspaper, the “governor of Khartoum state, Ab-

252 United Nations Human Rights Council, Joint written statement submitted by the Cairo Institute for Human Rights Studies (CIHRS), the East and Horn of Africa Human Rights Defenders Project (EHAHRDP), non-governmental organisations in special consultative status, A/HRC/21/NGO/90, 7 September 2013, p. 3.


254 Gulf News, “Sudan ‘martyr’ Salah becomes symbol of protest”, Gulf News, 1 October 2013. Gulf News reported that: ‘Authorities say 34 people have died since petrol and diesel prices jumped more than 60 per cent on September 23, sparking the demonstrations... Activists and international human rights groups said at least 50 people were gunned down, most of them in the greater Khartoum area.”
del Rahman Al-Khidir, had said more than 60 people died during the recent wave of protests.\textsuperscript{255} However, Amnesty International estimated that 210 people had been killed in Khartoum alone.\textsuperscript{256} Dr M., a psychologist who provides assistance to victims of violence and torture, including some of those involved in the protests, told the Equal Rights Trust that approximately 230 activists had been killed.\textsuperscript{257} The ACJPS was able to document the deaths of 185 persons, and in its June 2014 report to the UN HRC provided a list of the names of 144 persons who had been killed during the protests in September-October 2013.\textsuperscript{258}

There are also varying estimates of the total number of people arrested during and as a result of the 2013 protests. Dr M. told the Equal Rights Trust that the figure could be as high as 2000 people,\textsuperscript{259} while the authorities were reported as stating that 600 people had been arrested.\textsuperscript{260} Amnesty International reported that it had received reports of more than 800 arrests, including 17 members of the Communist Party and at least five members of the youth movement Sudan Change Now. All were held for at least one week, before being released without charge, some for a number of weeks; Mohayed Siddig, a founding member of the Sudan Change Now movement was held incommunicado for over a month.\textsuperscript{261}

The Equal Rights Trust and others have documented the torture and ill-treatment of some of those detained after protests. A number of those with whom the Trust spoke stated that some of the protesters arrested in September and October 2013 remained in prison as of January 2014. Furthermore, while it was not possible to provide estimated total numbers, M., a female human rights defender, stated that, as of mid-February 2014, she knew of at least 30 people who were still imprisoned.\textsuperscript{262}

\begin{thebibliography}{99}
\bibitem{255} Sudan Tribune, “Death toll from Khartoum protests exceeds 60 people”, \textit{sudantribune.com}, 8 October 2013.
\bibitem{257} Equal Rights Trust interview with Dr M., 20 January 2014, Khartoum.
\bibitem{258} See above, note 122, pp. 65–68.
\bibitem{259} See above, note 257.
\bibitem{260} See above, note 255.
\bibitem{261} See above, note 186, p. 12.
\bibitem{262} Letter from M., received 14 February 2014.
\end{thebibliography}
In 2014, partly in response to the urging of the Independent Expert on the situation of human rights in the Sudan, the government of Sudan produced a report into the 2013 demonstrations and the conduct of the security services. The government summarised the findings of this report in information provided to the UN HRC, stating that the police were acting to “protect the individuals and private and public property” in the face of “violent acts by groups of demonstrators” which turned into clashes between the police and the protesters. According to the state’s report, the results of these clashes were:

- Loss of lives which amounted to 85 deaths, including many police officers and personnel who were trying to maintain public safety and security.
- Infliction of heavy damage on public and private ownerships.
- Many injuries amongst individuals and security organs personnel.
- A big number of suspects were arrested under charges of criminal mischief and theft (sections 69, 77, 182 and 174 of the Criminal Law Act 1991).

The state also concluded that “there is no any [sic] eye witness who could specifically identify the person who fired (...) where regular forces were allegedly the shooter.” In its reply to the List of Issues put to it by the HRC, the government claimed that some of those who died were “shot in the back clearly by fellow so-called demonstrators.” Commenting on the state’s report on the 2013 protests, the Independent Expert noted that “the report does not provide evidence of a thorough and independent investigation of the human rights violations that occurred” and that:

The finding in the report that it was difficult to locate any of those who shot and killed so many people in broad daylight

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263 See above, note 188, Paras 32–33.
265 Ibid.
266 See above, note 100, Para 26.
during the demonstrations is unacceptable both morally and legally. While the Government’s report put the number of lives lost at 85, there are alternative reports from within the Sudan listing a higher number of deaths and injuries from gunshots during the demonstrations.\(^{267}\)

On 11 March 2014, a student at the University of Khartoum, Ali Abakar Musa, was shot and killed by state security agents, during a demonstration which followed a public meeting organised by the Darfur Students’ Association concerning escalating violence in the region.\(^{268}\) On 6 May 2014, the Sudan Democracy First Group reported that on 28 April 2014, four members of the Sudanese Ba’ath Party had been detained in Khartoum following a public talk, and seven more party members were detained the following day. Three of them were convicted of breach of public peace and sentenced to 40 lashes and a fine. According to this source, some political prisoners were held incommunicado, including Tajeldin Ahmed Arja, who had been in detention since 24 December 2013. He had been arrested because of critical remarks he addressed to the Chadian and Sudanese presidents at a conference in Khartoum.\(^{269}\)

**Discriminatory Torture and Ill-treatment on the Basis of Political Opinion**

As asserted above, among the most serious human rights abuses committed against those expressing political opinions opposed to the regime is the use of torture and other forms of ill-treatment. The US State Department report for 2012 stated that “government security forces beat and tortured persons in detention, including members of the political opposition, civil society activists, and journalists.”\(^{270}\) Similarly, the UN Independent Expert on the situation of human rights in Sudan expressed concern about the arbitrary detention of political activists in February and June 2013.\(^{271}\) A joint statement to the UN Human Rights Council in September 2013 contained specific allegations of torture of student demonstrators during 2012:

\(^{267}\) See above, note 188, Paras 40.
\(^{268}\) See above, note 122, Para 84.
\(^{269}\) See above, note 245.
\(^{271}\) See above, note 145, Para 28.
On 7<sup>th</sup> and 8<sup>th</sup> December 2012, the bodies of four university students were found in an irrigation channel near to Al Jazeira University after a student protest against the denial of the usual tuition waiver for Darfuri students was violently dispersed by the ruling party’s student militia, NISS and police. No serious investigation has been carried by the government into the incident. The incident incited protests across the country condemning the death of the students and calling for investigations, but these protests were also violently dispersed. On 8<sup>th</sup> November 2012, National Intelligence and Security Services (NISS) reportedly arrested seven students in Nyala in Darfur apparently because they had participated in the Nyala student protests in July 2012. After beating and interrogating the students, the NISS agents poured acid on their hands. One of the students has lost the use of his hand which was burned to the bone. Security forces continued threatening the students and their families and lawyers, warning them against seeking legal redress.\textsuperscript{272}

In 2012 and 2013, the Equal Rights Trust met dozens of independent journalists and human rights defenders who had been subjected to politically-motivated torture and ill-treatment, particularly in the aftermath of public protests. For example, journalist Anwar Awad Ali Elsamani was subjected to abuses following his arrest on 29 June 2012, in the wake of a major protest in Khartoum:

\begin{quote}
[A] pick-up car full of people stopped suddenly. The man sitting in the passenger seat got off and held me before asking his companions to take me to the car. Some 14 people put me in the car’s box. (…)

As I entered the building, they took my press identity card and my mobile phone. Like the other detainees, I was forced to sit on my knees after lifting my trousers well above my knees and putting my elbows on the
\end{quote}

\textsuperscript{272} See above, note 142, p. 3.
wall while looking on the floor. They started to verbally abuse us, asking us to lick our elbows. They hit anyone who made even a slight change in their posture. After about 20 minutes, they asked us to hide our heads inside our shirts and hold each other’s shoulder in a form of a column. They took us outside the building to a pick-up car, where there were some five people sitting in the box with water hoses, hitting anyone raising his head or changing his posture. Verbal abuse continued.

[Another man] said, “You know it was the wrong path, yet you follow it and then come here and say I am sick… you are mistaken, aren’t you?” I replied by saying, “No, I am not, because the road was open and not closed”. He was very angry and called another person, saying to him, “Come and take care of this journalist so he learns his mistake.”

After a few seconds, two big hands hit me in my ears about seven times. I felt severe buzzing inside my ears and was about to go unconscious. He verbally abused me as he was leaving. I lost hearing for a few minutes and gradually started to get it back. (…) Sporadic hitting, humiliation and repeated questions continued from about 8 pm until 11 pm. (…) 

At around 1:30 am, a guy (seemed to be an officer because he was issuing orders) ordered that each detainee gets ten lashes. The order was executed immediately. When my turn came, I went to the guy who said to me “you are the journalist, huh, they said your story is different, that’s why you are not going to be punished with these people; others will take care of you.”

I was summoned for interrogation again. They took me to the first floor and then to an office at the end of a corridor to the left. There was a guy in his sixties, wearing a Jalabiya, sitting in a chair and stretching his legs on a
table in front of him. He said to the other guy, “give him back his belongings”, and told me to leave (…) 

Later, I was seen by a number of doctors in Khartoum and Beirut who said the torture I was subjected to had resulted in a number of health problems, especially in my ears and neck, which needed surgical intervention.273

Since the early 1990s, Dr M. has provided counselling to a number of people who have been tortured or subjected to other forms of ill-treatment by state security services. He confirmed to the Equal Rights Trust that the treatment of the journalist Mr Elsamani was part of a much wider pattern of discriminatory torture and ill-treatment against those who challenge the regime. Dr M. told the Equal Rights Trust:

Severe torture on political grounds was typical of the government’s behaviour in the past, when there were so called “ghost houses” – secret locations in which torture was taking place. Political activists (…) have been subjected to all kinds of physical, psychological and sexual violence. The philosophy behind this was that violence served to break the resistance of the people. They knew that the Sudanese people have experience of democracy and popular uprisings (…) and so it took violence to crush any opposition physically and psychologically.

By now, the authorities have largely succeeded in this. Many people have emigrated over the years, and the exodus of political activists has empowered the regime. The accumulation of traumatic experience since the start of the al-Bashir regime has made it very difficult to protest. The government’s attitude has not changed. Last September, during the street protests, NISS and police were apparently told to shoot to kill. Those who

273 Excerpts from the testimony of Anwar Awad Ali Elsamani are reproduced here with the permission of the Journalists for Human Rights (JHR) network. The full testimony is available at: www.jhr-online.org.
were detained were sometimes brought to secret places and not to the known offices of the security service.

Of those subjected to various kinds of abuse, very few are willing to file complaints. As far as I know, no member of NISS or police – with the exception perhaps of one case where a person from Port Sudan challenged the NISS – has been charged with any offence for their conduct during the protests.274

Asked if his own position as a professional provided any shield from arbitrary arrest, Dr M. replied: “I, too, was arrested together with seven other academics on 18 November 2013 and held for two days, in a case that became known as the “university professors' arrest”.”275 Yet Dr M. felt that there had been a certain improvement in respect of the severity and spread of torture based on political opinion in recent years. As part of this improvement, known political leaders had not, to his knowledge, been physically abused in the last two or three years. Very significantly for the theme of this report, Dr M. also confirmed what a number of those interviewed by the Equal Rights Trust had indicated: the worse treatment of protesters originating from Darfur or the South. Thus, it is possible to discern a clear pattern of multiple discrimination on the grounds of political opinion and ethnicity in respect to the rights to freedom from torture and to personal security and safety.

On 19 June 2014, Freedom House appealed to NISS to end the extended detention and torture of three pro-democracy student activists – Mohamed Salah Abdel Rahman, Moamer Musa, and Tajelsir Jaafar Tajelsir, and release them immediately. The three activists were detained for their peaceful protests against the killing of the Darfuri student Ali Abakar Musa mentioned above and the injuring of several others when security forces opened fire on a student protest at Khartoum University in March.276 In the state’s dialogue with the HRC in June 2014, the Sudanese authorities directly denied that there were any political detainees in the country’s 238 prisons, and stated that there were “no reported complaints to the various national mechanisms

274 See above, note 257.
275 See above, note 257.
or court cases of torture" during the period covered by its report. Nevertheless, the Committee expressed its concern at the “numerous allegations of torture or ill-treatment committed by State officials”.

**Discriminatory Denial of Freedoms of Expression, Assembly and Association**

As noted above, the Sudanese Constitution provides for the rights to freedom of expression, assembly and association, and the government has been keen to state its commitment to the protection of these rights. However, the government has enacted laws which serve to restrict these rights, and has acted to repress the actions of independent media, academics and students, and civil society organisations. The Equal Rights Trust’s research and that of others indicate that these actions have targeted those critical of the regime and are thus likely to constitute direct discrimination on the basis of political opinion.

The Press and Publications Act 2009 has been criticised by Sudanese media and civil society for falling short of international standards on freedom of expression. Regarding permitted restriction of this right, section 5(2) states:

> [S]ave as maintained in this Act with regards to national security protection, public order and health, newspapers shall not be confiscated or shut down nor shall journalists and publishers be imprisoned on issues pertaining to their practice save under the provisions of this Act.

A number of the Act’s other provisions can be used as the basis for restricting the free expression of the media, while section 5(2) itself has provided sufficient latitude for the security services to confiscate and shut down newspapers and to harass, arrest and imprison journalists. While section 25 sets out a number of rights for journalists, section 26 imposes a number of duties, which include *inter alia* an obligation to “respect and protect public manners, morals, religious values, individual honour, privacy and sanctity as well as

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277 See above, note 102, Para 15.
278 See above, note 144, pp. 9–10.
to refrain from offending public decency.”\textsuperscript{280} In practice, the Press and Publications Act permits significant discretion to the authorities and the media face significant restrictions, as summarised by Hussein Saad of the Sudanese Council for Defending Rights and Freedoms:

\textit{The margin for freedom of expression has become nearly non-existent, and the Sudanese press is already subjected to pre-publication censorship; newspapers are closed and confiscated. Closures and court cases against journalists have become common.}\textsuperscript{281}

Throughout 2013, the ACJPS, in its bi-monthly \textit{Sudan Human Rights Monitor}, documented a number of cases of newspapers being closed down or subjected to other forms of pressure by the NISS. In April 2013, NISS agents reportedly told the chief editor of the \textit{Al Sahafa} newspaper to resign his position or the newspaper would be closed down. The chief editor, Mr Al-Nour, told the Centre that he “believe[d] that his termination was related to his continuous protest against newspaper censorship”.\textsuperscript{282} In its June 2013 issue, the \textit{Monitor} reported that:

\textit{On 3 June the Director General of Al Midan newspaper, Madiha Abdalla stated to Alsharg Alawsat newspaper that the NISS had prevented Al Midan from publishing for two days. On the third day, the security stopped them from printing by verbal order. (...) Al Midan has been prevented from distribution for one year (...) Ms. Abdalla was also reported to have accused the Government of Sudan of shutting down any newspaper that opposes President Omar al-Bashir, citing the closure of two other independent newspapers, and stated that even newspapers loyal to the government would be shut down if they criticised the National Congress Party. Al Intibaha, a pro-government newspaper reportedly owned by President al-Bashir’s uncle and with the widest distribution}

\textsuperscript{280} \textit{Ibid., section 26(i).}
\textsuperscript{282} \textit{Ibid.}
In addition to closing down newspapers and confiscating printed editions, the Equal Rights Trust was informed by journalists that the NISS practiced regular pre- and post-publication censorship.\textsuperscript{284} According to journalists participating in an Equal Rights Trust focus group, editors are expected to observe “red lines” which specify topics that cannot be discussed, such as the conflicts in the Nuba Mountains, South Kordofan and Darfur, the International Criminal Court, or any issues of government corruption. The journalists told the Equal Rights Trust that NISS officers would either come to newspaper offices demanding to see and approve editions, or review printed editions at printing houses, requiring printers to pulp newspapers which were considered unacceptable. In 2014, the frequency of pre-publication censorship cases reportedly decreased, but post-publication censorship was on the rise. According to a June 2014 report, over 15 newspapers had been subjected to post-publication censorship in the period January to March 2014.\textsuperscript{285}

In addition to these methods of restricting media freedoms, the Equal Rights Trust also found evidence of journalists being harassed, arrested and detained by the NISS. Since 2010, the Equal Rights Trust has worked in partnership with the Journalists for Human Rights (JHR) network, which provides capacity-building and support to journalists who are committed to exposing human rights abuses in Sudan. The JHR coordinator, Faisal el-Bagir, told the Equal Rights Trust that since 2012, at least 72 journalists had been arrested in the course of, and because of, their work.\textsuperscript{286} According to the JHR, from May 2013 to May 2014 there were over 90 cases of confiscation and closure of newspapers in Sudan, while during the same period, over 40 journalists had been arrested or investigated by security authori-

\textsuperscript{283} See above, note 144, p. 9.
\textsuperscript{284} See above, note 133.
\textsuperscript{285} See above, note 122, Para 145.
\textsuperscript{286} Letter from Faisal el-Bagir, received 2 March 2014.
The Trust also interviewed Mr Khalid Ahmed, a journalist charged under the Armed Forces Act, after he reported on a military operation in South Kordofan in 2013 (see Box 3).²⁸⁸

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**Box 3**

**Khalid Ahmed – A journalist facing prosecution for his reporting**

On 21 January 2014, the Equal Rights Trust met with Khalid Ahmed, a journalist from the *Al-Sudani* Newspaper. Mr Ahmed was due to appear in court the following day, 22 January, to face six charges under the Armed Forces Act. Mr Ahmed was charged with breaching articles of the Armed Forces Act related to breach of military secrets and publication of military plans. “This will be my sixth hearing in this case”, he told us. “If I am convicted tomorrow, I will go to prison for a minimum of four and a maximum of eleven years.”

Mr Ahmed was arrested and charged with offences under the Armed Forces Act in June 2013, following the publication of a report he had written about a visit to the Abu Karshola town in the South Kordofan region by Lieutenant General Essmat Abdulrahman, Chief of Staff of the SAF. Mr Ahmed was one of three journalists invited by the Sudanese Armed Forces to cover this visit, which was intended to showcase the “liberation” of the town from the SPLM-N. During the visit, the convoy in which the Lieutenant General was travelling was attacked by local rebel forces.

On his return to Khartoum, Ahmed filed a report with *Al-Sudani*. However, a second report attributed to “Khaled” was then published online. The second report attributed to “Khaled” described the attack in more detail, stating that the convoy had been forced to retreat to the centre of Abu Karshola.

This second report stated that a military helicopter called in to strike the rebels had been shot down and that the Sudan Armed Forces had suffered a number of casualties. The report contained criticism of an unnamed General for calling in the helicopter without sufficient knowledge of the situation.

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²⁸⁸ The content of Box 3 has been derived from: Equal Rights Trust interview with Khalid Ahmed, 21 January 2014, Khartoum.
on the ground, and of the Lieutenant General for taking a nap during the military engagement. The SAF denied the report, stating that the helicopter had been downed because of a technical fault, and refuting various other assertions made in the report.

On 4 June, Ahmed was arrested and charged with a number of offences under the Armed Forces Act, including harming the morale of the armed forces, sharing military information and tarnishing the reputation of the Chief of Staff. After a number of hearings, the charges were eventually dropped in April 2014.

The Equal Rights Trust and other organisations have also collected evidence of the NISS intervening to restrict the freedom of expression and assembly enjoyed by students and civil society activists. Participants at the Equal Rights Trust’s focus group with journalists in January 2014 spoke of restrictions on the freedom of expression of Darfuri student activists.289 Journalists informed the Equal Rights Trust of student activists who had been arrested, apparently connected to an announcement by the Vice President in April 2013 that Darfuris would not be able to make speeches following clashes between rebel forces and the SAF in the region. The ACJPS also documented a number of cases of student activists being arrested following meetings, including one case from April 2013, in which 32 members of a group calling for peace and democracy through performance were arrested and detained overnight before being released without charge.290 In the same month, the ACJPS reported the case of Ahmed Mohammed who was arrested and beaten by members of the NISS:

Four NISS officers reportedly entered the meeting and attempted to arrest one student Alfadil Ahmed Mohamed, (m), 28 years of age. During the attempted arrest, the NISS officers reportedly beat him with water pipes and their fists. Alfadil Ahmed Mohamed allegedly retaliated and stabbed one of the officers with a knife.

289 See above, note 133.
290 See above, note 281, p. 9.
The NISS officers fled the scene but later the same day, a group of NISS agents armed with Kalashnikovs entered the university and arrested 10 students.291

The activities of civil society groups have also been disrupted, with those perceived to be challenging the regime’s position on contentious issues subjected to harassment, interruption of their activities and in some cases the closure of their organisations. Faisal Salih, Programmes Director of the Teeba Press organisation, told the Equal Rights Trust that a number of training and other events which they had organised had been disrupted by officers of the NISS.292 Dr M. told the Equal Rights Trust that in 2010, he had been arrested and detained for 10 days because the NGO he directed had hosted a meeting to discuss the torture and ill-treatment of women.293 The ACJPS has also documented a number of cases of harassment of civil society organisations believed to be critical of the regime, and numerous arrests of staff members, together with delays in renewing licences to operate, which must be granted by a specially designated government body, the Humanitarian Aid Commission (HAC).294

The UN Independent Expert on the human rights situation in Sudan, in a highly critical report submitted to the Human Rights Council in September 2013, cited evidence of harassment and repression of non-governmental organisations, journalists and opposition political parties:

In December 2012, the Government shut down the operations of three organisations and (...) prevented a group of organisations from submitting a complaint against the Government’s decision to the NCHR [National Commission on Human Rights].

[T]he Government continues to arbitrarily close down newspapers and arrest journalists for publishing stories deemed critical of the Government. Although the Gov-

291 Ibid., pp. 7–8.
293 See above, note 257.
294 See, for example, above, note 281, pp. 12–13.
ernment announced in May 2013 that it had put an end to press censorship, NSS ordered up to four newspapers to cease operations in June 2013. Pre-publication censorship continues to be used against newspapers and some journalists were ordered to cease their newspaper columns. Security agencies continue to intimidate and instil fear of arrest in journalists, which consequently impedes press freedom, freedom of opinion and freedom of expression.

In January 2013, some political opposition figures were arrested and detained without charge by NSS on allegations of holding illegal meetings outside the country. At the end of his mission to the Sudan in February 2013, the Independent Expert called on the Government to either release the detainees or promptly charge them with recognizable offences before a court of law. The Government eventually released the said political detainees in April 2013 without any charges. 295

Recent evidence of repression of political, media and civil society organisations which challenge the government has also been provided by Sudanese non-governmental organisations. National and regional non-governmental organisations submitting evidence to the UN Human Rights Council and other UN bodies recorded many incidents of harassment, arrest, detention and in some cases torture and other forms of ill-treatment of political and civil society activists. For example, in a written statement to the UN Human Rights Council in February 2013, the Society for Threatened Peoples described the forced closure of four independent NGOs which were perceived to be challenging the regime:

When these NGOs and the Confederation of Civil Society Organisations in Sudan decided on December 30 to submit a written complaint to the National Human Rights Commission, police and security service officials attacked the activists and prevented them from hand-

ing a memorandum to the Commission. Dozens of security agents surrounded the commission office before the arrival of the delegation and deliberately prevented the NGO representatives from entering the building. The Commission sharply criticized the police action as an attack on the integrity and immunity of the Commission and as a flagrant violation of the Interim Constitution of 2005 and the National Human Rights Commission Act of 2009.296

The incident described above was occasioned by the December 2012 decision of the HAC to close down three independent non-governmental organisations: the Sudanese Studies Centre (SSC), the Al-Khatim Adlan Centre for Enlightenment and Human Development (KACE), and the Organisation for Human Rights and Development (ARRY).297 The SSC received a letter ordering the closure of the centre on the grounds that it had engaged in activities contrary to Sudanese national security,298 while KACE received a closure order which did not contain any justification.299 KACE appealed the decision, writing to HAC Commissioner Dr Suliman Abdelrahman Suliman. Dr Suliman responded that the organisation was in breach of Articles 7(1) and 7(2) of the Humanitarian and Voluntary Work Act, which concern, respectively, a requirement to obtain HAC approval for all project finances and a prohibition on receiving funds from entities outside Sudan without HAC approval.300 KACE then took its appeal successively to the Ministry of the Interior and the Administrative Court, both of which dismissed the case for the reasons given by Dr Suliman. On the first anniversary of the organisation’s closure, KACE issued a statement which argued inter alia that:


297 Frontline Defenders, Sudan: Government crackdown on civil society organisations, 11 January 2013.

298 Ibid.

299 Al Khatim Adlan Center for Enlightenment, Statement on the Closure of Al Khatim Adlan Center for Enlightenment, 8 January 2014.

300 Ibid.
The closure of Al Khatim Adlan Center for Enlightenment was based on discrimination and has no legal basis. KACE will hold President Bashir to his statement that the injustices and exclusions of the past 24 years will be put to an end.\textsuperscript{301}

Throughout the early months of 2014, KACE’s appeal was beset by procedural delays. At the beginning of the scheduled hearing at the Administrative Court of Appeal on 8 April 2014, lawyers representing KACE were informed that the case file was missing; and later that it had been transferred to the Supreme Court, in what KACE took as a sign of “an intention to stall the case further”.\textsuperscript{302} At the time of writing, KACE was still awaiting its Supreme Court hearing.

In another case of restricting civil society, the Salmmah Women’s Resource Centre, an organisation founded in 1997 as a resource centre with expertise in gender equality and women’s rights, was closed on 24 June 2014, when the Ministry of Justice cancelled its registration license.\textsuperscript{303} While a letter from the Ministry provided no reasons for the closure, Frontline Defenders reported that the decision was likely to be a response to the work of the organisation’s Director, Fahima Hashim, who had participated in the Global Summit to End Sexual Violence in Conflict in London only two weeks earlier.\textsuperscript{304}

At the end of its research visit in January 2014, the Equal Rights Trust estimated that, of the approximately 60 civil society actors in Khartoum with whom we spoke, only five had not been arrested at some point in the last three years, in connection with their work.

\textit{Political Discrimination in Land Allocation, Employment and Education}

Political discrimination is not limited to torture, ill-treatment, and the denial of civil and political rights. The Equal Rights Trust’s field research found evi-
dence of discrimination on grounds of political opinion affecting equal participation in other areas of life, including the allocation of land and employment, in both the public and private sectors.

In the city of Kassala, for example, focus group participants indicated that farm land was distributed exclusively to farmers belonging to one political party and not to the other farmers. Similarly, participants in three focus groups conducted in different parts of Kassala State testified that discrimination in employment in the public sector on the basis of tribal or regional affiliation, in combination with actual or perceived political affiliation, was widespread. These groups also stated that persons perceived to support the opposition were deprived of work and harassed in the private sector, and that in some cases their children were denied education.

The following testimony from S. in Kassala State provides an insight into the patterns of discrimination experienced by those sympathetic – or perceived to be sympathetic – to the opposition:

"I have graduated from Khartoum University, Faculty of Economics, with a very good rating. I worked as a collaborate registration assistant at Kassala University for one year and when a job offer opened for the same job I was excluded. The interview had nothing to do with the job itself; instead I was asked questions about football, politics and the Qur’an which I answered. (...) I don’t think that there were any reasons for not offering me the job except that I don’t belong to the ruling party. (...) Everyone in the state knows that getting a job is not based on knowledge. (...) It is very frustrating."  

The following testimony, from A., further illustrates the kinds of discrimination experienced by persons with “opposition” political beliefs:

"I am 50 years old. My academic qualifications are high, and my current occupation is unemployed accountant. I belong to the Gaa’lia tribe, and I’m married, with 6..."

305 Equal Rights Trust interview with S., October 2011, Kassala.
children. I'm originally from the Khawad village and lived in Kosti. I belong to an opposition party. I was fired from work in 1989 for political reasons and moved with my family back to my village in 1995. My relatives (...) helped me to get a job at the Alkameer medical centre in Khawad village where I worked for five years. There was a lot of corruption and I was asked to let things slide and when I refused to do so, I was fired. I stayed unemployed for two years. I had a house in Kosti that I rented but was forced to sell due to our financial problems.

When the money was about to finish I moved with my family to Almatama to look for a job there, but even though there were available jobs at the hospital, I was not given any job. I was then hired at a petrol station near Shandi Almatama Bridge. I worked there for 6 months. M.A., an official in Almatama locality, paid me a visit together with the secretary of the secretariat of the locality’s conference. They asked if the station was registered and I replied that I’m only an accountant. I was later informed by the owner of the station that he had to let me go because he was threatened to either fire me or register the station. After that I started buying milk and making dairy products. The officials started to fund neighbouring kiosks to do the same thing. That simply means that if you have different political views, then neither you nor your children will be able to work.\(^{306}\)

The Equal Rights Trust’s research also identified evidence of discrimination on the basis of political opinion in White Nile State, leading to lack of access to work, health services and social security. The following testimony from G., a 51 year old man from the Shaygiya tribe, currently residing in Kosti, is indicative of the types of problems experienced by members of opposition political parties in this state:

\(^{306}\) Equal Rights Trust interview with A., October 2011, Kassala.
I was a worker at the railway, the secretary of the labour’s union and a member of the Communist Party. I was arrested several times between 1982 and 1992. My wife had two miscarriages because of this. In 1992 I was taken into custody for a long period and no one at work knew where I was. My employment was terminated due to absence. When the government security officials were sure of the termination, they released me. I tried to explain to my employer what had happened but in vain. Because of the way I was terminated, I lost all my rights even though I filed many complaints.307

2.4 Discrimination and Inequality Based on Gender

Women in Sudan suffer discrimination and disadvantage in a number of areas of life, yet the Equal Rights Trust’s research indicates that two principal factors shape their experience most significantly. First, there are a number of discriminatory laws and legal provisions – in particular in the areas of criminal law and personal status law – which restrict women’s ability to participate in many areas of life on an equal basis with men; and which prevent progress in ending harmful practices such as female genital mutilation, child marriage and polygamy. Second, in addition to the harsh legal environment, women are subject to increasingly repressive, conservative religious practices which appear to be promoted by the regime.

In 2011, the Equal Rights Trust interviewed three female journalists for its bi-annual journal, *The Equal Rights Review*. Their testimonies, excerpts of which are presented in Box 4,308 provide an insight into the interaction between discriminatory laws and policies and negative social attitudes.

Liemia Abubakr

In the past, the status of Sudanese women was very good. People used to look on women in a positive way. But this was in the past.

There used to be a very strong women’s movement in Sudan. In the 1950s, women had the right to vote and there were rules on the representation of women in parliament. In 1972, a new law was passed which required that women were given equal pay for work of equal value.

When the current regime took over in 1989, it came with a specific ideology. In this ideology, women were viewed with great suspicion; women were targeted. This targeting was carried out through the law, such as the personal law, criminal law and the employment law.

A specific dress code was imposed on women, in line with this ideology. The school curriculum was revised in a way which discriminated against women. This ideology and these policies created an environment where women experienced discrimination and violence. In addition, the conflicts and war which Sudan experienced in this period created an environment in which many violations of women’s rights were carried out. As a result of these policies and the discrimination which women have experienced, the women's movement has receded.

Fatima Sulaiman Gazali Mohamed

I think the main obstacle which faces Sudanese women is the laws which have been passed targeting women. These laws legitimise certain practices, discrimination or even violence against women. This has created a pattern through which it becomes normal for people to discriminate against women.

The current situation faced by women, in the absence of awareness among most women, leads women to suffer more. This climate of discrimination transforms women’s behaviour. The oppression of women, and discrimination against them, causes women not to challenge, or raise awareness even among women. Any woman who tries to raise awareness among other
women, she is seen to be challenging the regime. I feel, as a woman, that the regime wants people to be ignorant of their rights.

They want to create an environment where discrimination is normal and where violations persist. Sometimes they use the name of religion, or the name of preserving society to justify their practices.

These practices are carried out while there is a silence in the society. The regime has used religion, customs and traditions to justify its position. The strength of the regime, the suppression of different views and the fear which this creates, causes people to be silent. People don't challenge discrimination against women.

**Sumaya Khalid Ibrahim Elmatbagi**

I am afraid that the stereotype which has been created by the government has now altered the way women are perceived within society. People now look at women from this perspective which the government adopts. This is particularly true of the generations which have grown up under this regime. Because the younger generation have been educated in a system which promotes negative stereotypes of women in society, I am worried that this may lead to further problems for women in the future.

The Equal Rights Trust’s interviews and focus groups found abundant evidence that women are subject to discrimination, harassment and various forms of ill-treatment which arise, at least in part, because of negative cultural and social perceptions of women promoted by official religious ideology. A., a 37 year old woman from Nyala in South Darfur, told the Trust:

*My husband lives outside the country and he asked me to issue birth certificates for my children in English. I told him that this cannot happen without the presence of their father, but he was insistent. So three days ago I went to the Bureau of Statistics to do this. I explained that my husband has been outside the country for many years, but they still refused to help me. It is apparent that the society’s view of women has not changed and we are still seen as inferior compared to men. Many gov-
ernment offices and bodies refuse to deal with women. It is extremely difficult for us to have a nationality or a passport issued. This is indeed utterly amazing; even if we get an education we are still unable to accomplish simple things. Women in Darfur are verbally harassed, circumcised, forced into an early marriage. I was not an exception. All of those things affected my life. I could have had a career if I was able to finish my education.\textsuperscript{309}

**Legal Provisions which Discriminate against Women**

As indicated by the testimonies of the female journalists cited above, there are a range of gender discriminatory provisions in Sudanese legislation. One academic has claimed that “there are 26 laws not in conformity with the constitution because of their explicit or implicit discrimination against women”\textsuperscript{310}

The Muslim Personal Status Act 1991 establishes a strongly patriarchal system governing marriage, the marital relationship and divorce, in which women do not enjoy legal equality. One of the most clear manifestations of this is in the establishment of a system of “guardianship” whereby women require the consent of a male guardian to marry and can be married against their will if the guardian consents. Section 25 requires that there are three essential requirements for the validity of a marriage contract: the testimony of two witnesses, the payment of a dowry, and the consent of a guardian who satisfies the requirements of the Act. Section 33 states that a “guardian must be male, adult of sound mind and Muslim”. Section 22 provides that it is for the guardian – not the woman herself – to decide upon the suitability of a proposed husband, while section 20 requires that he has regard to the husband’s “godliness”.

The effect of these provisions is to restrict women’s freedom to choose a spouse, by effectively giving authority to make such decisions to a male relative acting as a guardian. In 2012, a group of Sudanese non-governmental

\textsuperscript{309} Equal Rights Trust interview with A, November 2011, Nyala.

organisations submitted a paper to the international organisation Musawah, as part of its “Home Truths” report on discriminatory family laws around the world. These organisations harshly criticised section 25 of the Muslim Personal Status Act, stating that:

According to Article 25 of the law Sudanese women are incompetent of concluding their own marriage contracts (...) the law stated the existence of a male guardian as one of the requirements for the validity of the marriage contract; the male guardian has the right to petition the court for invalidation of a marriage if it is concluded without his permission unless the woman is proved to found [sic] pregnant or gives birth to a child.\(^{311}\)

In *High Court Case No. 207/2006*, a woman successfully claimed that she had a right to marry a person of her choosing if her guardian refused to conclude the marriage without good reason, as provided for in section 37 of the Act.\(^{312}\) While the outcome of the case was positive for the woman, it nevertheless illustrates the difficulties facing women seeking to challenge the guardianship system. The case is summarised in Box 5.

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**Box 5**

**High Court Case No. 207/2006**

In *High Court Case No. 207/2006*, the appellant challenged the decisions of the Personal Status Court of Omdurman and the Court of Appeal (Personal Status Division) allowing his daughter to marry. The defendant, the appellant’s daughter, had brought a case to the Personal Status Court of Omdurman seeking to enter into a marriage with a person against the wishes of her father in accordance with section 37 of the Personal Status Act 1991. Section 37 of the Act provides women with the right to go to court to marry

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\(^{311}\) Musawah, *Report submitted to Musawah as the result of consultations held with representatives of Sudanese Organisation for Research and Development (SORD), Motive (Partnership against VAW), Legal Forum, Mutawinat Group Khartoum, Gender Centre for Research and Training, Salmah Centre, and Asmaa Development Association, as well as a number of activists and specialists*, 2012, p. 4.

a person if their guardian refuses to conclude the marriage without a reason acknowledged by sharia. The court found in favour of the daughter and allowed the marriage to be concluded. The decision was upheld by the Court of Appeal upon appeal.

The father appealed to the High Court (Personal Status Division), citing section 22 of the Act which gave him the right, as guardian of the defendant, to object to the marriage. His refusal to permit the marriage was based on the principle of kafa’ah (equivalence) recognised under section 13(d) of the Act, which requires that the husband be suitable and compatible. He argued that his daughter was a university graduate working as a consultant whereas the man was a driver of a rakshah (a small motorcycle, also known as a toktok).

The High Court upheld the decision of the lower courts. Whilst confirming the right of the guardian under kafa’ah to oppose the marriage in principle, on the basis of the provisions cited, and his right to cancel the marriage contract if it was concluded without his consent based on this principle of equivalence, the court held that the principle of kafa’ah was based on two criteria – religious and moral values – and that satisfying these two criteria was sufficient for the marriage to be permitted.

Section 34 of the Act permits the marriage of female children, stating that “a woman who attained puberty shall be contracted marriage [sic] by her guardian on her consent and acceptance of the marriage and dower”. This is in conflict with the provisions of the UN Convention on the Rights of the Child, which provides that “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. The Equal Rights Trust interviewed N., a 20 year old Muslim woman from the Altargam tribe, who spoke of the pressures facing young women forced to marry before they reach adulthood:

*I live with my grandmother, my mother’s mother, since my parents are separated and each one has a new family. Three years ago, my father told my uncle to marry me without even bothering to tell me. When my uncle*

told me, I started screaming that I didn't want to get married. My grandmother told me to go to Nyala to my mother which I did. I later went to Khartoum to stay with my aunt (my mother’s sister). I tried to annul the marriage but when my father found out he told me that I am no longer his daughter. The court refused to annul the marriage but I appealed and was finally granted an annulment. My father appealed and the case is still ongoing. When I was married I was in the seventh grade and I was not able to go back to school. My father doesn’t think I am a person and maybe all men are like that.

From my experience I don’t think that there is any justice whatsoever. The judge didn’t want to listen to my story and told me to shut up and only listened to my father. We only have a primary school in our area and no secondary school. Families don’t educate their daughters. We live in hay houses and we have to buy water. Electricity is not available but in Khartoum the houses are nice and everything is available to those who have money.

What happened to me from my father is violence and has affected my education and even my chance of getting married again.314

The Act also establishes a hierarchy within marriage, whereby women are effectively subservient to their husbands, required to obey them in all matters, in return for a strictly limited set of rights. Sections 51 and 52 of the Act provide, respectively, for the rights and obligations of a wife and a husband in a marriage. Section 51 states that a wife has a right to maintenance from her husband, the right to visit her parents and relatives, the right to her private property, the right to be free from physical or moral injury and the right to just treatment with other wives, should the husband have more than one wife. The section reflects an assumption that husbands have an automatic right to control of their wife’s movements, body and property. Section 52 requires a wife to care for and obey her husband, be faithful and safeguard his property.

Section 75 sets out a number of situations in which a wife can be deprived of the maintenance which is her right as provided in section 51. It states that no maintenance is due where a wife refuses to move to, or leaves, the marital home without good reason or works outside the home without her husband’s agreement, provided that his objection is not arbitrary. Section 91 imposes a general obligation on a woman to obey her husband in all matters that do not contravene the law, where three conditions – the payment of a dowry, proof of her security with him, and the provision of a suitable dwelling – are met. Section 92 states that if a wife refuses to obey, her right to maintenance will lapse for the period of this refusal. Section 93 states that “disobedience” shall be found where a woman refuses to obey a court ruling, or is found to have breached one of the conditions in section 75. Section 94(1) states that women cannot be forced to obey by the court. Clearly, all these sections of the Act reflect assumptions about the role and position of women and men in a marriage which are based on the superiority of men over women. They directly restrict the freedom of married women to make free choices about various aspects of their lives, directly discriminating on the basis of their gender.

Sections 157 to 204 of the Muslim Personal Status Act set out the conditions for the dissolution of marriage. As with regard to marriage and the marital relationship, these provisions, too, institute male supremacy and directly discriminate against women on the basis of their gender. These sections of the Act enshrine sharia principles whereby divorce can be obtained through one of three methods. The first, talaq, is available to the husband alone and is effected by the husband pronouncing “I divorce you” three times. A court is then mandated to prepare official documents recognising the divorce. Talaq is subject to procedural checks which limit the man’s authority to divorce arbitrarily, in the form of a period of iddat (waiting) between each pronouncement. The second, khula, is a mutual agreement to divorce in which the couple agree a monetary settlement. The third kind of divorce permitted under the Act is tafriq, whereby the court can order a divorce on one of five grounds: physical or emotional injury; irreconcilable differences; impotency of the husband; failure by the husband to pay maintenance to the wife; or absence of the husband from the family home for one year without reason.

The case High Court Appeal No. 60/1997 summarised in Box 6 gives in insight into some of the difficulties related to the legal inequality of women.

315 High Court Appeal No. 60/1997, issued 27 March 1997.
in divorce proceedings. The case concerned section 162(1) of the Act, which permits a woman to seek a divorce where she has been subjected to physical harm. Despite the success of the wife in this case, the decision indicates that the Act effectively permits women to be beaten by their husbands as a form of discipline provided that the beating is “light”, “not directed towards the face or head” and does not inflict serious damage.

Box 6
High Court Appeal No. 60/1997

In High Court Appeal No. 60/1997, the appellant challenged decisions of the Personal Status Court of Omdurman and the Appeal Court which had granted his wife, the respondent, a divorce. The wife had filed a claim against her husband to the Personal Status Court of Omdurman requesting that the court issue a divorce on the basis of harm she had sustained during the marriage. She claimed that she had been beaten by her husband on the face, back, shoulders and head, and that she had been verbally insulted by him. The husband agreed that he had hit her, but argued that the violence was disciplinary, that it had been light and was appropriate for a woman with her stature. The Personal Status Court invited the husband to prove his claims, but he failed to provide any evidence. Weighing the facts and evidence provided by the two parties, the Personal Status Court of Omdurman issued a decree divorcing the defendant from the claimant. The decision was upheld by the Court of Appeal upon appeal.

The husband appealed to the High Court (Personal Status Division). The High Court dismissed the appeal and upheld the decision of the lower courts. The High Court used the same line of reasoning as the lower courts, namely that the wife had the right to seek a divorce for the “harm [she] sustained” under section 162(1) of the Personal Status Act 1991, which provides:

[I]t is permissible for the wife to request divorce for the harm (damage) sustained if continuing in marriage becomes impossible for someone who is in her status, and is not sanctioned by Sharia.

The Court held that the husband’s use of violence towards his wife, particularly “hitting [her] on the face and head” was sufficient grounds to grant the defendant a divorce.
The system of criminal law also contains a number of discriminatory provisions, as well as provisions which are open to discriminatory application and provisions which fall short of international standards regarding the prevention of gender-based violence. Section 145 of the Criminal Law Act 1991 criminalises adultery (zina, or zena), which is defined as sexual intercourse “without there being a lawful bond” between a man and a woman. The penalty for adultery is severe: in the case of married offenders, the punishment is death, while in the case of unmarried persons the sentence is one hundred lashes.\footnote{Criminal Law Act 1991, section 146.} While section 145 is neutral on its face, evidence collected by the Equal Rights Trust indicates that women are at greater risk of prosecution than men, in part because evidence of sexual intercourse outside marriage is more readily available when the “offender” is female. A Muslim woman belonging to the Zagawa tribe and living in Kosti told the Equal Rights Trust about her experience of being charged with the offence of adultery:

\begin{quote}
I had sex with a man outside of marriage and got pregnant. I called him but he switched off his phone and avoided me. When my pregnancy showed, the police arrested me and I was prosecuted in court for fornication. I was lashed while he was free and was never accused of any charges. My life is over because of what happened but because he is a man he can live a normal life and marry whoever he wants.\footnote{Equal Rights Trust interview with Z., August 2011, Kosti.}
\end{quote}

In a similar recent case reported by REDRESS, Ms Hassinia Alahamir Almin was convicted of adultery in May 2013, on the basis that she had given birth to a child outside of marriage. Mr Salah Abubakar, who was accused by the prosecutor of being the child’s father and thus also guilty of adultery, denied the accusations and was found not guilty.\footnote{See above, note 122, Para 26.}

The Criminal Law Act provides ineffective protection from sexual violence, with a confused definition of rape which puts women at risk of prosecution
for adultery, and no prohibitions on marital or family rape or sexual harassment. Section 149 of the Act defines rape as follows:

*There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent.*

There are a number of serious problems with this definition, and consequently with the application of the provision in practice. Most worryingly, a woman who alleges rape may face a prosecution for adultery.\(^{319}\) Rape and adultery are both classified as *zena* in the Act. The risk of charging rape victims with adultery is exacerbated by the laws of evidence, which create a high evidentiary threshold for proof of *zena* offences including rape, and which do not give equal weight to the testimony of men and women. Section 62 of the Evidence Act 1994 requires the testimony of four credible male witnesses for conviction of sexual offences, a very difficult requirement in practice. Regarding the evidentiary rules for proving *hudood* (most serious offences) other than *zena* before the court, Section 63 of the Act also directly discriminates against women, requiring that, in order to prove *hudood*, the testimony of either two males; or one male and two females; or four females is needed.

As noted in Section 2.1 of this report, section 152 of the Act, which prohibits “indecent and immoral acts”\(^ {320}\) has been used to prosecute women who dress in ways which do not conform to local Islamic dress codes. Two high-profile cases from 2009 and 2013, which are summarised in Box 7, illustrate how the application of this provision permits discrimination against women.

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\(^{320}\) Section 152 reads: “(1) Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent, or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping, not exceeding fourty [sic] lashes, or with fine, or with both. (2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.”
On 3 July 2009, Ms Lubna Hussein was arrested with 11 other women and girls at a restaurant in Khartoum. The arrest was made on the basis that by wearing trousers, the women were in breach of section 152 of the Criminal Law Act. Ms Hussein was kept in custody overnight and brought before a judge with the other female detainees the next day. Hussein was released on bail after insisting on the presence of her lawyer, while the other women were tried summarily and sentenced to 40 lashes. Three days later, Ms Hussein appeared in court to stand trial and was sentenced to a fine of 500 Sudanese pounds, with one month’s imprisonment if she failed to pay. Hussein appealed the decision, first before the Court of Appeal and then before the High Court. Both courts upheld the decision and ordered Hussein to pay the fine. The Sudanese Union of Journalists paid the amount on Hussein’s behalf to avoid her imprisonment.

In May 2010, Hussein submitted a claim to the Constitutional Court contesting the constitutionality of a number of statutory provisions which related to her case. She asked the Court to declare section 152 of the Criminal Law Act 1991 unconstitutional on the basis that it is vague, ambiguous and permits broad discretion in application.

Ms Hussein argued that section 152 constitutes, in theory and in practice, clear discrimination against women in violation of Article 31 of the Constitution and international laws which are part of Sudanese national law by virtue of Article 27(3) of the Constitution. Hussein also claimed that the statutory provisions contravene Article 33 of the Constitution and Article 7 of the ICCPR which protect against torture, cruel, inhuman or degrading treatment or punishment.

Hussein made a second claim to the Court challenging the constitutionality of sections 175-178 of the Criminal Procedures Act 1991 regarding her summary trial. She argued that the provisions violate her right to a fair trial under Articles 34(3) and 34(4) of the Constitution, Articles 9 and 14 (3) of the ICCPR and Article 6 of the African Charter.

At the time of writing, the Constitutional Court had not reached a decision.
Government of Sudan v Amira Osman Hamed (2013)

Amira Osman Hamed is a 35-year old Sudanese woman who works as an architect and is a human rights activist. On the day of her arrest, Ms Hamed was processing land certificates for a client at Jebal Awliya Land Office, where she was employed. Police, who were securing the premises on that day, had allegedly asked Ms Hamed to cover her hair with the scarf she had wrapped around her neck and shoulders. She refused to cover her hair and was subsequently arrested and charged for “indecent dress” under section 152 of the Criminal Law Act 1991. She was released on bail pending a trial in court after being detained for four hours at the police station.

On the first day of the trial, Ms Hamed’s lawyers asked to postpone the trial until they had received a reply from the Attorney General on an appeal they had submitted to drop the charges against her. The judges of Jabal Awliya Court accepted the request and adjourned the trial date. At the time of writing, the case is still pending. This is the second time Ms Hamed has been charged with a public order offence: in 2002 she was charged and convicted of wearing trousers and was released after paying a fine. If convicted on this occasion, Ms Hamed will be at risk of receiving up to 40 lashes, paying a fine, or both.

It should be noted that these cases are only the most highly-publicised examples of what is a relatively common practice restricting women’s freedom to choose their clothing: government figures for 2008 showed that 43,000 women were arrested for clothing-related offenses in Khartoum alone. 321 In April 2013, the ACJPS reported that 150 women were arrested in South Darfur for offences under section 152. The women, who were tea-sellers, were prosecuted “on the basis that some were wearing tight clothes and not wearing socks”. 322 They were found guilty and ordered to pay a fine of 300 Sudanese Pounds each. The Equal Rights Trust sought to corroborate these figures with Ebtisam Sanhouri Elrayh, a Lecturer of Constitutional Law and Human Rights at the University of Khartoum, who stated that:

322 See above, note 281, pp. 10–11.
Article 152 hangs like a sword over women’s necks, often being used by the police and security forces against women. Hundreds of women have been prosecuted under this provision and hundreds of others have been whipped after a summary trial, without having had access to a lawyer or even their family.\(^{323}\)

From its conversations with various respondents, the Equal Rights Trust found that dress code restrictions are applied much more rigorously in certain settings, where women are at a higher risk of being arrested for indecent dress: in the ethno-regional periphery, in certain poor urban areas, and in universities, but not, for example, in company offices or in more affluent areas of Khartoum.

The Khartoum Public Order Act 1996 imposes a number of severe restrictions on the activities of women residing in the capital, in the name of the preservation of public order and decency, in effect extending the prohibitive environment created by section 152 of the Criminal Law Act. Section 7 prohibits men and women from dancing together and women dancing in front of men. Section 9 states that there must be one door and ten seats for women in public transport. Section 16 states that a woman managing a hair dressing salon must be at least 35 years old. Section 18 prohibits men from providing tailoring work for women unless they have obtained approval from the local authorities.

Laws and regulations in a number of other areas of life discriminate against women. As mothers, women are subjected to discrimination in the law governing citizenship and nationality. Section 4(1)(b) of the Sudanese Nationality Act 1994 provides that a person shall be Sudanese by birth if he or his father was born in Sudan, or if he resides in Sudan and he and his ancestors on his father’s side were resident in Sudan at the time of the declaration of independence. No equivalent provision is made to acquire Sudanese citizenship by birth on the basis of the birthplace or residency of a person’s mother. Moreover, while section 4(2) states that a person “shall be Sudanese by birth if his father is Sudanese by birth at the time of his birth”, section 4(3) states that a person born to a mother who is Sudanese by birth “shall be entitled to Sudanese Nationality by birth whenever he applies for it”. Thus, acquiring cit-

\(^{323}\) Email correspondence from Ebtisam Sanhouri Elrayh, received 25 February 2014.
izenship on the basis of a father’s citizenship is automatic, whereas an application is required to acquire citizenship on the basis of a mother’s citizenship.

Laws governing employment and social insurance also reflect patriarchal understandings of the roles of men and women. Section 19 of the Labour Law 1997 prohibits women from working night shifts, with exception for women working in administrative, professional and technical jobs. The Public Service Regulations 1995, which govern all aspects of public employment, only recognise a family which is headed by a man. Section 1 defines “family” as “the worker’s wife (not exceeding four) and his dependent children”. The Social Insurance Act 1990 includes a very similar definition of “family”.

As part of its review of Sudan’s compliance with the ICCPR, in 2014 the UN HRC asked the state to provide information on steps taken to eliminate discrimination in legislation and prevent discriminatory enforcement of “vaguely worded provisions” such as section 152 of the Criminal Law Act. The state responded that “law reform is a process, which the Government of the Sudan already started”, leading the Committee to express concern at the persistence of discriminatory provisions and discriminatory enforcement of other provisions against women.

**Violence against Women**

The Equal Rights Trust’s research indicates that violence against women is a serious problem, particularly sexual violence in conflict zones. However, research on violence against women in Sudan is hampered by the fact that many women are either unable or unwilling to speak about the treatment to which they have been exposed, particularly where sexual offences are involved, with the result that reliable statistics on gender-based violence are not available. It appears that incidents of sexual and other forms of violence against women in conflict zones go largely unreported, and reporting is not helped by the severe restrictions on access to certain parts of the country where armed conflicts are ongoing. More broadly, crimes of rape and sexual violence go unreported, both as a result of fear of reverse prosecution for

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324 See above, note 100, Para 9.
325 See above, note 101, Para 11.
326 See above, note 102, Para 10.
adultery, and because of the stigma attached to women who have had sex outside marriage, irrespective of whether they had consented. Regarding domestic violence, women are generally reluctant to file formal complaints against their husbands, even though this is a legal ground for divorce, while the police do not normally intervene in domestic violence cases.

In January 2014, the Equal Rights Trust interviewed Nahid Gabralla, Director of the SEEMA Centre, an organisation which provides assistance to victims of gender-based violence. Ms Gabralla told the Equal Rights Trust that gender-based violence is common and that most women experience more than one type of violence. However, she stressed that lack of information is a major concern. Ms Gabralla stated that lack of credible data results, in part, from women’s unwillingness to report cases and the government’s refusal to publish data on the number of reports received. She highlighted the fact that regular police reports on the number of offences for all types of crime are not made available as symptomatic of what she perceived as the “regime’s attempts to deny the existence of these problems”. There is no freedom of information law, so activists cannot receive official information from the government as a matter of right. Sexual violence in detention has been routine, and while in the past the issue has been a total taboo, now it has begun to be articulated. According to Ms Gabralla, sexual violence, for which it is most difficult to obtain any data, can be presumed to affect disproportionately immigrant and refugee women, as well as victims of trafficking.\footnote{Equal Rights Trust interview with Nahid Gabralla, 22 January 2014, Khartoum.}

\textit{Gender Violence in Conflict Zones}

Violence against women is a particularly serious problem in areas of conflict where rape, sexual violence, harassment, abduction and physical abuse are common practices. In January 2014, the Equal Rights Trust spoke with a number of persons with experience of Sudan’s conflict zones. One of them, Salih Mahmoud Mohamed Osman, a human rights lawyer and politician from Darfur, told the Equal Rights Trust that in Darfur today:

\begin{quote}
[S]exual violence is happening on an almost daily basis. But since the beginning of the conflict, no-one has ever been convicted of rape. Women are victims of the occupa-
\end{quote}
tion – rape is still used as a weapon of war. Around the camps, these cases are everywhere. I established an office in Nyala providing medical treatment and free legal aid to victims of sexual violence, but had to close it in 2009. I couldn’t cope, there was a huge need and those who came to seek help were all very poor, so we worked pro bono. I tried to set up a network of pro bono lawyers but it was very difficult as everyone was afraid. The mention of rape by state army or Janjaweed was itself an offence. We filed more than 200 cases of sexual violence but could not get a single conviction. Just one soldier confessed to a rape of a 13-year old girl, while she was a prisoner and being transferred by bus. But his lawyer advised him to retract his confession. He did so and was allowed to go free. We had cases of attempted suicide among rape victims.

Both the Criminal Procedure Code and the Evidence Act based on sharia pose huge difficulties to proving sexual abuse. In several of my cases, my clients who were victims of rape were charged with adultery.328

The Equal Rights Trust heard similar allegations regarding sexual and other forms of violence against women in the conflict zones in Blue Nile and South Kordofan from Dr M., a psychologist who provides assistance to victims of violence and torture.329 Dr M. told the Trust that it is very difficult to get first-hand evidence from these areas because movement is severely restricted, but that he had good reason to believe that the number of victims coming to Khartoum and filing complaints represents just a tiny part of the total number. He also explained the stigma associated with making allegations of sexual violence, and rape in particular, and that anyone who mentions the issue is immediately suspected of supporting the International Criminal Court. Dr M. told the Equal Rights Trust about a recent case from South Kordofan:

I worked with one woman, a sexual harassment case involving a woman from an international NGO working in

328 See above, note 179.
329 See above, note 257.
the region. Their base was attacked by some kind of militia and she was attacked. It was very difficult to establish what happened to her – she was very distressed – but she had lots of symptoms, and was clearly traumatised (...) However she could not be persuaded to be seen by a forensic doctor or gynaecologist. It is very sensitive in our culture for women to speak about sexual violence. When raped, they always call it “harassment”, you know.330

The Equal Rights Trust’s independent findings are consistent with those of the Independent Experts on the situation of human rights in Sudan. In 2010, the then Independent Expert reported to the UN Human Rights Council that:

Acts of sexual violence, particularly against female internally displaced persons, are still of concern in Darfur. Women and girls continued to be attacked as they leave the confines of the camps in pursuit of income-generating activities, such as the collection of grass and firewood. Incidents of sexual violence were particularly frequent during the cultivation season between June and November, when there was increased movement of women and girls from the camps for internally displaced persons to farming areas. In most instances, the perpetrators were identified as individuals or groups of armed men often dressed in military uniforms. In recent times, women living in close proximity to military camps have also become vulnerable to sexual attacks from soldiers. In West Darfur, more than half of incidents of sexual and gender-based violence documented in three areas (Mornei, Abu Suruj and Sisi) were reportedly committed by SAF soldiers. The military authorities deny the rape allegations, claiming that the soldiers were engaged in consensual relations with the women.331

330 Ibid.
While the Independent Expert went on to note that “it is generally acknowledged that reported cases have decreased”,\(^{332}\) in 2013, his successor noted the continued prevalence of sexual violence against women in conflict areas, stating that:

*Women are forced, by various circumstances, to engage in routine livelihood activities, such as fetching firewood, farming and animal grazing, to support their families. These activities often expose them to security risks, including sexual and gender-based violence.\(^ {333}\)*

Recent cases reported by ACJPS in its *Sudan Human Rights Monitor* also indicate that patterns of sexual and other forms of violence against women in conflict areas continue. For example, in February 2013 ACJPS reported two rapes in South Kordofan in October 2012, both of which were thought to involve women associated with the rebel SPLM-N group, and both of which were allegedly perpetrated by the NISS.\(^ {334}\) One of the victims was 16, while the other, a 41 year old married woman, reported that she had been raped by eight NISS agents. In April 2013, ACJPS reported the rape of three women at an IDP camp in South Darfur, as follows:

*At 6pm on 8 April three women from the Kalma IDP camp in South Darfur were attacked and raped repeatedly at gunpoint. The women were stopped on the main road leading to the camp by six armed men in military uniforms and riding camels. The women were taken by force 150 metres away from the main road, where they were beaten and kicked before being forced to remove their clothing. Three men raped the women repeatedly while the other three men held the women at gunpoint. The women were allowed to return to the camp at 9pm. At 9:30pm they reported the incident to the UNAMID office in the camp. UNAMID immediately sent patrol cars*

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333 See above, note 145, Para 34.

to search for the perpetrators, but turned back to the camp when they heard gunshots.335

The 2014 report of the Independent Expert on the situation of human rights in the Sudan provided further examples of sexual and gender-based violence, including rape, in conflict-affected areas. His report highlighted the murder of five women following a failed attempted rape in South Darfur in February 2014 and the gang-rape of a UN peacekeeper in April.336 Also in 2014, Amnesty International collected testimony from Darfuri refugees who “indicated that there is a high prevalence of rape and other forms of sexual violence in villages in Darfur and in and around the IDP camps”.337

Violence against Female Political Activists by State Actors

Alongside evidence of sexual and other forms of gender-based violence by both state and non-state actors in the country’s conflict zones, the Equal Rights Trust heard numerous allegations of state agents committing acts of violence against women involved in political protests. According to the East and Horn of Africa Human Rights Defenders Project, during demonstrations in June 2012, the Sudanese police and security forces frequently beat and harassed female demonstrators, who played a major role in mobilising the population. Sexual and verbal abuse was reported.338 Over 100 female demonstrators were detained, and at least 14 were held for two months.339

The case of Safia Ishaq – a youth activist from Darfur raped by persons she believes to be members of the NISS – is indicative of the particular vulner-

335 See above, note 281, p. 13.
336 See above, note 188, Para 61.
337 See above, note 186, p. 13.
ability of female political protestors and activists to violence by the security services. Her case is presented in Box 8.\textsuperscript{340}

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**Box 8**

**Safia Ishaq – Raped by State Security Officers**

In February 2011 Safia Ishaq, a woman who had been involved with the Girifina youth movement, was apprehended, beaten and raped by persons she believes were members of the security services. On leaving a bookshop, Ms Ishaq was stopped by two men in plain clothes and forced into a car. She was taken to a building known to belong to the NISS. She was beaten, both while in the car and on arrival. On arrival, a further four men arrived and the two who had arrested her left with one other. The three remaining men continued to beat her while asking questions about her political activities and affiliations. When she denied allegations put to her, she was verbally abused and beaten. This lasted for several hours.

According to REDRESS, an international human rights organisation which is assisting Ms Ishaq in taking her case to the African Commission on Human and Peoples’ Rights:

> One of the men then asked the Applicant whether she had ever had sex. When the Applicant replied “No” the man called her a liar and said “I want to see if you have had sex or not.” He then started removing her skirt and when the Applicant resisted, he beat her so hard that she passed out. She regained consciousness with two of the men holding her by her legs, and a third man raping her. The Applicant was in a lot of pain. Her hands were tied with her headscarf, and the men had removed her skirt and underwear. Three men were taking turns in raping her and they continued beating her. As the Applicant fainted many times during this ordeal she was not able to specify for how long it lasted.

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\textsuperscript{340} The description of the case of Safia Ishaq Mohammed Issa is based on a summary of the facts produced by REDRESS as part of a complaint to the African Commission on Human and Peoples’ Rights: REDRESS, *Complaint: Safia Ishaq Mohammed Issa v Sudan*, 16 February 2013, Paras 2–6.
In October 2012, a second case reported to the Equal Rights Trust by its partners, the JHR, involving a female journalist, further highlighted the dual vulnerability of female political activists.\textsuperscript{341} On 29 October 2012, Somaya Ibrahim Hindosa was arrested and detained by the NISS in connection with reports she had written which were critical of the regime. She was brutally tortured and mistreated, with parts of her body burnt and her head shaved. According to REDRESS, Ms Hindosa was also forced to remove her \textit{abaya}, beaten with water pipes and subjected to racial abuse.\textsuperscript{342} Ms Hindosa was released four days later and was eventually able to flee the country, with support from the JHR.

In another well publicised case from 2013, Samar Mergani was sexually abused while in detention for her involvement in protests against the regime. As noted in section 2.3 above, in 2013, protesters took to the streets to demonstrate against the al-Bashir regime. Among them was Dr Samar Mergani, a pharmacist and social media activist who was arrested while taking video of the police shooting at the protestors. Dr Mergani alleged that during her detention, she was severely beaten and subjected to sexual harassment by NISS officers. In an interview with the Doha Centre for Media Freedom, she said:

\begin{quote}
They threw me into a police vehicle with other protesters, beat me and threatened to rape me when I resisted. 
(…) The men were in police uniforms while others were in civilian clothes but I believe they were all members of the National Intelligence Security Services (NISS).\textsuperscript{343}
\end{quote}

Following her release, Dr Mergani decided to speak out, telling her story to the media. Dr Mergani was prosecuted in the Bahri criminal court, both for

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{341} The description of the Ms Hindosa’s case is reproduced here with the permission of the Journalists for Human Rights (JHR) network.
\item \textsuperscript{342} See above, note 122, Para 92.
\item \textsuperscript{343} Salih, Z. M, “Sudanese women on the frontline”, \textit{Doha Centre for Media Freedom}, 31 October 2013.
\end{itemize}
\end{footnotesize}
the original video-recording, and for speaking about the abuse she suffered.\textsuperscript{344} Dr Mergani accused the security forces of torturing her and threatening to rape her, but during the trial, her lawyer was prevented from calling witnesses to back up her story.\textsuperscript{345} The trial took place on 28 October 2013; Dr Mergani was found guilty of participating in the demonstrations and of possessing recordings of the actions of the police. She was sentenced to three months imprisonment or the payment of a 5,000 Sudanese pound fine.\textsuperscript{346}

The Equal Rights Trust interviewed women’s activist Nahid Gabralla, who was detained and held for 40 days in 2012 because of her activism on behalf of women, including leading a march of hundreds of women in 2009 to demonstrate against the conviction of Lubna Hussein for the “crime” of wearing trousers. She told the Equal Rights Trust:

\begin{quote}
I was arrested in my office on 3 July 2012 by NISS officers in plain clothes, and spent 40 days in detention, in a cell with other women in Omdurman Women’s Prison. The NISS men did not show me any warrant, they just took me. This was not that long, considering that a Nuba woman I know was held for eleven months. During my 40 days in detention, I was interrogated three or four times. After the 15\textsuperscript{th} day, I was entitled to a 15-minute visit from a relative. We were nine women in the cell, and the bathroom was outside. The only times we were allowed out of the cell was to go to the bathroom, and to go to prayer. When I once requested to be seen by a doctor, I had to wait for 18 days before this was allowed. At one point, I went on hunger strike, demanding to be given female sanitary pads. I succeeded: they brought me pads a few hours later. I was not charged with any offence. When I was released, they told me, “Next time you will know”\textsuperscript{347}.
\end{quote}

\begin{flushright}
\textsuperscript{346} Sudan Speaks, “Verdict, Releases, Continuing Arrests”, 28 October 2013, available at: http://sudanspeaks.blogspot.co.uk/2013_10_01_archive.html. \\
\textsuperscript{347} Equal Rights Trust interview with Nahid Gabralla, 22 January 2014, Khartoum.
\end{flushright}
During and after the wave of anti-government protests in September 2013, a number of new cases of abuse of women activists were reported to civil society organisations working with victims of violence. In one case, a woman who worked at the British Embassy was reportedly detained for 12 days, and was subjected to violence which included being hit on the head.  

*Violence against Women by Non-state Actors*

The Equal Rights Trust also found evidence of sexual and other forms of violence by private actors, both within the victim’s family and outside it. The vulnerability of immigrant women, stressed by several of our interviewees, is exemplified by the shocking case of a 19-year old pregnant and divorced Ethiopian woman who was gang-raped by seven men. One of the civil society lawyers working on this case described it to the Equal Rights Trust in January 2014, and the following account by Equality Now reveals the grim developments:

> Immediately following the attack, a police officer found the distraught victim, but didn’t file a formal complaint of rape because it was a public holiday and the police station was closed. Disturbingly, the rapists filmed the attack, which later surfaced via social media in January 2014. After learning of the film, the authorities ultimately arrested everyone involved, including the victim. Sudan’s Attorney General has – without legal basis – consistently blocked her from filing a rape complaint on the basis that she was under investigation for the criminal offense of offending public morality. At one point, she even faced a sentence of death by stoning for adultery, as the prosecutor debated her marital status before affirming that she was divorced. Since being arrested, and despite being close to giving birth, the young woman has been held in police cells and, until recently, been consistently denied placement in a medical facility. As of 20 February, upon their confession, three of the perpetrators have been convicted of adultery, two of indecent

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acts, and one of distributing indecent material; their sentences consisted of lashes and fines. The seventh was freed due to insufficient evidence. The victim, however, was found guilty of committing indecent acts under section 151 of the Criminal Law Act.349

This case illustrates the failure of the state to effectively prevent and investigate sexual crime and the potential for victims of such crime to be found guilty of public order offences.

Regarding domestic violence, a 36 year old woman from Nyala told the Equal Rights Trust:

My ex-husband abused me physically and used to beat me for minor reasons. He used to drink a lot and beat me if I asked him to buy something or if he didn’t find me at home. I went to my brothers but they only made me go back which made my ex-husband beat me even more because no one could protect me. I was afraid for my children so I decided to go to court to get divorced. The process took time since I had to prove that my husband caused me damage. The judge was kind and helpful, that’s why I encourage women to fight for their rights and go to courts.350

Women also experience violence outside the domestic setting. The following story from M., a woman in Nyala, South Darfur, allows a glimpse into physical violence against women at the community level:

I’m a 46 years old woman and I live in Nyala, Atash displacement camp. I was beaten by a man a few years ago. I was doing some farm work in Gogain, west of Nyala, when I found a horse belonging to one of the men in the village. The horse ruined my harvest and this was not the first time it had happened even though I talked to

349 Equality Now, Sudan – 111th session of the Committee, 13 June 2014, pp. 1–2.
350 Equal Rights Trust interview with X., 10 April 2011, Nyala.
the owner of the horse. I went to the owner’s father and told him what had happened. He promised to talk to his son. When I went to fetch water in the evening I found the horse’s owner. He started beating me because I complained to his father. I was in my last month of pregnancy and had to be hospitalised for three days. I don’t know how I delivered that child. As a result of the incident my daughter who is now 7 is disabled, she cannot walk or eat solids, only liquids.

He beat me because I’m a woman. If I knew I would have told my husband first but I am the one who was doing the entire farm work. I didn’t go to the police because nothing is solved there.\textsuperscript{351}

Nahid Gabralla, Director of the SEEMA Centre told the Equal Rights Trust that incidents of domestic violence and violence outside the family such as those above are widespread, though the absence of data makes it impossible to estimate the total number of such cases.\textsuperscript{352} Research conducted by other organisations also indicates that violence, including sexual violence, is common within marriage. A qualitative research report on a series of interviews with 150 married women in Khartoum State found that 43\% of the women interviewed had been subjected to forced and/or violent sex.\textsuperscript{353}

The government has made some efforts to address gender violence. In its 2012 report to the UN HRC, it stressed that it has:

\begin{quote}
[S]trengthened its regulatory structures in order to combat violence against women and children. A Violence against Women Unit was accordingly established and the State plan for combating such violence was elaborated in consultation with the United Nations Mission in the Sudan (UNMIS). This plan was first im-
\end{quote}

\textsuperscript{351} Equal Rights Trust interview with M., 10 April 2011, Nyala.

\textsuperscript{352} See above, note 347.

\textsuperscript{353} Tønnessen, L., \textit{From impunity to prosecution? Sexual violence in Sudan beyond Darfur}, Norwegian Peacebuilding Resource Centre, February 2012.
implemented in December 2005 with the aim of raising women’s awareness of their rights and means of protecting those rights.354

Harmful Practices

Female genital mutilation (FGM) remains a significant problem in Sudan. According to most recent authoritative estimates, in 2013, 12.1 million women and girls, amounting to 88% of all women and girls in Sudan, had undergone FGM.355 According to these statistics, Sudan shared with Sierra Leone the seventh place in the list of the countries affected by this harmful practice. In its recent report to the UN HRC, the Sudanese government made a welcome admission of the scale of the problem which the country faces, stating that:

Although women in the Sudan have been accorded constitutional and legal rights, they nonetheless continue to endure certain harmful customs for reasons connected with educational attainment and social traditions. Of these customs, the most conspicuous is female genital mutilation (FGM), which is historically and traditionally widespread throughout the Horn of Africa and some West African countries and a cause of profound physical and psychological damage. The State and women’s organisations, among others, have made tremendous efforts to eradicate the practice, which is now steadily declining. The national campaign against it is essentially based on the dissemination of information and awareness concerning its disadvantages and the fact that it is prohibited by law.356

However, while the tone of this statement is laudable, it should be noted that the federal Child Act, which was passed in 2010, did not in fact criminalise FGM throughout Sudan. To date, the practice has been made unlawful in only

354 See above, note 132, Para 70.
356 See above, note 132, Para 68.
four states: South Kordofan (FGM/C Act, 2008), West Darfur (State Child Act 2008), Gedarif (State Child Act 2009) and Red Sea (State Child Act 2011). The Sudanese government’s 2012 report to the UN HRC asserted that one of the priorities in the National Strategy for the Elimination of FGM in the Sudan (2008–2018) is to “enact legislation and laws prohibiting FGM and criminalizing anyone who practises any type of FGM.”

The state’s efforts to combat FGM should be welcomed. Aside from the enactment of legislation, the National Strategy for the Elimination of FGM in Sudan has six other priorities, including sensitisation for the community, addressing FGM in the school curriculum and raising awareness of the health impacts. In its report to the UN HRC, Sudan highlighted that it had “rolled out the national strategy at the federal and state levels in the core areas of health, education, media, law, religion, information and social affairs.” In 2014, the Committee again called on Sudan to adopt and enforce legislation to prohibit FGM and “step up” its efforts to eradicating the practice.

Child marriage is also widespread in Sudan, although it is decreasing and there is a raised awareness on this issue, thanks to the work done by government, civil society and international organisations such as the United Nations Children’s Fund. In 2011, the prevalence of child marriage (marriage conducted before 18) was 37.6%, with the worst cases being Blue Nile (62.2%) and South Darfur (53.9%). The SEEMA Centre has received several requests for help from girls under the age of 18. For example, a 15 year old and a 16 year old came to the Centre to seek help in preventing their marriages, and through mediation, the marriages were prevented. The Family and Child Protection Units in many of the states of Sudan have played a positive role in preventing child marriage and other abuse of girls and women.

358 See above, note 132, Para 168.
359 See above, note 132, Para 170.
360 See above, note 102, Para 13.
361 The Federal Child Act promulgated in March 2010 defined a “child” as every person under 18, in compliance with international law.
362 See above, note 357.
**Discrimination against Women in Employment and Education**

Women do not participate in employment or education in Sudan on an equal basis with men, despite some improvement in their status that can be attributed to the work of women's organisations. The most recent data produced by the Central Bureau of Statistics illustrates significant gender inequality in access to, and participation in, employment. The labour force participation rate for women is 23%, compared with 73% for men. The same proportion of women as are in work are unemployed – 23% – against just 9% for men, while the percentage of women who are classed as "economically inactive" is 74%, compared with 26% for men. The Bureau of Statistics identifies being a "full time homemaker" as one of the two key reasons for economic inactivity.

The Equal Rights Trust’s interviews with experts and organisations working with and on behalf of women found evidence that women suffer many forms of discrimination at work. Women interviewed by the Trust described a range of barriers to accessing certain jobs such as land surveyors or oil engineers: many companies will not hire women for these roles as they argue that they cannot protect them. There have been difficulties for women in securing jobs in the civil service but in recent years, due to lobbying from women’s organisations, some barriers have been removed, and women today have somewhat better chances. One exception is the judiciary where there has been a regressive trend of female employment. From 1989 onwards, the government began to implement an informal policy of not appointing women judges, which has resulted in an almost completely male-dominated judiciary at present. The few female judges are to be found in appeal courts, as they started their legal careers before the process of Islamisation of the legal system began in earnest.

In the workplace, women are routinely subjected to less favourable treatment in both pay and benefits, even where they do the same job as men. Discrimination in promotions, with male candidates promoted ahead of more suitable females, is also widespread. Manal Abdelhalim, a women’s rights activist and expert, told the Equal Rights Trust:

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365 Ibid., p. 20.
Pay is often equal in practice, as required by law, but there is widespread discrimination in the allocation of privileges and benefits, such as allocation of plots of land or child allowances. Where a woman is married, it is assumed that her husband will receive these benefits. In practice, a woman can’t get promoted because of her marital status, as in most cases female employees resort to a long motherhood leave, usually for one or two years.

According to the Civil Service Act 2007, maternity leave is provided for one year, with the employee entitled to only basic salary which is equivalent to no more than 30% of the normal gross salary. According to the civil service bylaws, female employees are entitled to eight weeks of leave for giving birth (either in one period or in two periods, before and after birth, according to the woman’s choice). This is below ILO standards, which require a minimum of 14 weeks.

Due to the absence of any special arrangements or measures to fill the current gender gaps in employment policies – such as proper nurseries, paternity leave, proper motherhood and child health care, adequate maternity leave and maternity pay – women are very concerned about being out of the labour market.

According to the Labour Law 1997, which governs employees in the private sector, women are not allowed to work between 10 o’clock in the night and 6 o’clock in the morning, with some exceptions such as those who work in healthcare and technical jobs.

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366 Equal Rights Trust interview with Manal Abdelhalim, 22 January 2014, Khartoum. Sudan has not ratified any of the three successive International Labour Organisation (ILO) Conventions concerning maternity protection. Ms Abdelhalim is referring to the Maternity Protection Convention 2000, providing for a leave of not less than 14 weeks. The Convention provides that “with due regard to the protection of the health of the mother and that of the child” this shall include a period of six weeks “compulsory leave after childbirth”. (See Maternity Protection Convention, 2000 (International Labour Organisation Convention 183), Articles 4(1) and 4(4).)
The Equal Rights Trust’s findings are supported by those of other organisations, such as the Strategic Initiative for Women in the Horn of Africa (SIHA). According to a report by SIHA, women in Sudan experience discrimination in access to employment, equal pay for substantially similar work, credit, and owning or managing businesses.\(^{367}\)

The Equal Rights Trust also found evidence that women are often subjected to harassment in the workplace which leads to mental and psychological distress. Women who work in informal or casual jobs, such as market traders or tea sellers are very vulnerable to this harassment, particularly from soldiers, as in the case of F., a woman from the Shagrab refugee camp, illustrates:

\[
\text{I am a refugee in the Shagrab refugee camp, where work opportunities are unavailable. I had to leave the camp with my four children, rented a house in Kassala and started working as a tea seller. I was sexually harassed almost daily which made me leave this job and I started washing clothes at people's houses. I was raped in one of those houses and went to the Abu Khamsa police station in July 2011, after which I stopped working and asked the refugee commission to take me back to the refugee camp.}
\]

\[
\text{I told the police officer at the station that I had been raped. In the beginning he sympathised with me and took me to a doctor who examined me. The doctor stated that the hymen has been ruptured a long time ago but there was a recent evidence of force. When the police officer read the report he insulted me by saying that I'm a woman not a girl, meaning I'm not a virgin (...) He refused to give me the report (...) I left him but he never left me and continues to harass me himself.}\(^{368}\)
\]

Women from the periphery are subjected to dual discrimination on grounds of both gender and ethnicity, whereby the latter ground is in most cases mani-


\(^{368}\) Equal Rights Trust interview with F., November 2011, Nyala.
fested as colour of skin, which should be seen in the context of the Arab vs. African ethnic divide discussed above. A female lawyer from Darfur with a darker complexion told the Equal Rights Trust:

*Colour of skin discrimination against women is the norm here in the North. Many women bleach their skin, unfortunately. You will not find many women looking like me on TV, or at the border control at the airport, or at any other workplace where women have to be visible.*

In addition to the problems facing women in accessing and participating in employment, women face many challenges in accessing bank loans, particularly in rural areas where there is little service provision. Even where the financial institutions are accessible to women, men are often favoured over women in obtaining loans. Women are seen as a greater risk, with some banks imposing a ceiling for funding for women resulting in far less money available to them compared to men.

Women also experience inequality in education. Data produced by the Central Bureau of Statistics identified that in 2009, net enrolment in primary education was 64% for girls, compared with 69% for boys, while there was a significant gap in the proportion of male and female children who had ever attended any school – 72% and 52% respectively. Interestingly, however, the same report indicated that the gender ratio in secondary education was 1.09, meaning that marginally more female children were enrolled. The impact of historic disparities in access to education was evident in the data on literacy which indicated that while 73% of men above the age of 15 were literate in 2009, only 52% of women were literate.

Gender stereotypes also affect access to higher education, despite there being an adequate proportion of women in universities and other higher education institutions. A woman whom the Equal Rights Trust talked with said:

370 See above, note 367.
371 See above, note 363, pp. 16–17.
I am a student in the police academy in Khartoum, and have experienced some discrimination because of being female. My male colleagues get good flats as one of the benefits, but we women do not. I have divorced my husband and our children live with me. Despite this, my ex-husband, also a policeman, got a flat even though he is alone, while I am not entitled to a flat.374

**Discrimination in Access to Political and Public Life**

Under the Constitution, women have equal rights to vote and to stand for election in Sudan. The National Election Act 2008 establishes a positive action scheme, whereby “twenty five percent of women members of the legislative assembly shall be elected on the basis of proportional representation at the State level from separate and closed party lists.”375 In its 2012 report to the UN HRC, the government of Sudan stressed the impact which this provision had had on the level of women’s participation in the Interim National Assembly, illustrating an increase from 7.9% of all seats in 2001, to 25% of seats in 2010, a significant achievement in the timeframe of one decade.

Nevertheless, the provision in the National Election Act has been criticised for not going far enough. In a recent paper, Prof Ebtisam Sanhouri Elrayh of the University of Khartoum argued that the quota scheme suffers from a number of flaws:

*Only women members of political parties benefit from the special measures, as independent and professional women candidates are not eligible to compete in the women’s list. The 25% is a proportion only applied at the legislative body and not the States’ and local legislative assemblies. A broader provision is needed in the forthcoming constitution, which specifies that special measures apply to all government institutions and to the private sector. It shall impose a direct obligation on the State to enact legislation and policies required*

to implement it. The proportion shall match the suggestion by women’s and civil society organisations, i.e., 30 to 33% initially, to be incrementally increased over time to 50%.\textsuperscript{376}

The Equal Rights Trust also found evidence that women’s NGOs are increasingly strong and efficient in Sudan. Given the difficult environment in which they work and the numerous legal and cultural barriers to gender equality, they must be commended for having managed to achieve a certain positive impact in many areas, including employment, education and public life, in which women are less and less invisible.

\section*{2.5 Discrimination and Inequality Based on Disability}

Government estimates of the number of persons with disabilities in Sudan, based on analysis of the data from the pre-secession 2008 census, suggest that approximately 4.8\% of people in Sudan have some form of disability.\textsuperscript{377} Of this number, men made up a slightly higher proportion: 52.2\% of persons with disabilities, as opposed to 47.8\% women.\textsuperscript{378} The majority of persons with disabilities reside in rural areas (66.7\%), with a smaller proportion in urban areas (26.3\%); the remaining 7\% of persons with disabilities were found among the nomadic population.\textsuperscript{379}

Persons with disabilities benefit from a number of laws which promote their participation in society, including Articles 12 and 45 of the Constitution and the National Disability Act. In addition, in recent years, there has been progress in terms of raised awareness on the rights of persons with disabilities. The media widely cover disability issues and many civil society organisations work on such issues. However, there is excessive dependency on non-governmental organisations and foreign funding in service provision, and the rights of persons with mental disabilities are not sufficiently promoted.

\begin{itemize}
\item \textsuperscript{376} See above, note 310, p. 45.
\item \textsuperscript{377} See above, note 132, Para 28.
\item \textsuperscript{378} Ibid.
\item \textsuperscript{379} Ibid.
\end{itemize}
It should be noted that the issue of mental disability discrimination is relatively unknown in Sudan. The Equal Rights Trust found that while disability is a fast growing discourse in Sudan, promoted by the government and civil society, mental disability is an issue on which there is minimal awareness, and the lack of equal rights for persons with mental health problems or intellectual disabilities is taken for granted.

**Disability Discrimination in Employment**

Persons with disabilities can rely on a number of legal provisions in respect of non-discrimination and equality at work. Article 12(2) of the Constitution prohibits the denial of access to any profession or employment on grounds of disability. Article 45(1) provides that the state shall guarantee *inter alia* access to “suitable education and employment” for “persons with special needs”. In addition to these provisions, section 24(7) of the Civil Service Act 2007 establishes a minimum allocation of 2% of jobs within the civil service to be provided to persons with disabilities. The National Disability Act 2009 also contains a number of provisions to support persons with disabilities in employment. For example, section 4(2)(g) requires employers to provide rehabilitation to employees with disabilities, albeit only where the disability was caused at the place of employment, and their transfer to work which is appropriate, bearing in mind the disability. Section 4(2)(h) requires employers to provide reasonable accommodation in the workplace for employees with disabilities which meets their particular needs.

Despite these protections and the positive developments, the Equal Rights Trust’s research indicates that persons with disabilities in Sudan experience discrimination and disadvantage in accessing employment. Indeed, statistics produced by the government itself indicate that a large proportion of persons with disabilities are unemployed. According to Sudan’s report to the UN HRC, the 2008 census showed that, of the 1,359,420 persons with disabilities aged 10 and over, 600,791 (44.2%) were in employment, 700,042 (51.5%) were “job ready” and 58,587 (4.3%) were economically inactive.380

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The case of Adam Mohamed Hamid, presented in Box 9, provides an example of how even public bodies may be ignoring their obligations under the Constitution, National Disability Act and the Civil Service Act.

Box 9
Adam Mohamed Hamid v National Civil Service Recruitment Board & Ministry of Electricity and Dams

Adam Mohamed Hamid graduated from the Faculty of Business Administration at the University of Khartoum in 2006. On 27 March 2009, he applied for one of a number of administrative vacancies advertised by the Ministry of Electricity and Dams (the Ministry). His name appeared in the list of shortlisted applicants prepared by the National Civil Service Recruitment Board (the Board). The Ministry and the Board held an exam for all shortlisted applicants, which Mr Hamid passed.

At the subsequent interview, Mr Hamid was subjected to a number of questions focused on his disability. For example, he was asked whether he is able to use a computer with his disabled hand; he replied that he could. When the list of successful applicants was published, Mr Hamid’s name was not included. Mr Hamid concluded that, given the questions he had been asked, his disability could have been one of the factors in the decision not to select him and therefore decided to launch a legal challenge.

On 24 July 2011, Mr Hamid filed a lawsuit before the Constitutional Court against the Board and the Ministry, claiming to have been denied the right to work due to his disability. He based his claim on Article 45(1) of the Constitution, which provides that persons with disabilities shall enjoy all the rights and freedoms set out in the Constitution, including, in particular, the right to respect for their human dignity, access to suitable education and employment and full participation in society. Mr Hamid argued that the decision not to appoint him also violated section 24(7) of the National Civil Service Act 2007, which obliges all state bodies to allocate a percentage of not less than 2% of all approved positions to persons with disabilities, taking into

381 The contents of Box 9 are based on a summary of Mr Adam Mohamed Hamid’s case provided to Equal Rights Trust by researchers at the University of Khartoum, working under the supervision of Ebtisam Sanhouri Elrayh, Prof of Law at the University of Khartoum, February 2014.
consideration the nature and requirements of work and the nature of the
disability.

He further argued that the decision violated section 4(2) of the National
Disability Act 2009, which obligates the concerned authorities to imple-
ment a number of specified rights, privileges, facilities and exemptions,
including the right of persons with disabilities to be appointed to jobs in
public institutions (section 4(2)(e)) and the right to reasonable accom-
modation in the work place to respond to the needs of persons with dis-
abilities (section 4(2)(h)).

As of March 2014, the case was pending; the Equal Rights Trust has not been
informed of the outcome at the time of publication.

In early 2014, in interviews with persons with disabilities commissioned by
the Equal Rights Trust and conducted by researchers from the University of
Khartoum, I. and M. shared their experiences of discrimination in employ-
ment, both testifying to overt and blatant discrimination on the grounds of
disability. Their cases are presented in Box 10.\textsuperscript{382}

\textbf{Box 10}

\textbf{Testimonies of I. and M. – Disability Discrimination in Employment}

I. is a young lady who suffers from a visual impairment, though her disa-
\textsuperscript{bility often goes unnoticed as she does not require assistance. She applied
for a teaching position at the University of Sinnar, south of Khartoum. In
1999 upon passing the entrance interviews, she was appointed to a teach-
ing assistant post. The university immediately sent her to pursue graduate
studies, where she successfully completed her course, obtaining a Master’s
degree. Upon her return to the university, she received a notification termi-
nating her employment contract due to her visual impairment. The notifica-
tion letter stated that I. had failed to disclose her disability and her need for
a companion when interviewed for the role in 1999.

\textsuperscript{382} Equal Rights Trust interviews with I. and M., February 2014, Khartoum.
I. appealed the university’s decision before the Ministry of Higher Education, contesting the dismissal. She argued that no one had asked about her disability during the interview, as she did not need any assistance. Similarly, she argued that she had been able to carry out her graduate study without the need for a companion. I.’s appeal was dismissed by the Ministry of Higher Education due to its “lack of jurisdiction” over the matter. She was then directed to submit her appeal to the university that employed her. I did not take further action due to pressure from her father, who saw no point in continuing with the case.

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M. is a law graduate from the Khartoum Branch of the University of Cairo. In 1994, he applied for a legal advisor position at the Ministry of Justice in Khartoum. He was interviewed and appointed to the position in 1995. On his first day in the office, his superiors appeared surprised to find he had a disability. Soon after, he received a letter from the Ministry of Labour which included the following statement:

You are a disabled person; you will not be able to perform the work properly. We believe that you have been mistakenly selected. We request that you give the name of the counsellor who conducted the interview with you, so as to hold him accountable for your appointment.

M. stated he had decided at the time not to take legal action, commenting, “How can I get justice, if the decision came from the Ministry of Justice?”

According to Prof Elrayh, Prof of Law at the University of Khartoum, and a specialist in disability rights in Sudan, the cases of I. and M. “are not isolated incidents – many persons with disabilities have gone through, and still are going through, discrimination of this kind in the workplace due to disability or perceived disability.” 383

383 Email correspondence from Ebtisam Sanhouri Elrayh, received 25 February 2014.
Discrimination in Education and Discrimination Faced by Children with Disabilities

The 2008 census indicated that only 38% of six year olds with disabilities were attending school at the time of the census. In its review of Sudan in 2010, the Committee on the Rights of the Child raised concerns about the “exclusion suffered by children with disabilities in social, educational and other settings and (...) the limited access to basic services”. In its report to the Committee, the government acknowledged the provision of care for children suffers from “weak infrastructure” and stated that this has led to a continued increase in the number of children with disabilities. The government cited a number of reasons for this: lack of information due to absence of statistics and studies; a shortage of early intervention tools and a lack of trained staff; weaknesses in the available programmes and health care for persons with disabilities; and insufficient health insurance coverage for persons with disabilities.

In view of the foregoing, the government has taken a number of steps to improve laws and policies governing access to education for persons with disabilities. The National Disability Act 2009 contains a number of provisions designed to improve the situation of persons with disabilities regarding access to education. Under section 4(2)(a), persons with disabilities are to be exempt from fees in all stages of education including primary education and college. Section 4(2)(b) requires the development of specialised curricula for persons with disabilities and the provision of translators to assist in the accurate understanding of lessons and exams. Section 4(2)(c) imposes an obligation upon public authorities to facilitate the teaching of Braille, sign language, and “alternative writing”. As with the rights to employment, the general provision in this section for “competent authorities” to enforce the rights contained within the Convention on the Rights of Persons with Disabilities, means that these authorities are obligated to enforce the right to education provided in its Article 24. However,

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386 Ibid, Para 192.

387 Ibid, Para 192.
as with the provisions on employment, there is no information on the implementa-
tion and enforcement of the requirements in relation to education and, as such, it is difficult to know whether they have led to any improvements in access to education for children with disabilities. In 2013, the Federal Ministry of Education published its National Strategy for the Education of Children with Disabilities for the period 2013-2016.\textsuperscript{388} The National Strategy provides for teacher training and aims to address challenges such as physical access, given that poor infrastructure often prevents children with disabilities from participating in education on an equal basis with others.

Despite these positive legislative and policy initiatives, the Equal Rights Trust’s research found evidence of direct discrimination on grounds of disability for those seeking to access education, as with the cases of G. and Y., presented in Box 11.\textsuperscript{389}

\begin{center}
\textbf{Box 11}
\textbf{Testimonies of G. and Y. – Direct Disability Discrimination in Education}
\end{center}

G. is a 14 year old student who suffers from a visual impairment. He completed primary school in 2013 and wanted to enrol in the British Educational Institute, a secondary school in Khartoum. His application was initially accepted. However, when his father informed the school administration of his son’s disability, the application was declined. The main reason presented by the school was that G.’s need for extra care was more than the level of care provided at the school. In particular, the school was concerned about G.’s need for a special teacher. Despite the insistence of G.’s mother that her son did not require any extra care, the school refused to allow him to join. Out of fear for missing the academic year, his parents had to look for another school.

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Y. is a student with a sight disability. He successfully finished High School in 2006 and wanted to study at the Faculty of Education at Omdurman Islamic

\begin{footnotesize}

\textsuperscript{389} Equal Rights Trust interviews with G. and Y., February 2014, Khartoum.
\end{footnotesize}
University. Following standard application procedures, he applied to the Central Admission Office in 2006 and was accepted. However, when Y. went to complete his registration at the Faculty of Education, the Dean of the Faculty refused to allow his registration, stating that “you are blind and therefore unable to enrol in this faculty”.

When Y. asked the Dean to put his decision in writing, the Dean refused. Y. then submitted a written complaint to the Academic Affairs Secretary of the university, followed by a letter of complaint to the Vice-Chancellor of the University. The decision, and the reasons for not allowing registration, remained unchanged: “you are blind and can’t follow study in the faculty”. Both the Dean and the Vice-Chancellor refused to give their decision in writing.

Subsequently, Y. brought a claim before the Ministry of Higher Education, where one of the officials suggested, without giving reasons, that he transfer his application for study to the Faculty of Arts (Department of Philosophy) at the University of Al-Nelein. Y. returned to the Faculty of Education’s office several times to pursue his claim, but received no response. Fearing the loss of his academic year and having to go through the long application process again, Y. changed his application to the suggested course at the University of Al-Nelein.

As with the cases of I. and M. discussed above, Prof Ebtisam Sanhouri Elrayh was keen to stress that the stories of G. and Y. are “two of many similar stories that illustrate the flagrant violation of Article 44(1) of the interim constitution of 2005, among other laws”. Article 44(1) provides that “[e]ducation is a right for every citizen and the State shall provide equal access to education without discrimination as to religion, ethnic origin, gender or disability”.

### 2.6 Discrimination and Inequality Based on Sexual Orientation

Lesbian, gay and bisexual (LGB) persons in Sudan are at risk of – and experience – discrimination and a range of other serious human rights abuses because of their sexual orientation. Same-sex conduct between men is a criminal offence, while a number of other provisions of the Criminal Law Act have been used to prosecute members of the LGB community. In addition, LGB

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390 Email correspondence from Ebtisam Sanhouri Elrayh, received 25 February 2014.
persons face extreme stigma, putting them at risk of violence at the hands of the public or even their own families if identified. The result is that there is effectively no openly LGB population in the country, with LGB persons, and men who have sex with men, meeting in private homes, with contacts made through clandestine peer-to-peer networks.

Unlike all other section in this part of the report, this section does not reference research and other information from international human rights organisations. This is because almost no such research exists, reflecting the extreme difficulty of access to the deeply clandestine existence of LGB networks in Sudan. The Equal Rights Trust has done pioneering work in finding ways to access and interview LGB persons inside Sudan, which is presented here for the first time.

It should also be noted that this section does not use the familiar acronyms LGBT, or LGBTI, as we were unable to gather information about trans and intersex persons in Sudan.

**Discriminatory Legal Provisions**

Same-sex sexual activity between men is explicitly criminalised in Sudan under section 148(1) of the Criminal Law Act 1991, which provides for an offence of sodomy:

> Any man who inserts his penis or its equivalent into a woman’s or a man’s anus or permitted another man to insert his penis or its equivalent in his anus is said to have committed sodomy.

For a first offence, the punishment is whipping of a hundred lashes, and/or imprisonment for a term of up to five years; for a second offence, whipping of a hundred lashes and imprisonment for a term of up to five years; and for a third offence, the penalty is death or life imprisonment.

The UN HRC has criticised Sudan for retaining the possibility of the death penalty for same-sex sexual activity.\(^3\) At its first Universal Periodic Review in 2011, a number of states called upon Sudan to abolish the death penalty.

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Sudan responded by stating that the death penalty was imposed for “the most serious crimes”.\textsuperscript{392} However, the Commission on Human Rights and the UN HRC have confirmed that use of the death penalty for non-violent acts, including sexual relations between consenting adults, constitutes a violation of international human rights law.\textsuperscript{393} The Special Rapporteur on extrajudicial executions has stated that “death sentences may only be imposed for the most serious crimes, a stipulation which clearly excludes matters of sexual orientation”.\textsuperscript{394} In his report on Nigeria, the Special Rapporteur stated that “in relation to sodomy, the imposition of the death sentence for a private sexual practice is clearly incompatible with Nigeria’s international obligations”\textsuperscript{395} and that “the mere possibility that it can be applied threatens the accused for years, and is a form of cruel, inhuman or degrading treatment or punishment. Its status as a law justifies persecution by vigilante groups, and invites abuse”.\textsuperscript{396}

In addition to section 148, a number of other provisions in the Criminal Law Act criminalise same-sex sexual activities, or activities deemed contrary to public morality. Section 151(1) provides for an offence of gross indecency: “whoever commits an act of gross indecency upon the person of another person or any sexual act which does not amount to (...) sodomy” – the punishment is whipping of up to forty lashes and/or imprisonment of up to one year, or a fine. Section 151(2) provides that where the offence is committed in a public place, the punishment is whipping of up to eighty lashes and/or imprisonment of up to two years, or a fine.


\textsuperscript{393} See United Nations Commission on Human Rights Resolutions 2002/77, Para 4 (c); 2003/67, Para 4 (d); 2004/67, Para 4 (f); and 2005/59, Para 7(f). See also: above, note 391.


Section 152(1) provides that:

*Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent, or immoral dress, which causes annoyance to public feelings, shall be punished with whipping not exceeding forty lashes or with a fine or with both.*

An act is deemed to be contrary to public morality if it is so considered in the religion of the doer or the custom of the country where the act occurs (section 152(2)). Similarly, section 154 provides for a general offence related to improper conduct which, while not focused on same-sex conduct, has been used as the basis for charges against LGB persons. Section 154 states:

1. *There shall be deemed to commit the offence of practising prostitution, whoever is found in a place of prostitution so that it is likely that he may exercise sexual acts, or earn therefrom, and shall be punished, with whipping, not exceeding hundred lashes, or with imprisonment, for a term, not exceeding three years.*

2. *Place of prostitution means any place designated for the meeting of men, or women, or men and women between whom there are no marital relationship, or kinship, in circumstances in which the exercise of sexual acts is probable to occur.*

**Application of the Criminal Law Act against Suspected LGB Persons**

According to the US State Department, convictions for same-sex sexual activity under sections 148 and 51 are rarely enforced.\(^\text{397}\) However in 2010, a group of young men were publicly flogged with thirty lashes and fined 1,000 Sudanese pounds after being convicted of wearing women’s clothes and make-up

and dancing “in a womanly fashion”.

Moreover, the Equal Rights Trust collected evidence which indicates that, while few people have been convicted under sections 148 and 151, other provisions of the Act have been used to arrest and charge LGB persons with criminal offences.

In January 2014, the Equal Rights Trust met with a group of gay men, some of whom had been arrested in early 2013, for offences under sections 152 and 154 of the Criminal Law Act. Their story is summarised in Box 12.

**Box 12**

**Z. and Eight Other Sexual Minority Members**

On 13 February 2013, at approximately 8pm, NISS and police officers raided the house of a well-known musician, Z., in Khartoum North. The musician and eight others who were present at the house were arrested and charged with violation of sections 77 (disturbance of the peace) and 152 (indecent dress) of the Criminal Law Act 1991. The nine were held by the NISS. While in detention, they were beaten, harassed and subjected to verbal abuse and degrading treatment. Their ill-treatment included being forced to pass by a line of men, with each one in turn hitting the victims on the back with truncheons.

On 19 February, the *Al Sudani* and *Al Dar* newspapers reported on the case, claiming that the nine men were in fact celebrating a gay wedding. Two days later, on 21 February, *Al Intibaha* newspaper (which is owned by Eltaiab Mustafa, the uncle of President al-Bashir, and which has a wide circulation) called for conviction of the nine men, on the basis of their perversion and corruption of Sudanese society. The article demanded convictions on the basis that the men were gay, despite the fact that none had disclosed their sexuality.

On 22 February, the Attorney General’s office called for the original charges to be amended, to include charges of practicing prostitution (section 154 of the Criminal Law Act, carrying a minimum penalty of two years) and running a place of prostitution (section 155). This request was granted on 5 March 2013.

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In the following days, various newspapers began to call for the men to be stoned or given long prison sentences. At the same time, the police began to leak details of their identities. Some of the men were subjected to death threats and threats of other serious violence, which caused them to go into hiding, moving to secret locations. In at least one case, the family of the accused declared that they wanted to kill him.

On 20 August, the court of first instance dismissed charges against six of the men, and found the remaining three guilty only of breaching section 152 of the Criminal Code, because they were wearing shorts (even though this was inside a private home), which was judged to be indecent dress. On 26 September, the Appeal Court reversed this ruling, and released all nine men.

As of January 2014, some of the men continued to live in hiding, in constant fear for their physical safety. A section of the public has completely refused to accept the September 2013 verdict, and there have been calls for the execution of the men because of their sexuality. The men’s identities are not protected, as a result of the various newspaper articles and the leaked information, placing all of them at risk.

At time of writing, four of the men have been granted asylum by Western countries.

The Equal Rights Trust met and talked with X., a lawyer providing pro bono legal assistance to LGB persons who have been charged with criminal offences connected with their sexuality. In the 2013 case of Z. and others, he had only been able to enter the proceedings at the court stage, as he had not been allowed to act for the accused during the pre-trial stage, in violation of an important due process provision.

Asked for an estimate of the number of cases brought against LGB persons using the various provisions of the Criminal Law Act referenced above (predominantly sections 148, 152 and 154), X. stated that in his opinion, there could have been approximately 900 cases in 2011, but as many as 3500 cas-
es in 2012, and 5000 in 2013 throughout the country.\textsuperscript{399} However, he noted that this estimate was based on limited information, given that many of those charged have been unable to secure legal representation, and the reporting of cases is therefore limited. A further challenge comes from the fact that civil society organisations in Sudan do not report on such cases, be it for fear of retaliation, or because they share the attitude of the authorities. The Equal Rights Trust was disappointed to hear opinions expressed in a safe space by civil society representatives to the effect that sexual orientation discrimination as such is not a human rights issue.

Regardless of the numbers affected, it is clear that convictions for offences related to sexuality ruin the victims' future: they remain on police record, and are finger-printed, monitored, harassed and often forced to work as police informants.

\textbf{2.7 Discrimination and Inequality Based on Health Status}

\textit{Discrimination against Persons Living with HIV/AIDS}

According to the most recent data produced by the Joint United Nations Programme on HIV/AIDS (UNAIDS), there are between 52,000 and 88,000 persons living with HIV in Sudan.\textsuperscript{400} WHO estimates for 2011 indicate a prevalence of 202 cases per 100,000 people.\textsuperscript{401} According to UNAIDS, there were between 4,500 and 6,800 AIDS-related deaths in 2012.\textsuperscript{402}

The Equal Rights Trust’s research found that persons living with HIV experience stigma and prejudice, with the effect that many conceal their HIV status.\textsuperscript{403} Despite the difficulties in identifying persons living with HIV who would be willing to discuss their experience, the Equal Rights Trust spoke

\begin{itemize}
\item \textsuperscript{399} Equal Rights Trust interview with X., 21 January 2014, Khartoum. The Equal Rights Trust could not corroborate Mr X.’s estimate. Other practicing lawyers thought that such cases were more likely to number in the hundreds than the thousands.
\item \textsuperscript{401} World Health Organisation, \textit{Sudan: Health Profile}, 2011.
\item \textsuperscript{402} See above, note 400.
\item \textsuperscript{403} Equal Rights Trust interview with B., 20 January 2014, Khartoum.
\end{itemize}
with such persons in a number of locations, and heard testimony of various forms of discrimination and disadvantage, including in access to health care and employment. For example, interviews and group discussions in Kassala state showed that the concept of the rights of people living with HIV is not well understood.\textsuperscript{404} Efforts devoted to combating HIV/AIDS have focused on prevention rather than on awareness or education, with the result that the community sees HIV-positive persons as contagious “carriers” and therefore excludes them socially. F., a woman from the Alshaabia neighbourhood of Kassala, gave the following testimony:

\begin{quote}
I feel very angry and I curse my husband who has transferred this disease to me. A woman refused to drink water after me. (...) I feel embarrassed and hide my disease. (...) If people knew then they would run away from me. (...) I know a woman who had AIDS and died. No one wanted to wash her body until one woman did after a lot of effort.\textsuperscript{405}
\end{quote}

The government has made some efforts to improve the situation of persons living with HIV. The Ministry of Health’s response to the spread of HIV and AIDS was to launch the Sudan National AIDS Programme (SNAP) in 1987, soon after the official identification of the first case of HIV back in 1986. SNAP’s work in its early years focused on preventing an increase in the prevalence of HIV (currently estimated by SNAP to be approximately 0.53%)\textsuperscript{406} amongst the general population, while its new strategy is expected to prioritise and target the most-at-risk populations.

In 2005, the government drafted legislation protecting the rights of persons living with HIV and AIDS. In its progress report for 2008, SNAP stated that the draft legislation was awaiting final approval from the Ministry of Justice before being presented to the Cabinet for its endorsement.\textsuperscript{407} Disappointingly, in its 2011 report, SNAP stated that the draft legislation had

\begin{flushleft}
\textsuperscript{404} Equal Rights Trust focus group and interviews, October 2011, Kassala.
\textsuperscript{405} Equal Rights Trust interview with F., October 2011, Alshaabia.
\end{flushleft}
not yet been adopted by the Cabinet, despite the lapse of three years.\textsuperscript{408} In July 2014, the Sudanese authorities informed the UN HRC that a bill on the rights of persons living with HIV and AIDs “has been tabled to the Parliament for consideration”, giving no further detail on the proposed timetable for legislation to be enacted.

In the absence of a legal instrument, in 2004, the government did adopt a National Policy on HIV/AIDS,\textsuperscript{409} which includes, among its twenty priorities, a focus on “stigma, discrimination and rights of people living with HIV/AIDS”. This part of the policy recognises that stigma and discrimination associated with HIV/AIDS are “[t]he greatest barriers to preventing further infections, providing adequate care, support, treatment and alleviating impact.”\textsuperscript{410} It goes on to call for safeguarding the rights of people living with HIV/AIDS so as “to improve the quality of their lives and minimise stigma.”\textsuperscript{411} In recent years, the government has taken steps in combating stigma and exclusion of persons living with HIV and AIDS, and the media have run positive stories, featuring such persons and showing they can form families and have healthy children.

**Discrimination Related to Tuberculosis and Drug Abuse**

The WHO estimates that the prevalence of Tuberculosis (TB) in Sudan is 207 cases per 100,000 of the population, among the highest in Africa.\textsuperscript{412} Dr B. explained to the Equal Rights Trust that stigma surrounding the disease is severe, even after a person has fully recovered.\textsuperscript{413} The testimony from Y., a woman from River Nile state, illustrates this contention:

\begin{quote}
I am a 50 year old woman. I am a worker and I am the oldest of my siblings – five brothers and two sisters. Our father was a worker at the Silah Altibi Hospital and
\end{quote}

\begin{flushleft}
\footnotesize

\textsuperscript{409} See section 3.3 below for a more detailed assessment of the National Policy on HIV/AIDS.


\textsuperscript{411} Ibid.

\textsuperscript{412} World Health Organisation, *Sudan: Tuberculosis Profile*, 2012.

\textsuperscript{413} Equal Rights Trust interview with Dr B., 20 January 2014, Khartoum.
\end{flushleft}
died when I was in elementary school. I dropped out of school to work at a soap factory in 1975 to support my family. I made sure that all my siblings graduated from universities and got married. I got sick with tuberculosis and even though I was cured, people treated me like an outcast, even my siblings and their children. If I go anywhere people do not greet me or sit beside me and if I visit one of my siblings I feel that they get annoyed.414

Until recently, the government completely denied the existence in Sudan of drug abuse and the theme was taboo. But at present, the government has acknowledged the problem and has started to release information, including statistics. The issue has even been the subject of discussions in mosques.415

Discrimination in Access to Healthcare, Employment and Education on Grounds of Health Status

Widespread stigma attached to HIV and AIDS has a direct impact on access to healthcare for persons living with the condition. In Khartoum state, Equal Rights Trust researchers conducted interviews with persons living with HIV and representatives of the Sudanese Association for the Care of People Living with HIV/AIDS.416 Those interviewed stated that persons living with HIV and AIDS are denied medical treatment and that some have had to file complaints in order to receive the necessary treatment. In one case, a doctor completely refused to perform a surgical procedure because the patient had AIDS. The Equal Rights Trust interviewed Dr B., a senior medical professional working on issues of HIV prevention and treatment, who said that he was aware of many examples of people being pre-tested for HIV prior to any other medical examination, diagnosis or treatment and then refused treatment if found to be positive. Dr B. stated that, while pre-testing is not provided for in Sudanese laws, it is a widespread practice.417

414 Equal Rights Trust interview with Y., August 2011, Shandi.
416 Focus group with persons living with HIV, October 2011, Khartoum.
Focus group participants in Kassala spoke of other problems facing persons living with HIV and AIDS in accessing healthcare. For example, the widespread use of “health cards” carrying details of a person’s HIV status were causing embarrassment which discouraged some from accessing health services. Participants also highlighted difficulties in acquiring health services other than in hospitals, which presents a practical obstacle for many of those affected. They stated that when someone needed an injection or intravenous therapy, they had to go to a hospital because staff in other health care centres are afraid to deal with patients with HIV.418

The Equal Rights Trust also found cases illustrating that persons living with HIV and AIDS can face difficulties in accessing employment and education as a result of prejudice and ignorance. Focus group participants in Khartoum said that they were forced to conceal their condition so that their children are allowed to go to schools.419 In one case a primary school student was expelled when the school found out that his father had HIV. S., a teacher from Kassala state, commented on the impact of stigma and prejudice on her employment:

I am a secondary school teacher. I was diagnosed with AIDS and because of ignorance I was suspended from my job. My own private institute of education excluded me for the same reason. I was so frustrated and depressed. I contacted the association of people living with HIV in Kassala, which helped and supported me until I got my job back. (...) I am not the only one who has suffered from the ignorance of the people. I have a friend who also had to go through what I went through. (...) All the people I know went through difficulties like this and some have not returned to their work yet.420

418 See above, note 404.
419 Equal Rights Trust focus group with persons living with HIV, October 2011, Khartoum.
420 Equal Rights Trust interview with S., October 2011, Kassala.
2.8 Conclusion: The Metamorphoses of Inequality

The Equal Rights Trust’s research and consultations resulted in evidence of widespread and systematic discrimination on grounds of religion or belief, race and ethnicity, political opinion, gender, disability, sexual orientation and health status.

The evidence reveals that the government has played a major role in causing and perpetuating discrimination – either through the enactment and enforcement of discriminatory laws or through the actions of the armed forces, security services, police and other state bodies. The state is the principal perpetrator in many of the most serious patterns of discrimination which prevail in Sudan. The report presents evidence of extrajudicial killings, torture and ill-treatment, and other human rights abuses by state actors which are discriminatory in nature, as they are caused wholly or in part by the ethnicity, religion or political opinion of the victims.

The report highlights a significant number of laws which discriminate, or which are open to discriminatory application, on the grounds of religion, ethnicity, political opinion, gender and sexual orientation. It also exposes the hostility of some sections of society towards particular groups – religious minorities and lesbian, gay and bisexual persons, for example – and the serious discrimination which these groups suffer as a result. The report finds that groups which are, or which are perceived to be, in opposition to the authorities, suffer discriminatory denial of their freedoms of expression, association and assembly, among other human rights. Finally, it documents discrimination in employment, education, healthcare and other areas of life, which restricts the ability of certain groups to participate on an equal basis with others in all areas of life.

In respect of discrimination and inequality arising on grounds of religion and belief, discriminatory legal provisions present arguably the most significant problems, both for members of religious minorities and for all those whose understanding of Islam is different from the conservative version promoted by the government. The imposition of sharia law in 1983 and the subsequent programme of legal reform to bring national legislation into line with sharia principles have had a negative impact on religious minority communities. The Criminal Law Act explicitly prohibits apostasy, and contains a vague provision
which has been used to prohibit blasphemy, suppressing free expression. Reli-
giously motivated dress code laws are enforced against women. Christians
face particular challenges in exercising their religious freedom, suffering ar-
rests, destruction of religious buildings and interference with their rights to
manifest their beliefs. Both religious minorities and non-complying Muslims
experience discrimination, apparently with the acquiescence of state bodies.

The report further finds that discrimination on the basis of race and ethnic-
ity is at the heart of Sudan’s cycle of injustice and conflict. Sudan’s history of
inter-ethnic conflicts in the periphery (South Sudan, Darfur; some areas in the
East, and latterly in Blue Nile and South Kordofan states) is well-publicised.
However, this report contributes to a deeper understanding of the conflicts
through the prism of the unified human rights framework on equality. In our
view, inequality is the integral root cause of all of Sudan’s continuing conflicts,
and at the centre of this inequality is the racial/ethnic factor, tinted by reli-
gion. The al-Bashir government has continued and strengthened the identity
politics of its predecessors by promoting a narrow vision of Sudan as a singu-
larly Arab and Islamic state.

The report finds a clear pattern of armed violence, by both state and non-state
actors, motivated by, or otherwise connected to, the ethnicity of the victims. It
also presents evidence of the involvement of state actors who, operating with
immunity from prosecution, carry out discriminatory arrests and ill-treat-
ment of individuals from particular ethnic groups, such as those from Darfur
and the South. Further, certain ethnic groups experience severe difficulties
in accessing citizenship: persons judged to be of South Sudanese origin were
effectively denationalised in 2011, on the South’s independence, leaving a sig-
nificant part of the population at risk of statelessness, solely because of their
ethnic origin. Finally, the Equal Rights Trust documented discrimination in
the distribution of land and resources, political participation, and discrimina-
tion in education or employment for persons from particular ethnic groups,
limiting their ability to participate equally in these areas of life.

Political opinion – both real and perceived – is a major ground of discrimi-
nation in Sudan. Political freedom is severely limited, and the Equal Rights
Trust has been able to identify a clear pattern of discriminatory denial of free-
dom of expression, association and assembly, directed by state security forces
against opposition groups and individuals. Actual or perceived political op-
ponents to the government, including journalists, civil society activists and academics, have experienced less favourable treatment generally, as well as during and after protests against the regime. Moreover, the report provides substantial evidence of discriminatory torture and ill-treatment by members of the security services against those arrested in connection with criticism of the government. The report also concludes that discrimination on the basis of political opinion can limit the ability of those affected to access land, employment and education, restricting their economic and social opportunities.

**Women** in Sudan suffer discrimination and disadvantage in a number of areas of life, despite ostensibly enjoying legal protection from discrimination under Article 32 of the Constitution. The Equal Rights Trust’s research found two key causal factors which inform women’s experience of discrimination. First, the significant number of discriminatory laws and legal provisions, in particular in the areas of criminal law and personal status law. Second, the prevalence of repressive, conservative social attitudes toward women. The report finds that both laws and practices entrench inequality in the family, workplace and other areas of life. The report also presents distressing evidence of the level and severity of violence against women, identifying in particular the role of state agents. In the context of legal discrimination and negative social attitudes, women are unable to participate in employment and education on an equal basis with men.

In the area of **disability**, the Equal Rights Trust welcomes the authorities’ efforts to improve the situation of persons with disabilities, which stands in contrast to the weakness of such efforts in other areas. However, the report finds little evidence of the impact of recent laws and policy initiatives. Testimonies from persons with disabilities provide evidence of direct, overt discrimination on the basis of disability. There is little evidence of public or private actors taking reasonable accommodation measures, even where required to do so by law. Persons with mental health problems and intellectual disability are still invisible in the growing disability discourse.

**Lesbian, gay and bisexual (LGB) persons** are at risk of – and experience – discrimination and a range of other serious human rights abuses because of their sexual orientation. Men who have sex with men are prosecuted on the basis of legal provisions that explicitly prohibit “sodomy”, as well as provisions neutral on their face but used in a discriminatory manner against them.
In addition, LGB persons face severe social stigma and a high risk of discriminatory violence from homophobic members of the public. There is effectively no openly LGB population in the country, while those who are exposed by the media as homosexual risk persecution.

The final section of Part Two of the report finds that, despite a number of commendable policy measures, persons living with HIV and AIDS and those who have tuberculosis experience prejudice and discrimination on the basis of their health status. The government is implementing, with mixed success, comprehensive policies to address HIV/AIDS issues, including the discrimination suffered by people living with the condition.

Overall, the Equal Rights Trust has found that Sudan’s reality today is an intricate web of inequalities. The chief, though not the only weaver, is the al-Bashir government whose identity politics promotes a narrow vision of Sudan as an Arab, Islamic nation. But the evidence presented here, with the voices of resistance and protest permeating Sudan’s world, suggests that the confluence of peace and social cohesion cannot be achieved by pressing in this direction. Rather it can be reached only through a recognition of equality and a celebration of diversity.
3. THE LEGAL AND POLICY FRAMEWORK RELATED TO EQUALITY

This part of the report describes and analyses the legal and policy framework related to equality in Sudan, in order to assess its adequacy to address the patterns of inequality and discrimination highlighted in the preceding part. It discusses both the international legal obligations of the state and the domestic legal and policy framework which protects the rights to equality and non-discrimination. In respect of domestic law, it examines the Interim National Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. It also examines government policies which have an impact on inequality, before turning to an assessment of the enforcement and implementation of existing laws and policies aimed at ensuring equality. The report reviews existing judicial practice related to discrimination, as well as the practice of specialised bodies whose functions are relevant to equality.

In order to assess the full picture of the Sudanese legal and policy framework as it relates to equality, this part should be read together with, and in the context of, the previous part, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application.

3.1 International and Regional Law

Since gaining independence in 1956, Sudan has signed and ratified a number of international treaties. Through their ratification, Sudan has committed to respect, protect and fulfil the rights contained in these instruments, and to be bound by the legal obligations contained therein.

3.1.1 Major United Nations Treaties Relevant to Equality

Sudan has a poor record of participation in the major UN human rights treaties. It has ratified or acceded to only five of the nine core UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of Racial Discrimination (ICERD); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD).
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<tr>
<th>Instrument</th>
<th>Signed</th>
<th>Ratified / Acceded</th>
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<tbody>
<tr>
<td>International Covenant on Civil and Political Rights (1966)</td>
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<tr>
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<tr>
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<td>No</td>
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<tr>
<td>International Covenant on Economic, Social and Cultural Rights (1966)</td>
<td>n/a</td>
<td>18/03/1986 (Acceded)</td>
</tr>
<tr>
<td>Optional Protocol to the International Covenant on Economic, Social and Cultural Rights</td>
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<td>No</td>
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<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (1965)</td>
<td>n/a</td>
<td>27/03/1977 (Acceded)</td>
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<tr>
<td>Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (allowing individual complaints)</td>
<td>No</td>
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<tr>
<td>Convention on the Elimination of All Forms of Discrimination against Women (1979)</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)</td>
<td>04/06/1986</td>
<td>No</td>
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<tr>
<td>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)</td>
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The failure to sign or ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) represents arguably the most significant gap in Sudan’s international legal obligations related to equality. At the first Universal Periodic Review (UPR) of Sudan at the UN Human Rights Council in 2011, a number of states made recommendations to Sudan that it ratify those core UN human rights treaties to which it was not party. Eleven states made recommendations in relation to CEDAW,¹⁴²¹ a treaty to which all but seven member states of the United Nations are party. Sudan rejected recommendations calling on it to ratify or accede to CEDAW, though it did accept those recommendations asking it to “consider” ratification or accession, stating that:

*The Government has subjected the Convention on the Elimination of All Forms of Discrimination against Women to a wide consultative process with a view to bring on board the view points of the different sects of the society.*¹⁴²²

Despite signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1986, Sudan has not yet ratified it. At

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¹⁴²¹ Australia, Belgium, Brazil, Ecuador, Finland, France, Malaysia, Norway, South Korea, Spain and Uruguay.

the UPR in 2011, four states called upon Sudan to ratify the treaty, but these recommendations were all rejected by Sudan, as were recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

In addition to failing to ratify or accede to important UN human rights conventions, Sudan has a poor record in ratifying those optional protocols which permit individuals to lodge claims of rights violations with the relevant UN treaty bodies. As a result of the failure to ratify the Optional Protocol to the ICESCR and Optional Protocol 1 to the ICCPR, individual victims of discrimination in Sudan are unable to bring complaints to the treaty bodies which monitor the implementation and enforcement of the instruments. This problem is exacerbated by the limited opportunities for individuals to seek redress for violations of Covenant rights at the domestic level. As detailed below, Article 27(3) of the Interim National Constitution provides for international human rights treaties to which Sudan is party to constitute part of the Bill of Rights. However, the UN Human Rights Committee (HRC) has criticised Sudan for failing to incorporate the rights provided in the ICCPR into domestic law and publicising it sufficiently so that it can be easily invoked before the courts and administrative authorities.

Similarly, whilst Sudan has acceded to ICERD, it has not made a declaration under Article 14 of the Convention which would allow individual complaints. The Committee on the Elimination of Racial Discrimination (CERD) has noted this failure and recommended that Sudan consider making a declaration under Article 14 when it reviewed Sudan in 2001.

423 Australia, Brazil, Ecuador and Spain.

424 See United Nations Human Rights Committee, Concluding Observations on the third periodic report of the Sudan, UN Doc. CCPR/C/SDN/CO/3, 29 August 2007, Para 8: “The Committee notes that pursuant to article 27 of the Interim National Constitution of 2005, the Covenant is binding and may be invoked as a constitutional text. It regrets, however, that the rights protected by the Covenant have not been fully incorporated into domestic law, and that the Covenant has not been sufficiently well publicized to be easily invoked before the courts and administrative authorities. The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant. It should in particular ensure that remedies are available to safeguard the exercise of those rights. The Covenant should be made known to the general public, and in particular to law enforcement personnel.”

The only treaty which Sudan has both ratified and permitted individual complaints to be made is the CRPD, though no individual complaints have yet been lodged against Sudan with the Committee on the Rights of Persons with Disabilities.

In 1991, Sudan notified the Secretary General of a derogation from the ICCPR, having declared a state of emergency.\footnote{Government of Sudan, Derogations: Notifications under Article 4 (3) of the International Covenant on Civil and Political Rights, UN Treaty Collection, 21 August 1991. The Derogation reads: “The state of emergency was declared all over the Sudan on June 30, 1989, when the Revolution for National Salvation took over the power, in order to ensure security and safety of the country. [The articles of the Covenant which are being derogated from are articles 2 and 22 (1) as subsequently indicated by the Government of the Sudan.]” (Emphasis in original.)} Under Article 4(1) of the ICCPR, where a state of public emergency has been declared, a state party:

> [M]ay take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Article 4(2) states that no derogation may be made from Articles 6, 7, 8(1) and 8(2), 11, 15, 16 and 18 of the Covenant. Article 4(3) sets out the process by which a state may avail itself of the right of derogation: it requires that the state immediately inform other state parties, through the intermediary of the Secretary General, of the provisions which it has derogated from, and the reasons for the derogation. On its face, the derogation by Sudan complied with these requirements of Article 4, and was not challenged by any of the other state parties to the ICCPR.

The notification of derogation indicated that Sudan derogated from Articles 2 (non-discrimination) and 22(1) (freedom of association) of the Covenant. Article 2(1) of the ICCPR requires that state parties respect and ensure all rights in the Covenant, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Thus, the derogation had the effect of...
suspending Sudan’s obligations to ensure non-discrimination in the enjoyment of all civil and political rights provided by the Covenant. However, the extent of this derogation was limited by the explicit prohibition on discrimination based on “race, colour, sex, language, religion or social origin” in the implementation of derogation measures which is provided for by Article 4(1). The UN HRC has stressed the importance of ensuring that derogations from the Covenant do not themselves involve discrimination, stating as follows:

*Even though article 26 or the other Covenant provisions related to non-discrimination (articles 2, 3, 14, paragraph 1, 23, paragraph 4, 24, paragraph 1, and 25) have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances. In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.*

In August 2001 and again in December 2001, the Government of Sudan informed the Secretary General that the state of emergency had been extended until 31 December 2002. No subsequent notice was filed with the Secretary General of Sudan’s intention to extend the state of emergency. The state of emergency was lifted in 2005, on the signing of the Comprehensive Peace Agreement (CPA) between the Sudanese authorities and the Sudan People’s Liberation Movement. However, it should be noted that Sudan has not, as required by Article 4(3), notified the Secretary General of the date of the termination of its derogation. Moreover, the state of emergency is still in force in certain areas of the country. According to Sudanese lawyer Dr Mohammed Babiker:

*In January 2005, the state of emergency was lifted following the signing of the CPA with the Sudan People’s Liberation Movement/Army (SPLM/A). However, it re-

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mains in force in certain areas affected by the armed conflict such as Darfur, Blue Nile and South Kordofan. In sum, since the beginning of the armed conflicts in 1983, the Sudan has virtually been subjected to a permanent or de facto emergency. Under these circumstances, it makes sense to regard emergency powers as Sudan’s de facto constitution.\textsuperscript{428}

Sudan’s position regarding its obligations under the UN human rights system cannot be properly appreciated without an understanding of the state’s history of criticism of the system itself. Sudan is one a number of countries, together with Iran and Saudi Arabia, which have criticised the Universal Declaration of Human Rights – and implicitly therefore the international bill of human rights of which it forms a part – as a partisan text reflecting a secular interpretation of the Judeo-Christian tradition. Indeed, in 1994, Sudanese representatives to the UN Human Rights Commission were involved in a very public conflict over the relationship between the state’s obligations under international human rights law and sharia law.\textsuperscript{429} Responding to a recommendation by the then Special Rapporteur on Sudan that it should bring its legislation into line with its international law obligations, the Sudanese delegation strongly expressed the view that sharia law superseded its international human rights obligations. In its official response to the Special Rapporteur’s report, Sudan stated:

\textit{All Muslims are ordained by God to subject themselves to sharia Laws and that matter could not be contested or challenged by a Special Rapporteur or other UN agencies or representatives.}\textsuperscript{430}

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3.1.2 Other International Treaties Relevant to Equality

Sudan has a mixed record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. Sudan ratified the 1951 Convention relating to the Status of Refugees in 1974, which is of particular importance given the high number of refugees in the country: according to United Nations High Commissioner for Refugees planning figures, a total of 215,810 refugees, people in refugee-like situations, asylum seekers and other persons of concern resided in the country in 2014.\(^{431}\)

Sudan has also ratified a number of key International Labour Organisation (ILO) Conventions including the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention.

In light of the problems regarding the citizenship of persons of South Sudanese origin which are discussed in section 2.2 above, it is a cause of concern that Sudan has failed to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Sudan does not recognise the jurisdiction of the International Criminal Court. In response to the charges of genocide, crimes against humanity and war crimes in Darfur, which the prosecutor of the International Criminal Court pressed against President Omar al-Bashir, Sudan stated that it would not ratify the Rome Statute of the International Criminal Court, despite having signed it in 2000.\(^{432}\)

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<th>Instrument</th>
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<th>Ratified / Acceded</th>
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<tr>
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<tr>
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<td>No</td>
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<tr>
<td>(1954)</td>
<td></td>
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<tr>
<td>Convention on the Reduction of Statelessness (1961)</td>
<td>No</td>
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\(^{431}\) United Nations High Commissioner for Refugees, 2014 UNHRC country operations profile – Sudan.

\(^{432}\) In a communication received on 26 August 2008, the Government of Sudan informed the Secretary-General of the following: “Sudan does not intend to become a party to the Rome Statute. Accordingly, Sudan has no legal obligation arising from its signature on 8 September 2000.”
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) | 07/09/1956 | 09/09/1957 (Ratified)
---|---|---
United Nations Educational, Scientific and Cultural Organisation Convention against Discrimination in Education (1960) | No | No
Forced Labour Convention (ILO Convention No. 29) (1930) | n/a | 18/06/1957 (Ratified)
Equal Remuneration Convention (ILO Convention No. 100) (1951) | n/a | 22/10/1970 (Ratified)
Discrimination (Employment and Occupation) Convention (ILO Convention No. 111) (1958) | n/a | 22/10/1970 (Ratified)
Indigenous and Tribal Peoples Convention (ILO Convention No. 169) (1989) | No | No
Worst Forms of Child Labour Convention (ILO Convention No. 182) (1999) | n/a | 07/03/2003 (Ratified)

### 3.1.3 Regional Instruments

Sudan has ratified the African Charter on Human and Peoples’ Rights, but has not ratified the Protocol which establishes the African Court on Human and Peoples’ Rights. As a result, individuals and other member states of the African Union are unable to bring proceedings against Sudan. Also disappointing is the failure of Sudan to ratify the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, particularly given its failure to sign and ratify CEDAW. Sudan has, however, ratified the African Charter on the Rights and Welfare of the Child.

Despite being a member of the League of Arab Nations, Sudan has not signed or ratified the Arab Charter on Human Rights, which entered into force in
2008. It should be noted that when the Charter entered into force, it was severely criticised by the then UN High Commissioner for Human Rights, Louise Arbour, who expressed concerns about “the approach to the death penalty for children and the rights of women and non-citizens [...] extent that it equates Zionism with racism”.433

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<th>Instrument</th>
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<tr>
<td>African Charter on Democracy, Elections and Governance (2011)</td>
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<td>No</td>
</tr>
<tr>
<td>Arab Charter on Human Rights (1994)</td>
<td>No</td>
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**Cairo Declaration on Human Rights in Islam**

As one of the 45 members of the Organisation of Islamic Cooperation, Sudan is a signatory to the Cairo Declaration on Human Rights in Islam, which was adopted in 1990 by the 19th Islamic Conference of Foreign Ministers. The Cairo Declaration was strongly criticised on its adoption, largely for the attempt to establish an alternative to the Universal Declaration of Human Rights, and for the apparent elevation of Islam and sharia law to a position of primacy over human rights. In a statement to the UN Commission on Human Rights

In February 1992, the Secretary General of the International Commission of Jurists (ICJ), speaking on behalf of the ICJ and the International Federation for Human Rights urged the rejection of the Declaration on the basis that:

1. It gravely threatens the inter-cultural consensus on which the international human rights instruments are based;
2. It introduces, in the name of the defence of human rights, an intolerable discrimination against both non-Muslims and women;
3. It reveals a deliberately restrictive character in regard to certain fundamental rights and freedoms, to the point that certain essential provisions are below the legal standard in effect in a number of Muslim countries;
4. It confirms under cover of the “Islamic sharia (Law)” the legitimacy of practices, such as corporal punishment, that attack the integrity and dignity of the human being.434

Article 1(a) of the Cairo Declaration provides a basic guarantee of equality and non-discrimination. It states:

All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.435

The scope and impact of this provision is limited in a number of ways. First, as a declaration, the Cairo Declaration has no legal force, and is not legally binding on the states which have signed it; victims of discrimination cannot


435 Cairo Declaration on Human Rights in Islam, Organisation of Islamic Cooperation, Article 1(a).
bring a claim against the state or any other actor for violation of Article 1. By extension, the Declaration provides for no complaint mechanism and establishes no monitoring body equivalent to the treaty bodies established by the various UN instruments.

Second, the scope of the right provided by Article 1(a) is limited: the application of the protection from discrimination is restricted in scope to that necessary to ensure equality in basic human dignity, obligations and responsibilities. This does not meet the obligation to provide protection from discrimination in the enjoyment of other human rights which is imposed by Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. Moreover, it falls far short of the obligation to provide protection from discrimination in all areas of life governed by law, which is provided for by Article 26 of the ICCPR.

Third, the right – as with all other rights in the Declaration – is subject to restrictions based on Islamic law. The final clause of Article 1(a) states that “the true religion is the guarantee for enhancing (...) dignity”, thus reserving a special status for Islam and calling into question the effect on the protection for non-Muslims.

More importantly, the Declaration explicitly places the Islamic sharia in a position of supremacy over other bases for human rights, and indeed over human rights themselves. Article 24 of the Declaration states that: “[a]ll the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah”. Article 25 goes on to state that sharia is the “only source of reference for the explanation or clarification of any of the articles of this Declaration”.

3.1.4 Status of International Instruments in Domestic Law

Articles 27(3) of the Interim National Constitution provides for the direct application of international human rights law in Sudan. It represents a key provision insofar as it demonstrates the comprehensive approach adopted by the Constitution in relation to human rights protections. Article 27 (3) states:

All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.
This provision has generally been interpreted by academics to mean that such treaties are now an integral part of Sudanese law and thereby constitutionally and legally binding on the Sudanese courts. The Sudanese authorities recently reconfirmed this position, stating in a report to the UN HRC that international instruments which the state has signed and ratified:

[A]re regarded as an integral part of the Bill of Rights set forth in the Constitution, pursuant to article 27(3) thereof, and of the practical application of all legal measures, as will be later explained in this report, thereby settling any debate on this matter.

As such, for the first time in Sudanese legal history, in 2005 several international treaties containing provisions prohibiting discrimination became part of Sudanese domestic law. Article 27(3) has the potential to have a significant impact on the extent of protection from discrimination provided under Sudanese law. As noted above, Sudan is party to a number of key international treaties providing protection from discrimination, including the ICCPR and the ICESCR, as well as the ICERD, CRC and the CRPD. Under Article 2 of the two Covenants, Sudan is obligated to ensure the enjoyment of all civil, political, economic, social and cultural rights without discrimination on a list of grounds. Moreover, under Article 26 of the ICCPR, Sudan is obligated to guarantee the right to non-discrimination as a free-standing right, applicable in all areas of life regulated by law. The direct effect of these instruments, together with the ICERD, CRC and CRPD, provides important potential protection for victims of discrimination in Sudan.

Nonetheless, there is significant concern over the extent to which Article 27(3) is effective in practice. In its 2007 Concluding Observations on Sudan’s compliance with its obligations under the ICCPR, the UN HRC noted the effect of Article 27(3), but regretted that:

436 See, for example, above, note 428, p. 16.
438 International Covenant on Civil and Political Rights, Article 2(1) and International Covenant on Economic, Social and Cultural Rights, Article 2(2).
The rights protected by the Covenant have not been fully incorporated into domestic law, and that the Covenant has not been sufficiently well publicized to be easily invoked before the courts and administrative authorities.\(^{439}\)

M. Babiker has argued that the monist approach enshrined by Article 27(3) is unworkable in the Sudanese legal and political context:

\[\text{The automatic transformation of international law into Sudan's national legal system has, however, raised serious difficulties in terms of the actual application of the law by law enforcement officials as well as courts. This has been particularly the case where a conflict arises between statutory law including Shari'a and human rights norms. This poses the question of whether article 27 (3) shall be maintained or whether any new constitution should opt for a “dualist” theory or pursue a “third way” for the sake of effective implementation of future constitutional Bills of Rights.}\]

\[\text{(…) Article 27 (3) of the INC [Interim National Constitution] 2005 suggests that Sudan’s legal system is monist. This is in theory. However, judicial practice indicates that judges in ordinary courts rarely rely on the Bill of Rights and international human rights instruments. The current practice of the Constitutional Court (as the guardian of human rights) unfortunately demonstrates that it has failed to protect the constitutional human rights of the Sudanese people and others in Sudan.}\(^{440}\)

The Equal Rights Trust’s consultation with civil society actors, legal academics and practicing lawyers identified a number of cases where the claimant had relied upon international human rights law when claiming discrimination. However, as yet, the Sudanese courts have appeared reluctant to directly

\(^{439}\) See above, note 424, Para 8.  
\(^{440}\) See above, note 428, p. 26.
enforce international human rights law. We believe that the reason is a combination of a lack of political will, a weak understanding of equality in international human rights, as well as the apparent discrepancy between the monist assumption of the Constitutional provision and the dualist character of the Sudanese legal system which has its origins in British common law from the colonial era. In any case, Sudan is undoubtedly under an obligation to give effect to the provisions guaranteeing the rights to equality and non-discrimination enshrined in international law, whether through their direct application or incorporation in the national law.

3.2 National Law

3.2.1 The Constitution

Sudan’s constitutional development since 1956 reflects the country’s turbulent recent history: in the 58 years since independence, the country has had eight different constitutions. The current Interim National Constitution was adopted in the immediate aftermath of the Comprehensive Peace Agreement (CPA) signed in Naivasha, Kenya in 2005 between the Sudanese government and the Sudan People’s Liberation Movement. The CPA provided for the development of a new constitution for the country.\(^\text{441}\) Pursuant to this agreement, an Interim National Constitution was drafted and ratified in October 2005. Notwithstanding the secession of South Sudan in 2011, the Constitution remains in force in the Republic of Sudan.

Part One: The State, the Constitution and Guiding Principles

A number of the provisions in Chapter One of Part One of the Constitution, which sets out its guiding principles, reflect a commitment to equality and non-discrimination. Article 1(1) states that Sudan is a “democratic, decentralised, multi-cultural, multilingual, multi-racial, multi-ethnic, and multi-religious country where such diversities co-exist”, while Article 1(2) states that Sudan is “founded on justice, equality and the advancement of human rights and fundamental freedoms”. According to the Sudanese authorities, Article 1(2) “affirms the State’s commitment to justice and equality, with no form of discrimination on any ground, such as race, ethnicity, colour, sex, language, religion, and so on”.

\(^\text{441\footnote{Comprehensive Peace Agreement, Chapter 1: Machakos Protocol, July 2002, Article 2(1)(f).}}\)
religion or political opinion”. Article 4, which sets out the fundamental bases of the Constitution, refers to equality, respect and justice for all citizens and the cultural and social diversity of the Sudanese people as guiding principles.

Articles 6, 7 and 8 provide important guarantees in respect of religious freedom, nationality and citizenship, and language, in each case incorporating relevant provisions of the Comprehensive Peace Agreement on these issues. While in general these provisions do not refer explicitly to the rights to equality or non-discrimination, each is significant in providing a legal guarantee necessary for the equal participation of all groups in society, and for addressing some of the underlying causes of the North-South conflict. It is notable that, while Article 22 of the Constitution specifically states that the provisions in Chapter Two of Part One of the Constitution “are not by themselves enforceable in a court of law”, no similar savings clause exists in Chapter One, and indeed, the courts have not drawn a distinction between the rights provided in Articles 6, 7 and 8, and those contained in the Bill of Rights itself.

Article 6 states that Sudan shall respect religious rights, including the right to worship, to write, issue and disseminate religious publications, to provide religious education and to celebrate religious holidays and ceremonies. These are undoubtedly important guarantees given the role which religion played in causing and perpetuating the conflict between North and South Sudan.

Article 7(1) states that “[c]itizenship shall be the basis for equal rights and duties for all Sudanese”. In its recent reports to UN treaty bodies, the Sudanese government has stressed the importance of this provision. In its 2013 report to the UN Committee on Economic, Social and Cultural Rights (CESCR), Sudan stated that the Article “guarantees the right of equality, without discrimination on any basis, and in fact makes citizenship the sole criterion for the enjoyment of rights and freedoms”. In its 2012 report to the UN HRC, the state stressed that “citizenship – not religion, ethnicity or colour – is the basis for rights and duties in the Sudan”.

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443 Ibid., Para 96.

444 See above, note 437, Para 141.
However, Article 7(1) – and the interpretation of the provision by the state in its reports to the UN treaty bodies – is problematic, in that it appears to limit the enjoyment of rights and freedoms to citizens alone. International human rights law is clear that the obligation of states to protect and guarantee the rights to equality and non-discrimination – and indeed almost all human rights – extends to all persons within the territory and subject to the jurisdiction of the state, though this is subject to a number of important caveats. Article 2(1) of the ICCPR, for example, requires states parties to undertake “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind” (emphasis added). Similarly, Article 26 states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law” (emphasis added) rather than, for example, using the words, “all nationals” or “all citizens”. The HRC has, in its Communications, found that distinctions made on the basis of citizenship may violate Article 26.

Two limitations to the general principle that human rights should be enjoyed by all persons, not only citizens, are provided in ICESCR and ICERD. Article 2(3) of ICESCR provides that:

*Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*

Notwithstanding this general exception, CESCR has stated in its General Comment No. 20 that:

*The ground of nationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone.*

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including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.\textsuperscript{446}

Article 1(2) of ICERD states that the Convention “shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens”. In its General Recommendation No. 30, CERD limited this general exception by clarifying where distinctions between citizens and non-citizens would, despite Article 1(2), contravene the Convention:

2. Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

3. Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;

4. Under the Convention, differential treatment based on citizenship or immigration status will constitute

discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. Differentiation within the scope of article 1, paragraph 4, of the Convention relating to special measures is not considered discriminatory...\textsuperscript{447}

Article 7(2) of the Constitution provides that “every person born to a Sudanese mother or father” has the inalienable right to Sudanese citizenship. This provision is significant in two respects. First, it establishes the principle that persons should be equally able to acquire Sudanese citizenship by birth by virtue of their father’s or mother’s nationality. Unfortunately however, this principle is not consistent with the Sudanese Nationality Act 1994, which instead establishes a hierarchy whereby it is easier to acquire citizenship by the paternal line than the maternal line.\textsuperscript{448} The second important aspect of Article 7(2) is that it establishes the “inalienability” of citizenship acquired by birth. Again however, the Sudanese Nationality Act, as amended in 2011, appears to directly contradict this principle: section 10(2) of the Nationality Act provides that: “Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan.” Article 7(3) of the Constitution provides that “no naturalised Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law”.

Article 8 deals with the question of national and official languages. It states that all indigenous languages are national languages which shall be respected, developed and promoted, and recognises that both Arabic and English shall be official working languages of the government. Article 8(5) explicitly prohibits discrimination on the basis of the use of either Arabic or English at any level of government or education. Given the patterns of discrimination on the basis of language which are documented in Part 2 of this report, Article 8(5) provides a potentially important avenue for legal redress.


\textsuperscript{448} See discussion above, at Section 2.4.
A number of provisions in Chapter Two of Part One of the Constitution are also potentially significant for the realisation of the rights to equality and non-discrimination in the areas of economic development, employment and education. Article 10(1) provides that the overarching aims of economic development in the country shall be:

\[E\text{radication of poverty, attainment of the Millennium Development Goals, guaranteeing the equitable distribution of wealth, redressing imbalances of income and achieving a decent standard of life for all citizens.}\]

Article 12(1) provides that the state will develop policies and strategies to ensure social justice. Article 12(2) states that no qualified person shall be denied access to a profession or employment on the basis of disability and that persons with special needs and the elderly “have the right to participate in social, vocational, creative or recreational activities”. Article 13(4) requires the state to recognise the cultural diversity of the country and to encourage diverse cultures. Article 15 deals with “Family, Women and Marriage”: significantly, Article 15(2) requires the state to “protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower them in public life”.

However, although the provisions in Chapter Two provide welcome guidance on the development of legislation and state policy, they are not directly enforceable in the Sudanese courts, by virtue of Article 22, which states that:

\[Unless this Constitution otherwise provides, or a duly enacted law guarantees the rights and liberties described in this Chapter, the provisions contained in this Chapter are not by themselves enforceable in a court of law; however, the principles expressed herein are basic to governance and the State is duty-bound to be guided by them, especially in making policies and laws.\]

**Part Two: Bill of Rights**

Part Two of the Interim National Constitution – the Bill of Rights – is the most significant part of the Constitution in respect of the protection of the rights
to equality and non-discrimination. The Bill of Rights in the Constitution has been welcomed by commentators as going further than any previous constitution in attempting to ensure comprehensive protection of human rights and basic freedoms in line with Sudan’s international legal obligations.\(^{449}\) As Dr Amin M. Medani concludes in a January 2014 paper: “there is no doubt that the provisions of the Bill of Rights are the most elaborate and significant ever provided in any Constitutional document in the history of the Sudan.”\(^{450}\)

Article 27(1) provides that the Bill of Rights is:

\[A\] Covenant among the Sudanese people and between them and their governments at every level (...) it is the cornerstone of social justice, equality and democracy in Sudan.

Article 27(2) provides that the state shall “protect, promote, guarantee and implement” the Bill of Rights. As noted above, Article 27(3) provides that international human rights instruments ratified by Sudan form an “integral part” of the Bill of Rights. Significantly, Article 27(4) reinforces the supremacy of the Constitution as guaranteed by Article 3, stating that: “[l]egislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights”.

Article 31 of the Constitution concerns the rights to equality and non-discrimination, though providing only limited protection of both. It states:

All persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law.


It is notable that Article 31 bears at least a superficial similarity to Article 26 of the ICCPR, which states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Two key differences are obvious. First, while Article 26 of the ICCPR states simply that all persons are entitled to equal protection “without any discrimination” (emphasis added), Article 31 of the Constitution enumerates a short closed list of grounds on which such discrimination is prohibited. Thus, the guarantee of equal protection of the law provided by the Constitution is limited by reference to a specific group of characteristics, restricting the ability of an individual to challenge any denial of equal protection which arises on another basis, such as disability, age or sexual orientation.

Second, Article 31 entirely omits the second sentence of Article 26, which provides an autonomous right to non-discrimination. In its General Comment No. 18 on non-discrimination, the UN HRC has emphasised the three distinct strands of protection provided by Article 26 of the ICCPR, highlighting the importance of the separate prohibition on discrimination:

Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.451

Through the omission of the second sentence of Article 26 of the ICCPR, the Constitution provides only very limited protection from discrimination: a person is only entitled to enjoy equal protection of the law without discrimination. Thus, Article 31 provides a lower degree of protection from discrimination than that provided by the international instruments to which Sudan is party. Discriminatory acts impinging on the enjoyment of a person’s civil, political, economic, social and cultural rights may occur in a wide range of contexts and situations, and protection from discrimination in all areas of life regulated by law is by far a broader concept than equal protection of the law. For example, the law can give equal protection to a man and a woman while sanctioning rules that treat the woman less favourably. In this case, the law would merely ensure that the man and the woman have an equal opportunity to the enforcement of the discriminatory rule.

A central problem in understanding the scope of protection provided by Article 31 is the lack of clarity about what the phrase “equal protection of the law” means, in the Sudanese legal context. To date, this question has not been considered by the courts in Sudan, leaving significant room for speculation about the extent to which different actors, and different actions, are subject to an obligation of non-discrimination. Nevertheless, it seems reasonable to assume that Article 31 falls short of the far-reaching obligation arising under Article 26 of the ICCPR to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”. As the HRC has noted, Article 26 creates an “autonomous right”, which is far broader in its scope than “equality before the law” and “equal protection of the law”, and also broader than the right to be free from discrimination in the enjoyment of other human rights provided by Article 2(1). In its General Comment No. 18, the Committee noted that Article 26:

\[\text{[P]rohibits discrimination in law or in fact in any field regulated and protected by public authorities (...) In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.}\]

\[452 \text{Ibid., Para 12.}\]
Consonant with Article 26 ICCPR, the Declaration of Principles on Equality states that the right to equality and the right to non-discrimination which is subsumed in it apply “in all areas of activity regulated by law”. Article 31 of the Constitution does not explicitly prohibit discrimination in all fields regulated and protected by public authorities, or all areas of activity regulated by law. Rather, it states that all persons are entitled to enjoy equal protection of the law without discrimination. In the absence of judicial interpretation of the phrase “equal protection of the law” in Sudanese jurisprudence, there is a risk that the scope of Article 31 would be construed narrowly, falling below the standard of protection from discrimination required by Article 26 of the ICCPR or Principle 8 of the Declaration of Principles on Equality.

Another cause for concern is that, while the Bill of Rights in the Constitution provides arguably the best protection for fundamental human rights of any of Sudan’s constitutions, Article 31 has a narrower material scope than a number of its predecessors. For example, the 1973 Constitution provided that “Sudanese have equal rights and duties, irrespective of origin, race, locality, sex, language and religion” and that “the State shall ensure equality of opportunities for all Sudanese and prohibit any discrimination in work opportunities or conditions or pay on the grounds of origin, sex, or geographical affiliations”. The 1998 Constitution provided that:

> All people are equal before the courts of law. Sudanese are equal in rights and duties as regards to functions of public life; and there shall be no discrimination only by reason of race, sex or religious creed. They are equal in eligibility for public posts and offices not being discriminated on the basis of wealth.

A further potential problem may be created from the lack of explicit prohibition in Article 31 of both direct and indirect discrimination. The UN CESCR has stated that the prohibition on discrimination in Article 2(2) of ICESCR includes both direct and indirect discrimination, and both are also included in

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454 Ibid., Principle 8.
455 Constitution of Sudan 1973, Article 38 and Article 56.
the definition of discrimination in the Declaration of Principles on Equality.\(^{457}\)

In the absence of jurisprudence or clear state practice indicating that Article 31 does effectively prohibit both forms of discrimination, there is ground for concern that the Constitution would only extend protection to acts of direct discrimination. In addition, the Constitution does not explicitly prohibit harassment or failure to make reasonable accommodation, though the latter is partly compensated for, in respect to disability, by limited provisions in the National Disability Act 2009.

The personal scope of protection provided by Article 31 is also severely limited. The Article provides protection from discrimination only on the basis of the characteristics or grounds which are explicitly referred to in the text: race, colour, sex, language, religious creed, political opinion and ethnic origin. While this list includes six of the grounds which are listed in Articles 2(1) and 26 of the ICCPR and Article 2(2) of the ICESCR, it omits several others which are well-recognised under international law. The list omits five characteristics which are explicitly listed in both the ICCPR and the ICESCR: national or social origin, other opinion (apart from political), property and birth. Moreover, it omits all those grounds which the HRC and the CESCR, in interpreting the ICCPR and the ICESCR respectively, have recognised as falling under “other status”, within the meaning of Article 2 of the relevant Covenants: civil and family status, nationality, economic status, sexual orientation, gender identity, age, disability and health status.\(^{458}\)

Article 31 also omits pregnancy and maternity, both of which are protected under Article 11 of the CEDAW (though these may be construed as being covered under the protected characteristic of “sex”). All of these omitted grounds are also recognised in Principle 5 of the Declaration of Principles on Equality.

In addition to the problems posed by the use of a limited list of explicitly protected grounds, the scope of protection provided by Article 31 is limited by virtue of the fact that the list is exhaustive, rather than indicative. Both the ICCPR and the ICESCR state that the rights therein should be enjoyed without distinction on an explicit list of characteristics and “any other status”; the same phrase is also used in the broader right to non-discrimination found in Article 26 of the ICCPR. In its General Comment No. 20, the CESCR stressed the importance of the phrase “other status”, finding that:

\(^{457}\) See above, note 446, Para 10; see above, note 453, Principle 5.

\(^{458}\) See, for example, above, note 446, Paras 28–35.
A flexible approach to the ground of ‘other status’ is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of comparable nature to the express recognized grounds in article 2, paragraph 2.\textsuperscript{459}

As the Committee has indicated, the use of an indicative, open-ended list of protected grounds is important if the scope of protection is to recognise emerging forms of discrimination. As noted above, both the HRC and the CESCR have recognised a number of additional characteristics – ranging from age and disability to sexual orientation – as forms of other status. By omitting “other status”, Article 31 does not help Sudanese courts to extend the protection from discrimination to grounds which were not specified when the Constitution was first adopted.

The personal scope of Article 31 is also severely limited in other ways. Notably, the construction of the Article is likely to make it difficult for a person to claim discrimination where they experience unfavourable treatment by reason of a perception, whether true or false, of having a particular protected characteristic, or by reason of an association with someone who possesses a protected characteristic. The CESCR has stated that: “membership [of a protected group] also includes association with a group characterised by one of the prohibited grounds (...) or perception by others that an individual is part of such a group”.\textsuperscript{460} Similarly, the Declaration of Principles on Equality states that:

\begin{quote}
Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.\textsuperscript{461}
\end{quote}

Finally, the personal scope of the protection provided by Article 31 is limited by the failure to prohibit discrimination on multiple grounds, including both cumulative and intersectional discrimination. The CESCR has noted that

\begin{itemize}
\item \textsuperscript{459} See above, note 446, Para 27.
\item \textsuperscript{460} Ibid., Para 16.
\item \textsuperscript{461} See above, note 453, Principle 5.
\end{itemize}
some individuals or groups of individuals, such as women with disabilities, face multiple discrimination on two or more protected grounds,\(^{462}\) and has stressed that “such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remediing”.\(^{463}\) The Declaration of Principles on Equality also recommends that states provide protection from multiple discrimination.\(^{464}\)

In addition to the general equality provision in Article 31, three other Articles of the Constitution either provide protection from discrimination, or require measures to be taken to improve the position of groups exposed to discrimination. Article 32 is directed towards the rights of women and children. Article 32(1) proclaims that:

\[
\text{The State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits.}
\]

Thus, in respect of gender, the Constitution complies with the requirements of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR, which require that the state guarantees the enjoyment of the rights contained therein without distinction on certain grounds including gender. Yet here also, the provision falls short of the standard required by Article 26 of the ICCPR, which the HRC has stated is “an autonomous right” which “prohibits discrimination in law or in fact in any field regulated and protected by public authorities”.\(^{465}\) This ensures a broader material scope: all areas regulated by law, including where the discrimination at issue is not attached to the enjoyment of another human right. Moreover, while the provision reflects the language of Article 3 of both the ICCPR and the ICESCR, Sudan lacks the constitutional or legislative provisions required to meet the obligations which are implicit in this Article. As the HRC has stated, Article 3 requires that:

\(^{462}\) See above, note 446, Para 17.


\(^{464}\) See above, note 453, Principle 5.

\(^{465}\) See above, note 451, Para 12.
State parties take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment of such rights, the education of the population and of state officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant.\(^{466}\)

As noted in Section 2.4 above, Sudan retains a significant number of laws which directly or indirectly discriminate against women,\(^{467}\) while many obstacles continue to limit the equal enjoyment of rights by women. Moreover, as discussed in more detail in Section 3.2.2 below, Sudan has not adopted legislation which prohibits discrimination against women. Thus, the government is failing to fulfil its obligations under Article 32 of the Constitution, particularly to ensure equality before the law in the area of “personal status” and criminal matters; to take positive action measures in favour of women; and to combat harmful customs and practices against women. In an important sense therefore, Article 32 represents an unfulfilled commitment: the Article recognises that the state shall guarantee equal rights for men and women, but little has been done to achieve this.

In addition to the prohibition on discrimination in the enjoyment of other human rights, Article 32(1) also explicitly guarantees equal pay for work of equal value, thus going some way to meeting Sudan’s obligations as a party to the ILO Equal Remuneration Convention.\(^{468}\) Article 32(2) provides that “[t]he State shall promote women’s rights through affirmative action”. As with


\(^{467}\) See also Sanhouri Elrayh, E., “Women’s Rights in the Constitutional Bill of Rights: Issues of Status, Equality and Non-Discrimination”, *The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives*, REDRESS, Faculty of Law, University of Khartoum and the Sudan Human Rights Monitor, 2014, p. 45, where the author states that: “there are 26 laws not in conformity with the constitution because of their explicit or implicit discrimination against women”.

\(^{468}\) International Labour Organisation Equal Remuneration Convention (ILO Convention No. 100), 1951. Article 2(1) of the Convention states: “Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”
Article 32(1) however, this provision remains an unfulfilled commitment. According to Prof Sanhouri Elrayh:

> Eight years after its incorporation, the impact of the provision on women’s position is negligible due to a lack of effective measures taken in this regard. To illustrate, article 136 of the INC [Interim National Constitution] provides general directives for recruitment in the civil service, one of which is aimed at addressing the imbalance and inequity in recruitment, non-discrimination at any level of government against any qualified Sudanese based on religion, ethnicity, region or gender, and to employ positive discrimination measures and professional training to achieve equitable employment within a specific timeframe. However, the participation of women in the public and private sector remains far behind that of men even with legislation in place.469

Articles 32(3) and (4) provide for further specific obligations upon the state in relation to women’s rights. Article 32(3) requires the state to “combat harmful customs and traditions which undermine the dignity and status of women”, and Article 32(4) requires the state to “provide maternity and child care and medical care for pregnant women”. These provisions reflect, in part, certain provisions in the CEDAW, the most important international instrument on women’s equality which Sudan has not yet signed or ratified. Article 2(f) of the Convention, for example, requires states parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. Articles 11 and 12 of the Convention include provisions on support for women during pregnancy and maternity.

Article 32(5) requires the state to “protect the rights of the child as provided in the international and regional conventions ratified by the Sudan”. Thus, Article 32(5) reinforces Sudan’s existing obligations under international law. As noted above, Sudan has ratified the CRC and the first two Optional Protocols (on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography respectively).

469 See above, note 467 pp. 60–61.
Article 45 provides specific protections for persons with “special needs” and the elderly. Article 45(1) states that:

*The State shall guarantee to persons with special needs the enjoyment of all the rights and freedoms set out in this Constitution; especially respect for their human dignity, access to suitable education, employment and full participation in society.*

Article 45(1) is problematic in two important respects. First, the phrase “special needs” is not defined, either in the Article itself or elsewhere in the Constitution. This creates a serious lack of certainty about the scope of the provision’s application, leading to potential problems for those seeking the benefit of the provision, and those responsible for ensuring its implementation and enforcement. Secondly, if an assumption is made that “persons with special needs” includes some or all of those considered to be persons with disabilities, as defined in the CRPD, the Article provides no detail on how the “enjoyment of all rights and freedoms” and “full participation in society” is to be achieved. In this regard, it is notable that neither Article 31 nor Article 45(1) prohibits discrimination on the basis of disability, nor requires that reasonable accommodation measures to ensure the equal participation of persons with disability in all areas of life be adopted, as required by the CRPD. While such omissions could be compensated for in legislation, the National Disability Act, adopted four years after the Constitution, in 2009, also omits both a prohibition on discrimination and a general requirement to make reasonable accommodation.

Article 45(2) guarantees to the elderly “the right to the respect of their dignity” and obliges the state to “provide them with the necessary care and medical services as shall be regulated by law”. The term “elderly” is not defined in the Article or elsewhere in the Constitution.

Finally, Article 47 provides specific rights for ethnic and cultural minorities:

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470 Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 2006, Article 1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

471 Ibid., Articles 5(2) and 5(3).
Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures; members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the framework of their respective cultures and customs.

This compares favourably with Article 27 of the ICCPR, which requires, in states with ethnic, religious or linguistic minorities, that persons belonging to such minorities have the right to “enjoy their own culture, to profess and practise their own religion, or to use their own language”. As with Article 32, however, the practice of the state provides numerous examples of flagrant, systematic and consistent violation of Article 47.

The provisions of the Constitution examined above provide, in theory at least, for some degree of protection from discrimination. However, no real effort has been made to translate the provisions in the Bill of Rights into legislation, with the exception of the National Disability Act 2009 and limited provisions in some other areas of law. There has also been no effort made to review legislation which pre-dates the Constitution in order to determine its compliance with the latter. Although a special committee was expected to be formed for this purpose, there is no indication that it has been established.

One significant shortcoming of the Bill of Rights, which has been highlighted by Dr Babiker, is the absence of a general prohibition on “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, as required by Article 20 of the ICCPR. A similar obligation also arises under Article 4 of the ICERD, which Sudan became a party to in 1977. While the Constitution does, at Article 39, require that all media “shall refrain from inciting religious, ethnic, racial or cultural hatred and shall

472 See above, note 428, p. 16.
474 International Convention on the Elimination of all forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965. Article 4(a) requires that states “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof”.

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not agitate for violence or war”, this is clearly a narrower prohibition than that envisaged by either the ICCPR or the ICERD. Given the well-documented history of racially and religiously motivated violence and conflict in Sudan, and the role of hate speech by the country’s political leaders in perpetuating such violence, this is a serious omission.

### 3.2.2 Specific Equality and Anti-discrimination Legislation

As a party to the ICCPR and the ICESCR, Sudan has an obligation to provide protection from discrimination by state and non-state actors through the adoption of equality legislation. The UN HRC has stated that under Article 26 of the ICCPR, all states parties have an obligation to ensure that the “law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds”.

It has also noted that Article 2 “requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations”. The CESCR has stated that “[s]tates parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights.”

Thus, Sudan has an obligation to ensure that its legislation prohibits discrimination on all grounds which are explicitly listed in Articles 2 and 26 of the ICCPR and Article 2 of the ICESCR, together with those characteristics recognised by the relevant Committees as covered by “other status”. Therefore, the list of grounds on which Sudan should provide protection from discrimination includes: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, family status, nationality, economic status, sexual orientation, gender identity, age, disability and health status.

In order to ensure consistency with the Covenants, such legislation should also provide protection from discrimination which arises on the basis of “oth-

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475 See discussion above, at Sections 2.1 and 2.2.
476 See above, note 451, Para 12.
478 See above, note 446, Para 37.
479 Ibid., Paras 18–35.
er status”. Moreover, in order to ensure consistency with the Covenants as interpreted by the relevant Committees, such legislation should prohibit discrimination by association and perception, and multiple discrimination.

Anti-discrimination law should, as explained by the CESCR, prohibit both direct and indirect discrimination, incitement to discriminate and harassment. The CESCR has also stressed that legislation and other instruments should “provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights.” Similarly, the HRC, when discussing the general obligations of states arising under Article 2 of the ICCPR, has stated that they “must ensure that individuals also have accessible and effective remedies to vindicate those rights”, and that “the Covenant generally entails appropriate compensation” for breaches of rights.

In addition to the general obligations arising under the ICCPR and ICESCR, as a party to ICERD and CRPD, Sudan has specific obligations to prohibit discrimination against racial or ethnic groups and against persons with disabilities by public and private actors in all areas of activity covered by these treaties.

Sudan has made little progress towards discharging its obligations to provide effective protection from discrimination in its legal system. Indeed, beyond the constitutional provisions discussed above, there is very limited legal protection from discrimination. Sudan lacks comprehensive anti-discrimination law or equality enforcement bodies. It also lacks specific laws prohibiting discrimination on grounds such as race, sex or disability. In its 2014 review of Sudan’s compliance with its obligations under the ICCPR, the HRC expressed concern at the “lack of comprehensive anti-discrimination legislation pro-

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480 Ibid., Para 16.
481 Ibid., Para 17.
482 Ibid., Para 10.
483 Ibid., Para 7.
484 Ibid., Para 40.
485 See above, note 477, Paras 15 and 16.
hibiting discrimination on grounds such as age, sexual orientation, gender identity and health status” and stated that Sudan should “consider adopting comprehensive anti-discrimination legislation”.487

While Sudan adopted a National Disability Act in 2009, the Act does not prohibit discrimination on the grounds of disability, or create a general requirement of reasonable accommodation to ensure that persons with disability are able to participate in life on an equal basis with others. Instead, as is discussed below, the Act sets out a series of benefits which should be available to persons with disabilities.

National Disability Act 2009

The National Disability Act 2009 is the only piece of legislation in Sudan which specifically and explicitly regulates the situation of a group exposed to discrimination. Its existence is particularly welcome given the absence of disability from the list of protected characteristics in Article 31 of the Constitution. Nevertheless, the Act suffers from some serious deficiencies, including notably that it does not prohibit discrimination on the grounds of disability. Moreover, despite being enacted two years after Sudan signed the CRPD, and in the same year in which it was ratified, the Act falls well short of meeting Sudan’s obligations under the Convention.

Section 3 defines a disabled person as “every person born with a disability or who became physically or mentally or sensory disabled permanently and that it affects him totally or partially”.488 This definition is narrower than that provided in the CRPD, which makes reference to “physical, mental, intellectual or sensory impairments”.489 It also implies a medical, as opposed to a social, understanding of disability. The social framework on disability reflected in the CRPD requires that disability is defined not merely as a medical condition affecting the person “totally or partially”, but that such impairments, “in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.490

488 National Disability Act, section 3.
489 See above, note 470, Article 1.
490 Ibid.
The Act does not define or prohibit discrimination on the basis of disability. This means that the Act falls short of the obligation, established by the CRPD, to “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds”.491 The Act also omits a general obligation to make reasonable accommodation, though a specific obligation on the competent authorities to enforce the provision of reasonable accommodation in the workplace is provided under section 4(2).492 Under the CRPD, “denial of reasonable accommodation” is included as a form of discrimination on the basis of disability. Reasonable accommodation itself is defined as:

\[
[N]ecessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.493
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Only one section of the Act – section 4 – concerns the “rights, privileges, facilities and exemptions” provided to persons with disabilities; the remainder of the Act relates to the establishment and operation of the National Council for Disabled Persons. Section 4(1) provides that:

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[T]he competent authorities shall enforce all the rights enshrined in the Transitional Constitution of the Republic of Sudan for the year 2005 and conventions for the disabled to which Sudan is a party.
\]

The first part of this subsection is largely superfluous: as noted, the Constitution does not provide any specific protection from discrimination for persons with disabilities, as disability is omitted from Article 31, which itself provides only a limited degree of protection. The second part has greater potential: by requiring that the “competent authorities shall enforce” international instruments, the section gives the potential for persons with disabilities to claim violations of their rights under the CRPD. To date, however, this provision has not been tested in the Sudanese courts.

491 Ibid., Article 5(2).
492 See above, note 488, section 4(2)(H).
493 See above, note 470, Article 1.
Section 4(2) of the Act provides an extensive list of specific rights, privileges and exemptions which the “competent authorities are committed to enforce”, “without prejudice to the generality” of section 4(1). The section requires the competent authorities to:

A. Provide exemptions from tuition fees at all stages of education, from primary to tertiary;
B. Develop an education curriculum which includes persons with disabilities, and provide translators to help in the proper understanding of lessons and exams;
C. Facilitate the teaching of Braille, sign language and the use of alternative script and provide technical aids and necessary educational tools;
D. Encourage outstanding and talented persons with disabilities;
E. Preserve the rights of persons with disabilities in state employment;
F. Determine the proportion of disabled persons to be trained each year, in coordination with the institutes of technical and professional training;
G. Provide for the rehabilitation of workers, whose disabilities occur at work, and transfer such persons to alternative jobs if necessary;
H. Provide reasonable accommodation in the workplace;
I. Include persons with disabilities in the social insurance system;
J. Provide exemptions for facilitative health aids;
K. Conduct early checks to detect signs of disability in children and pregnant women, to reduce and prevent disability;
L. Allocate special programmes for persons with disability;
M. Use sign language in all programmes where this is possible;
N. Provide special access to sport stadiums and cultural activities for persons with disabilities;
O. Organise cultural and sports festivals to highlight the capabilities and talents of persons with disabilities;
P. Take the necessary measures to facilitate the access for disabled persons to buildings and roads, transportation and other facilities;
Q. In the design of buildings, provide for facilitative means to ensure movement for persons with disabilities;
R. Allocate a percentage of land in the public housing plan and in public housing for persons with disabilities;
S. Allocate designated parking for persons with disabilities in public utilities;
T. Introduce traffic signs for persons with disabilities on driving license exams;
U. Erect signs which use sign language;
V. Provide exemption from ID fees for those persons with disabilities who cannot pay; and
W. Provide exemption from customs duties for prosthetic devices, work facilities, mobility aids and education for persons with disabilities.494

This list creates obligations on the state to make specific provision for persons with disabilities in many areas of life which are the subject of specific articles of the CRPD. However, in many areas, the provisions of the Act do not reflect the values or approach which underpin the CRPD. In the area of education, which is the subject of paragraphs A, B, C and D, the Act’s provisions reflect some but not all of the requirements of Article 24 of the CRPD. Section 4(2)(A) exempts persons with disabilities from tuition fee payment for primary and secondary education, giving effect to the requirement in the CRPD that persons with disabilities can access free primary and secondary education.495 Section 4(2)(B) requires the development of an educational curriculum which includes persons with disabilities, reflecting the CRPD’s requirement that persons with disabilities “are not excluded from the general education system” and that they “can access an inclusive (...) primary and secondary education”.496 Section 4(2)(C) builds on this, requiring the provision of technical aids and necessary educational tools. However, it should be noted that the Act does not create a general requirement of reasonable accommodation in education, or create obligations regarding individualised support measures, as required by Article 24(2) of the CRPD.497 Similarly, while Article 4(2)(C) of the Act reflects the requirements of Article 24(3)(a) and (b) regarding the facilitation of learning of Braille, alternative script and sign language, the Act is more limited than the CRPD, omitting any reference to augmentative and alternative modes of communication, for example, which are essential for accommodating persons with intellectual disabilities. It is also noteworthy that the Act creates obligations which are not contained in the CRPD, notably the general requirement to “[e]ncourage outstanding and talented persons with disabilities” created by section 4(2)(D).

494 The list provided here is a précis of the provisions contained in paragraphs A-W of section 4(2), not a direct quote.
495 See above, note 470, Article 24(2)(b).
496 Ibid., Article 24(2)(a) and (b).
497 Ibid., Article 24(2)(c), (d) and (e).
Paragraphs E, F, G and H relate to participation in employment, and again reflect some but not all of the relevant provision – Article 27 – of the CRPD. Paragraph E requires the state to “preserve the rights of person with disabilities in state employment”, a significantly narrower protection than that provided by Article 27(1)(b) of the CRPD, which requires that the state take appropriate steps to:

> Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.

Thus, where the Act creates a limited obligation which applies only in public employment, the CRPD requires far-reaching protection of all labour rights in all types of employment. Moreover, the Act completely omits a prohibition of discrimination on the basis of disability in all aspects of employment, as required by Article 27(1)(a), and a requirement to ensure that “persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others”, as required by Article 27(1)(c).

Paragraph F closely reflects the Convention language in respect of technical and vocational programmes, though the requirement is limited in its scope, in that it only requires the state to determine the proportion of persons who should benefit from training, rather than creating a general requirement to provide such training. Paragraph G creates an obligation which partially reflects the requirements of Article 27(1)(k) of the Convention, in that it relates only to the rehabilitation of persons whose disabilities were acquired at work, whereas the Convention creates a general obligation regardless of the way in which a disability occurred.

As previously noted, paragraph H creates an obligation to provide reasonable accommodation in the workplace, closely reflecting the requirements of Article 27(1)(i) of the Convention. It is noteworthy that the Act does not reflect the requirements in Article 27(1)(e), (f), (g), (h) and (j) of the Convention,

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498 Ibid., Article 27(1)(d).
and thus provides a lower standard of protection in the area of employment than that required by the CRPD. The Act also omits a stand-alone requirement relating to slavery, servitude and forced labour, as required by Article 27(2) of the CRPD.

Some provisions in section 4(2) of the Act give effect to the requirements to ensure an adequate standard of living for persons with disabilities which correspond to rights under Article 28 of the CRPD. Paragraph I requires the state to include persons with disabilities in the social insurance system, which would contribute toward meeting the obligations created by Article 28(2)(b) which requires that the state ensures access to social protection and poverty reduction programmes. Similarly, Paragraph R requires the state to allocate a proportion of land and public housing to persons with disabilities, reflecting the requirements to ensure access to public housing programmes which is established by Article 28(2)(d) of the Convention. Again however, the Act omits provisions relating to access to clean water, assistance for persons living in poverty and access to retirement benefits and programmes, which are provided for in the CRPD.\(^{499}\)

In the area of healthcare, the Act falls well short of the requirements created by the CRPD. Paragraph J requires that the state provide exemptions for “facilitative health aids”. Paragraph K requires the state to take steps to detect, reduce and prevent disability, reflecting part of the obligation created by Article 25(b) of the Convention, which requires \textit{inter alia} that the state provide health services “including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons”. However, the Act does not explicitly require that persons with disabilities are provided with the same range, quality and standard of health care as others; nor does it prohibit discrimination in the provision of health insurance, or the discriminatory denial of health services.\(^{500}\)

Section 4(2)N and section 4(2)O of the Act relate to participation in cultural life, recreation, leisure and sport, and again reflect some, but not all, of the requirements of the CRPD in this area. Paragraph N provides that persons with disabilities should have special access to sports stadiums and cultural

\(^{499}\) \textit{Ibid.}, Article 28(2)(a), (c) and (e).

\(^{500}\) \textit{Ibid.}, Article 25(a), (e) and (f).
activities, as required by Article 30(1)(c) and 30(5)(c) of the Convention. Paragraph O specifies that the state shall organise cultural and sports festivals to “highlight the capabilities and talents of persons with disabilities”, reflecting in part the requirements of Article 30(2) and 30(5)(b). Again however, the Act is limited, omitting in particular any reference to the inclusion of persons with disabilities in mainstream cultural and sporting activities.

Paragraphs P and Q relate to accessibility for persons with disabilities. Paragraph P closely reflects the requirement of Article 9(1)(a), that the state shall take

\[
\text{[A]ppropriate measures to ensure to persons with disabilities access, on an equal basis with others to (...) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces.}
\]

Paragraph Q goes further, requiring that building design takes account of the access needs of persons with disabilities. It is notable, however, that the Act makes no reference to the more detailed requirements, provided in Article 9(2) of the Convention, which set out a series of state obligations to ensure equality of access for persons with disabilities.

Aside from section 4, the National Disability Act is silent on the rights of persons with disabilities, and the obligations of the state or other actors towards them. Crucial rights enshrined in the CRPD, such as rights related to legal capacity (Article 12) or independent living (Article 19) are thus unrecognised. Instead, the remainder of the Act focuses on the establishment (in section 5) and operation of the National Council for Persons with Disabilities. Section 6 requires that the Council consists of a Minister appointed by the President, with the remaining members being 50% persons with disabilities and 50% those active in integrating persons with disabilities into the community. Section 7 sets out the Council’s three aims, which are as follows:

A. To address issues facing persons with disabilities and to work to resolve them;
B. To work on the integration of persons with disabilities and make them a powerful force in the community; and
C. To take action to enforce the rights of persons with disabilities with the competent authorities.

Section 8 of the Act, entitled “Responsibilities of the Council”, states that the body shall “develop public policies, plans and programs for the disabled persons”.

### 3.2.3 Non-discrimination Provisions in Other Legal Fields

As noted in section 3.2.2 above, Sudan is required, as a state party to the ICCPR and ICESCR, to adopt legislation prohibiting discrimination. While this obligation is best discharged by the enactment of what the CESCR has called “specific legislation prohibiting discrimination”, protections in legislation governing other areas of law can be an alternative, particularly in countries, such as Sudan, where specific legislation is weak or absent.

There are a number of provisions in Sudanese legislation governing particular fields which prohibit discrimination or provide for equal rights. Notably, the National Civil Service Act, the Criminal Law Act and the Child Act all contain some equality-relevant provisions. Unfortunately however, these provisions are limited in scope.

**Nationality, Citizenship and Immigration Law**

The Sudanese Nationality Act 1994 contained no non-discrimination or equality provisions, and none were introduced by the Sudanese Nationality Act (Amendment) 2011. On the contrary, as discussed above in sections 2.2 and 2.4, the law contains a number of provisions which discriminate against persons of South Sudanese ethnic origin and against women.

**Family Law**

There are no non-discrimination provisions in the Muslim Personal Status Act 1991, or in any other legislation governing aspects of family law. As discussed above in section 2.4, the Muslim Personal Status Act 1991 enshrines legal inequality between men and women and directly discriminates against women in entering into marriage, during marriage itself and in the dissolution of marriage.
Criminal Law

Article 4(a) of ICERD requires states parties to:

[D]eclare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.

This obligation is met, in part, through section 64 of the Criminal Law Act 1991 (provoking hatred against or amongst sects) which states that:

Whoever provokes hatred, contempt or animosity, against any sect, or between sects, by reason of ethnic, colour, or language differences, in a manner which exposes the public peace to danger, shall be punished, with imprisonment, for a term, not exceeding two years, or with fine, or with both.

According to Sudan’s state report to the CERD in 2000, the Advisory Council on Human Rights had proposed, in 1994, that section 64 be amended in order to prohibit racial discrimination as a discrete offence and to bring section 64 in line with the requirements of Article 4(a) of ICERD.501 The proposed Criminal Act (Amendment) 1998 would have created a new offence as Section 64(2) of the Criminal Law Act 1991 in the following terms:

Whoever calls for or abets the dissemination of ideas based on racial discrimination whether by way of violence or any other way or provides assistance for racial activities including the financing thereof shall be deemed to have committed an offence and shall, upon

conviction, be punished with imprisonment for a term not exceeding two years or with a fine or with both.

“Racial discrimination” would have been defined largely in line with the definition provided in Article 1(1) of ICERD. Whilst the Committee welcomed the proposed amendment, the proposed legislation was never passed.

Employment Law

Employment in Sudan is largely governed by two pieces of legislation: the Labour Act 1997 for employment in the private sector (with some important exclusions, notably related to domestic workers, casual workers and agricultural workers) and the National Civil Service Act 2007 for employment in the public sector.

The Labour Act 1997 does not provide protection from discrimination in the field of employment. There are two provisions, however, which provide some support for women workers. Section 46 governs maternity leave. Section 46(1) provides that female workers, once they have completed six months of service, are entitled to maternity leave with full pay for four weeks prior to confinement and four weeks after confinement (or two weeks and six weeks respectively if they prefer). Section 46(2) prohibits terminating the employment contract of a female worker during pregnancy or confinement. Provisions to support women during mourning (idda) leave are contained within Section 48. A female worker is entitled to leave with pay upon the death of her husband for four months and ten days if she was not pregnant and until the end of her confinement (plus a further eight weeks of maternity leave after childbirth) if she was pregnant.

Section 28 of the National Civil Service Act 2007 includes a provision on equal pay for equal work. Section 28(1) states that the principle of equal pay for equal work must be taken into account when determining wages on the basis of the nature of the work and the difficulty for the individual of undertaking his duties and responsibilities.

Section 24, which governs appointment and re-appointment within the civil service, contains a positive action measure for persons with disabilities. Section 24(7) states that “all units of the states shall allocate not less than 2% of the approved announced vacancies for persons with disabilities, taking into account the nature and requirements of the work and the nature of the disability”. Although section 24(7) uses the term “not less than 2%”, attempts to enforce regulations which provide for higher quotas have been unsuccessful. As noted below in section 3.4.2, in the case of Alsier Mustafa Khalfalah and others v Civil Service Recruitment Committee of Khartoum State,\(^{503}\) the High Court (Administrative Circuit) dismissed a claim by the applicants who were persons with disabilities following the Civil Service Recruitment Committee of Khartoum State’s decision to recruit only 1.8% of persons with disabilities as teachers in the region. The Committee made the decision despite an Order issued by the Governor of the State of Khartoum instructing it to ensure that 5% of the vacancies were filled by persons with disabilities. The High Court upheld the decision of the lower court which had rejected the claim on the basis that the Governor’s Order was inconsistent with the 2% quota in the National Civil Service Act 2007 and that the Recruitment Committee was not bound by the 5% quota in the Governor’s Order.

**Education Law**

The Planning and Organisation of Public Education Act 2001 does not provide a right to non-discrimination or equality. However, section 13 stipulates that *all* children of eligible school age (i.e. from six to fourteen) have the right to education, thus implicitly providing for equality of access to education.

Section 5(2)(c) of the Child Act 2010 states that “the child’s right to protection from all forms of unjust discrimination” is a basic rule for the application of the provisions of the law, however it provides no mechanism by which this right can be enforced and no definition of “unjust discrimination”.

**Health Law**

Health law in Sudan, largely found within the National Public Health Act 2008, contains no specific clause prohibiting discrimination in the provision

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503 Citation in the court register: High Court, Administrative Appeal No. 127/2012. Case not among those selected for report in the law reports.
of healthcare. Chapter IV is entitled “Maternal and Child Health”; however, it contains only two provisions which state that, starting immediately after birth, children should be vaccinated against diseases.

Section 28 sets out the situations whereby citizens have the right to free medical treatment which includes the treatment of children up to the age of five and pregnant women during childbirth, caesarean sections and follow up care after birth.

Section 32 provides that abortions cannot be performed except in hospitals and can only be undertaken for medical reasons as specified in regulations provided by the Ministry. It should be noted that measures which prohibit abortion or unduly restrict women’s access to it violate a number of international human rights provisions, including the right to non-discrimination on grounds of sex in access to healthcare.504

Other Areas of Law

The Council for Promotion and Development of National Languages Act was passed in 2008 in accordance with the CPA. Its objectives include to: (i) protect national languages and their codification; (ii) develop national languages; and (iii) promote initiatives of native speakers.

While the Act does not explicitly prohibit discrimination, the existence of a law which guarantees and protects the full range of national languages is a progressive step. It is significant in light of the recent aggressive promotion of the Arabic language in government, the administration of law and other areas of life, and the discriminatory impact felt by persons who are not fluent Arabic speakers.

3.3 National Policies Impacting on Discrimination and Inequality

The government does not have a current comprehensive national policy on equality or non-discrimination and has no specific national or regional poli-

cies to promote the right to equality of certain disadvantaged groups. Within educational policy, there is neither any active promotion of equality nor any initiatives to raise awareness about the right to equality. However, Sudan does have a national plan for the protection and promotion of human rights.

**National Plan for the Protection and Promotion of Human Rights in the Sudan, 2013**

The National Plan for the Protection and Promotion of Human Rights was adopted in 2013. The Plan was developed and published under the auspices of the Advisory Council for Human Rights, a government agency which brings together representatives of all government ministries and which is hosted and chaired by the Ministry of Justice. Section 2 of the Plan sets out its mission as being:

> To develop and consolidate human rights in legislation and practice, to apply the principles of equality and non-discrimination in the enjoyment of all rights, to disseminate awareness of human rights and to conduct legal reforms, and review national legislation for the purpose of being in conformity with the Sudan’s international and regional commitments.

Section 7 of the Plan provides detail on its "scope", setting out proposed activities in each of eight areas: human rights education; civil and political rights; economic, social and cultural rights; review of national legislation; relations with regional and international bodies; knowledge dissemination; partnerships with civil society; and cooperation and coordination with law enforcement authorities. However, the Plan does not set out targets in any of these areas. Instead, the Plan is framed in non-specific and largely aspirational terms, with reference to areas of focus and examples of activities which could be undertaken.

It is notable that the Plan does not include either a general priority on equality and non-discrimination, or separate sections on combating discrimination against and promoting equality for particular groups such as women or per-

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sons with disabilities. Moreover, none of the objectives or proposed activities in the priority areas make direct or explicit reference to the rights to equality or non-discrimination as such.

Nevertheless, the Plan does provide some guidance in areas where activity by the state could be expected to improve protection of the rights to equality and non-discrimination. Thus, for example, the section on review and reform of national legislation states that the implementation of the Plan shall include “study of national legislation (...) to secure compatibility of the same with the Sudan’s international and regional commitments”.506 Properly interpreted, this would require the state to review its legislation to ensure that it does not discriminate on protected grounds, in compliance with *inter alia* Article 26 of the ICCPR. Similarly, the section on knowledge dissemination outlines the need for “a series of workshops on civil and political rights” which would, of necessity, include training on the rights to non-discrimination and equality if these were to be complete, coherent and comprehensive. The same section sets out the need for specific training workshops on gender-based violence and the status of women, and on the rights of “handicapped persons”.

Thus, the Plan offers some grounds for hope, not least in that it sets out aspirations or plans which civil society actors can use to hold the state to account. The UN Independent Expert on the situation of human rights in the Sudan welcomed the adoption of the Plan as a major step forward, stating, in his September 2013 report, that it “marks a positive step and provides a clear strategy for the improvement of human rights in the country”.507 He called on the Government to expedite the implementation of the Plan, to establish a body to oversee its implementation and to publish annual reports on its implementation.

**National Policy for Internally Displaced Persons, 2009**

Between 1989 and 2009, the government did not have a consistent policy response to the problem of internally displaced persons (IDPs). In 1989, the government established a Ministry for Relief and Displaced Affairs. A few


months later, the Ministry was reorganised, adding to it the Commission of Refugees and the Relief and Rehabilitation Commission. It was renamed the Ministry of Relief, Rehabilitation and the Displaced and Refugees’ Affairs before being dissolved in 1993. The different commissions were then attached to different ministries: the Relief and Rehabilitation Commission was attached to the Ministry of Planning, while the Commission of Refugees became part of the Ministry of Interior. Some of the responsibilities for IDPs were also transferred to the newly established states. This resulted in the compartmentalisation of IDP and refugees issues, and led to a lack of coordination between the different bodies.

Apart from these fragmented policy measures, the use of force in dealing with IDPs was one of the main elements in the government policy during the 1990s. Over time, the manner in which the government dealt with relocating IDPs to camps resulted in a national and international outcry, also drawing the attention of the international community to the plight of IDPs in Sudan. In addition, the beginning of peace negotiations in July 2002 provided an impetus for the government to re-engage with the question of IDPs. Prior to this, the government had established the Humanitarian Aid Commission (HAC), within whose mandate lies protection and assistance for IDPs. In 2003, the Ministry of Humanitarian Affairs was established, and HAC was appended to it. In 2009, the Ministry published its most recent National Policy for Internally Displaced Persons.  

The Preamble to the Policy recognises that IDPs are entitled “without discrimination to all the rights, privileges and obligations enshrined in the constitution”. The Policy also sets out a series of principles on (a) the rights of IDPs before displacement, during displacement, and during the settlement and transitional stages; and (b) relations between partners. The principles include a requirement that aid be provided to the most vulnerable IDPs with special consideration given to women and children, and that this should be provided “without discrimination or division considering host communities”.

During the transitional stage, the various levels of government must endeav-


509 Ibid., p. 2.

510 Ibid., p. 5.
our to ensure that IDPs who have returned to their places of origin or settled elsewhere “are not subject to discrimination from host communities and (...) have the full rights to equal participation in public affairs”\(^\text{511}\). Partners providing assistance to IDPs must ensure that such assistance is provided “without discrimination due to religion, ethnicity or affiliation and should be provided on the basis of rights and needs”\(^\text{512}\). Provision of assistance should not be “conditioned or interfaced with political and ideological interest or any other un-declared conditions”\(^\text{513}\).

Unfortunately, the benefits of the Policy have been limited due to a lack of effective implementation mechanisms. The United Nations Special Rapporteur on the human rights of internally displaced persons has stated that:

\[\text{[I]implementation of the policy has been slow, in part due to the lack of fully functional Government monitoring mechanisms, such as the High Committee on IDPs. With regard to implementation of the policy, relevant stakeholders noted a lack of due recognition and attention to IDPs outside of camps and settlements. Non-camp IDPs, especially in urban and semi-urban areas, have become virtually “invisible”, with no standard registration or other procedure to identify them and respond to their protection or assistance needs. In relation to durable solutions, while the national IDP policy provides for return and local integration or resettlement, the emphasis has generally been placed on returns, for which it has been important to establish joint verification mechanisms with the Government, in order to confirm voluntariness.}\(^\text{514}\)]

The above remarks concerning IDPs outside camps are very pertinent. It should be recalled that, as explained in section 2.2 of this report, since the

\(^{511}\) Ibid, p. 6.  
\(^{512}\) Ibid, p. 7.  
\(^{513}\) Ibid.  
1990s the government has consistently obstructed the creation of IDP camps in the Khartoum area and other urban areas in the North, in a manifest denial of the scale of displacement of people from the periphery by armed conflict. It has also neglected IDPs in informal settings and actively discriminated against them in a number of ways which were discussed in Part 2 of this report. The Special Rapporteur called on Sudan to:

*Develop a comprehensive national framework on internal displacement, including national legislation, in line with the relevant Great Lakes Protocols, the Guiding Principles on Internal Displacement and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), and ratify the latter at the earliest opportunity.*

In addition, the Special Rapporteur also called on Sudan to “review the national IDP policy with a view to making any necessary changes and provide the required institutional resources for effective implementation of the policy and legislative frameworks.”

**National Policy for the Empowerment of Women, 2007**

In March 2007, the Government endorsed a National Policy for the Empowerment of Women in order to accomplish the visions of its National Strategic Development Plan. The Policy, which was formulated by the Ministry of Social Welfare, Women and Children, focuses on women’s capacity building in health and education, strengthening women’s capabilities and participation in peace building and conflict resolution. It includes six focus areas for the advancement of the status and capabilities of women through policy development:

Health and Environment: to include policies focused on the improvement of life expectancy among women, contain the spread of HIV/AIDS and other Sexually Transmitted Diseases, end the practices of female genital mutilation and

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516 See above, note 514.
improve environmental and nutritional awareness among women. Among the programmes envisaged are a Programme for Safe Motherhood and a Programme for Women’s Campaign against AIDS.

Education Policies: to include policies aimed at creating societal awareness on the importance of education for girls, especially among the rural communities and providing more places for women in technical education.

Economic Empowerment: to include policies with the primary aim of consolidating women’s leadership and providing capacity-building to enable women to acquire skills, knowledge and technology.

Human Rights and Legal Knowledge: to include policies to provide for equal participation of all women in legislation formulation processes at all levels.

Political Participation and Decision Making: to include policies aimed at promoting political awareness of women and follow-up of political issues. The Policy also states that laws and regulations that prevent women from promotion to leading positions and decision-making posts would be revised and that the formation and activation of Women Unions and Women NGOs would be encouraged.

Field of Peace and Conflict Resolutions: The Policy states that consolidation of women’s participation in peace building and peace sustainability will be part of the policy in the fields of peace and conflict resolution. In this aspect, the Policy states that the economic stability of the family will be given more emphasis, and legislation that protects women in conflict areas will be introduced and enforced.

Referring to the National Policy in its October 2012 report to the UN HRC, Sudan stated that “the Ministry [of Welfare and Social Security] has implemented a number of projects in line with the strategy and in order to put it into practice on the ground”\textsuperscript{518} In respect of political participation, the state was keen to stress to the Committee that “the minimum quota preserved for

\textsuperscript{518} United Nations Human Rights Committee, \textit{Consideration of reports submitted by States parties under article 40 of the Covenant, Fourth periodic reports of States parties: Sudan}, UN Doc. CCPR/C/SDN/4, 16 October 2012, Para 239.
women in the legislative body is 25%, and it has been implemented by 100% in the Council of States (the first chamber of the parliament) as well as in the National Assembly (the second chamber of the parliament”).

In respect of the other priority areas in the Policy, the state referred the Committee to its report to the CESCR. Unfortunately, Sudan’s report to the CESCR makes no direct reference to the National Policy for the Empowerment of Women and provides little information on policy measures adopted pursuant to it: the sections of the report dealing with the rights to work, to health and to education make no reference to specific measures taken in these areas in respect of women.

That said, in respect of health, the report highlights a number of measures taken to end practices of female genital mutilation, including the adoption of a national strategy for the elimination of female circumcision (2008–2018) and a fatwa, issued by the Fatwa Council, prohibiting infibulation. In respect of education, the report states that “Sudanese women have accomplished significant successes in the field of education, the biggest of which perhaps occurred in the 1990s during the higher education revolution”, but provides no detail on measures taken to increase women’s participation in education. Finally, in respect of women’s economic empowerment, the state highlights that a financing scheme established by the Central Bank of Sudan has a 30% reservation for women’s projects and stresses efforts made to encourage women to enter the formal employment sector, though without detail as to the nature of these efforts.

The assessment of other stakeholders of Sudan’s achievements in empowering women is mixed. A 2009 Annual Ministerial Review produced by the United Nations Economic and Social Council examined the efficacy of the National Policy in accelerating progress towards Millennium Development Goals. It found that:

519 See above, note 437, Para 8.
520 Ibid.
521 See above, note 442.
522 Ibid., Para 134.
523 Ibid., Para 144.
524 Ibid., Paras 145–146.
Using the MDG indicators to evaluate gender policies, significant progress has been achieved to promote gender equality and women’s empowerment. The ratio of girls to boys in primary and secondary education (gender parity index) has improved from 0.85 and 0.90 in 2000 to 0.93 and 1.0 in 2006. The share of women in wage employment in non-agricultural salary increased from 26.6 in 2000 to 30% in 2005, and proportion of seats held by women in National Parliament increased from 10% in 2000 to 18.3% in 2005 and to 25% in 2006, which are good ratios compared to regional levels.  

Conversely, the Development Centre of the Organisation for Economic Co-operation and Development rated Sudan as 85th out of 86 in its 2012 Social Institutions and Gender Index (SIGI). The SIGI aims to present information on “discriminatory social institutions, such as early marriage, discriminatory inheritance practices, violence against women, son preference, restricted access to public space and restricted access to land and credit.” Sudan’s poor rating is based on the range of discriminatory social institutions which persist in the country, including discriminatory laws governing family life, restricted access to resources and restricted civil liberties for women.

While it is difficult to assess the impact of a wide-ranging policy such as the National Policy for the Empowerment of Women by reference to a small number of indicators, it nevertheless seems clear that Sudan has not made strong enough efforts to implement the Policy. Despite the multiple opportunities to highlight its efforts to implement the Policy which were provided by Sudan’s participation in reviews by both the HRC and CESCR, the state was either un-

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willing or unable to illustrate the steps it had taken. Moreover, as section 2.4 of this report – and other measures, such as the SIGI – illustrate, women continue to experience significant disadvantages in almost all of the priority areas identified in the Policy and there is little sign of government success in achieving gender equality in these areas.

**National Policy on HIV/AIDS, 2004**

The National Policy on HIV/AIDS was published by the Office of the Minister of Health in 2004. The Policy was designed, in part, to support the National Strategic Plan for HIV/AIDS prevention and control for the period 2003–2007 which had been developed by a task force set up by the Sudan National AIDS Program (SNAP). The National Strategic Plan had four objectives:

1. to curb the transmission of HIV/AIDS infection through appropriate strategies and interventions;
2. to reduce morbidity and mortality due to HIV/AIDS and to improve the quality of life for persons living with HIV/AIDS;
3. to build the capacity of the different partners involved in the prevention and control of HIV/AIDS; and
4. to mobilise and coordinate national and international resources for the prevention and control of HIV/AIDS.

The overall objective of the Policy is:

[T]o provide a framework for leadership, coordination and implementation of a National multisectoral response to the HIV/AIDS epidemic. This includes formulation, by all sectors and stakeholders of appropriate interventions which will be effective in preventing transmission of HIV/AIDS and other sexually transmitted infections, protecting and supporting vulnerable groups, mitigating the social and economic impact of HIV/AIDS. It also provides for the framework for strengthening the

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capacity of institutions, communities and individuals in all sectors to arrest the spread of the epidemic.\textsuperscript{530}

The Policy sets out twenty specific policy areas and issues to address, a number of which are relevant to equality and non-discrimination. Most importantly in this context, priority area two relates to “[s]tigma, discrimination and rights of people living with HIV/AIDS”. The Policy notes that stigma and discrimination associated with HIV/AIDS are “the greatest barriers to preventing further infections, providing adequate care, support, treatment and alleviating impact”.\textsuperscript{531} The Policy therefore calls for safeguarding the rights of people living with HIV/AIDS so as “to improve the quality of their lives and minimize stigma”\textsuperscript{532} through the observance of the United Nations Guidelines on Human Rights and HIV/AIDS.

Other relevant priority areas include priority nine, covering legislation and legal issues, priority ten, which covers gender, and priority fourteen, which discusses transmission prevention. In respect of priority nine, the Policy calls for future legislation and law reform relating to HIV/AIDS to protect and safeguard the rights of persons living with HIV and AIDS, while also enhancing efforts towards their community mobilisation. Priority ten notes that gender roles and relations “powerfully influence the course and impact of the HIV/AIDS epidemic”\textsuperscript{533} and that women are more likely to become infected, and are more often adversely affected by HIV/AIDS. The Policy envisages a gender-based response to HIV/AIDS, addressing the vulnerability of girls and women, and gender sensitivity in the provision of care and services.

Priority fourteen deals with prevention of transmission, with a sub-section focused specifically on special risk groups, defined as sex workers, injecting drug users and homosexuals. The Policy notes that there is a lack of data on HIV/AIDS in certain groups considered to be “fuelling the epidemic”\textsuperscript{534} with a main obstacle being stigma against persons in those groups. The Policy there-

\begin{itemize}
\item \textsuperscript{530} \textit{Ibid.}, p. 16.
\item \textsuperscript{531} \textit{Ibid.}, p. 17.
\item \textsuperscript{532} \textit{Ibid.}, p. 17.
\item \textsuperscript{533} \textit{Ibid.}, p. 29.
\item \textsuperscript{534} \textit{Ibid.}, p. 36.
\end{itemize}
fore considers that the response should be comprehensive and recognise and involve working with such groups. This is a potentially important provision, given the extreme vulnerability of such groups.

Unfortunately, despite the promise evidenced by the inclusion of these four priorities in the National Policy – and the steps which Sudan has taken in responding to HIV/AIDS generally – there is little apparent progress in any of these key areas. A 2012–2013 Progress Report published by SNAP in 2014 finds that “[s]ince 2011, Sudan has made marked strides in the AIDS response in HIV prevention and working with populations that drive the HIV epidemic”\textsuperscript{535} but shows little evidence of progress in respect of priorities 2, 9, 10 and 14 of the National Policy.

In respect of priority area two, the report states that “HIV stigma reduction activities have been a cross cutting component in all HIV activities”, but makes no reference to policy measures designed to address discrimination.\textsuperscript{536} In respect of the priority concerning legislation, the report notes that “the existing draft legislation for PLHIV [people living with HIV] protection is yet to be endorsed by the Cabinet”.\textsuperscript{537} The Progress Report is largely silent on priority area 10, which envisages a gender-based response to HIV/AIDS, with the exception of the issue of prevention of mother to child transmission, where the state has made good progress.\textsuperscript{538} Finally, in respect of most at risk populations – one of the focal points of priority 14 of the Policy – the report indicates that the government is taking measures to reach these communities for testing and preventative purposes, in particular through work with civil society organisations.\textsuperscript{539} However, the report notes that: “[p]revention of HIV among key populations continues to be challenging with existent criminalising laws and HIV stigma among decision makers”.\textsuperscript{540}


\textsuperscript{536} \textit{Ibid.}, p. 17.

\textsuperscript{537} \textit{Ibid.}, p. 18.

\textsuperscript{538} \textit{Ibid.}, p. 15.

\textsuperscript{539} \textit{Ibid.}, p. 20.

\textsuperscript{540} \textit{Ibid.}, p. 22.
3.4 Enforcement and Implementation

3.4.1 Enforcement

States do not meet their obligation to protect people from discrimination by simply prohibiting discrimination in the law. They must also ensure that the rights to equality and non-discrimination are effectively enforced in practice. This means that, in addition to improving legal protection from discrimination, Sudan must also put in place mechanisms which guarantee victims of discrimination effective access to justice and appropriate remedies. According to Principle 18 of the Declaration of Principles on Equality:

*Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.*

**Access to Justice**

Access to justice will only be effective where victims of discrimination are able to seek redress unhindered by undue procedural burdens or costs. Remedies must be “accessible and effective” and legal aid must be provided where necessary. Rules on standing which allow organisations to act on behalf, or in support, of victims of discrimination are particularly important in overcoming the disadvantages faced by individuals in the justice system. It is also important to allow groups of victims who have experienced similar discriminatory treatment to bring claims on behalf of a group, if the systemic nature of discrimination is to be effectively addressed.

Articles 78 and 122 of the Constitution provide individuals with a right to bring cases to the Constitutional Court. Under Article 122(1)(b), the Constitutional

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541 See above, note 453, Principle 18, p. 12.
542 See above, note 477, Para 15.
Court has “original jurisdiction to decide disputes that arise under this Constitution and the constitutions of Northern states at the instance of government, juridical entities or individuals” (emphasis added). Under Article 78:

*Any person aggrieved by an act of the National Council of Ministers or a national minister may contest such act (a) before the Constitutional Court, if the alleged act involves a violation of this Constitution, the Bill of Rights (…)*

The Constitution does not, however, set out precisely how a person can bring a claim alleging a violation of a constitutional right such as the right to equality before the law (Article 31). This process is instead set out in the *Constitutional Court Act 2005*. Section 18 of the Constitutional Court Act sets out what must be included in any petition to the Constitutional Court: (a) the claimant’s name and address; (b) the constitutional right or freedom which it is claimed has been violated; (c) details on who allegedly violated the constitutional right(s); and (d) details on the interest which has been prejudiced, where the suit is presented by individuals or collectively, or the injury which has been sustained.

These requirements appear to limit standing to bring a claim more narrowly than international best practice would suggest. Principle 20 of the Declaration of Principles on Equality states that:

*States should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.*

Section 18 of the Constitutional Court Act, however, limits standing only to those individuals who have themselves suffered a violation of their right to equality and does not permit “public interest” claims to be brought on behalf of victims by associations or non-governmental organisations who have not

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themselves been harmed. Section 18(1)(d) does, however, make reference to group actions, thereby permitting class actions where the individuals involved have suffered similar violations.

Various limitations are set down in sections 19 and 20 of the Constitutional Court Act. Under section 19(4), a person must prove that they have exhausted all other means of adjudication set down in law or that a period of 30 days has elapsed since they submitted an appeal of a decision or act alleged to be unconstitutional. Significantly however, this requirement does not apply to claims involving the rights and freedoms contained within the Bill of Rights. Under section 19(6), a person must pay a fee unless this is waived by the court (section 30 provides that the court may exempt a person if they are insolvent). Under section 20(a), the court may dismiss the claim summarily if the claimant has no right or interest in the claim or if six months have elapsed since they first became aware of that right or interest having been engaged.

Section 20(d) repeats the condition that the claimant has exhausted all other means of adjudication prior to bringing the claim. The requirement under section 20(d) that all other means of adjudication have been exhausted before a claim can be brought has been strongly criticised by some, particularly given the inability of lower courts to address questions of constitutionality:

This requirement [to exhaust all other available means of adjudication], coupled with the lack of referral powers by ordinary courts, means that an applicant may have to suffer an adverse final judgment in a suit or trial first, where applicable, before he or she can approach the Court. Prohibiting the lower courts from referring constitutional questions to the Constitutional Court, as provided for in the Judicial and Administrative Act of 2005, is clearly problematic and detrimental to the promotion of a human rights culture. It prevents constitutionalism from filtering down to lower courts and taking root in the daily administration of justice. There is an evident risk that individuals are forced to conduct years of expensive litigation
before they can raise what may be considered a simple constitutional issue.\textsuperscript{544}

One exception which, to some extent, mitigates this problem is in those cases where it is legislation itself which is being challenged. In the case of \textit{Association of Auditors and Accountants v Government of Sudan and Council of Accountants},\textsuperscript{545} the Constitutional Court held that the requirement that all other means of adjudication be exhausted first does not apply if the subject matter of the claim is legislation itself.

The independence of the Constitutional Court has been questioned by critics. Under the Constitution, the Constitutional Court comprises nine justices, one being the President of the Constitutional Court.\textsuperscript{546} Justices are appointed by the President upon recommendation of the National Judicial Service Commission and approval by two thirds of the Council of States representatives.\textsuperscript{547} REDRESS has commented that, in practice:

\begin{quote}
[T]his formula has failed to ensure effective independence of the Court, which refers both to the position of judges, including appointment, security of tenure and safeguards against interferences, and institutional independence from the executive and legislature.\textsuperscript{548}
\end{quote}

Additionally, the National Judicial Service Commission “is widely seen as having failed in its role of providing effective oversight of the judiciary”, as it has been composed along party lines and with no clear mandate to ensure the independence of the judiciary.\textsuperscript{549}

\begin{footnotes}
\item REDRESS, \textit{Arrested Development: Sudan’s Constitutional Court, Access to Justice and the Effective Protection of Human Rights}, August 2012, p. 12.
\item \textit{Association of Auditors and Accountants v Government of Sudan and Council of Accountants}, Case Number MD/KD/11/1999 of June 1999.
\item Interim National Constitution, Article 119(1).
\item \textit{Ibid.}, Article 121(1).
\item See above, note 544, p. 27.
\item \textit{Ibid.}
\end{footnotes}
Legal Aid System

Article 34(6) of the Constitution states that:

Any accused person has the right to defend himself/herself in person or through a lawyer of his/her own choice and to have legal aid assigned to him/her by the State where he/she is unable to defend himself/herself in serious offences.

This provision, however, only applies to criminal proceedings, and within these only to “serious offences”. It does not apply to civil proceedings or constitutional claims alleging violation of the right to equality before the law in Article 31. Although a Legal Aid Bill was prepared in 2009, with the assistance of the United Nations Development Programme, no law has yet been passed.

Given the lack of state assistance, individuals who are unable to afford to bring a claim involving discrimination must instead rely on universities and civil society organisations for assistance. The first university legal aid clinic was established in the 1970s at the Faculty of Law at the University of Khartoum. This clinic provides legal aid in all areas of law and is run by students under the supervision of university staff. Large law firms with graduates of the Faculty take some cases from the clinic on a pro bono basis. Other legal aid clinics have opened in different universities’ law departments, but their resources are limited and they rely heavily on donations from international organisations.

Outside of universities, there are several non-governmental organisations which provide legal aid, including, for example, Mutawunat (for women who are victims of crime), Sema (for women and girls who are victims of violence), Place (for victims of violence and persons living with HIV), Amel (for cases involving torture) and Isnad (for criminal cases), all of which are in Khartoum State. There are some more recently established non-governmental organisations which provide legal aid in the eastern and western parts of Sudan, funded almost entirely by international donors.

Evidence and Proof

International law recognises that it can be difficult for a person to prove that discrimination has occurred, and thus requires that legal rules on evidence...
and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration of Principles on Equality states that:

Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.

As this principle indicates, international law requires that the “burden of proof” in cases of discrimination be transferred to the defendant, once a prima facie case that discrimination has occurred has been made. The CESCR has stated in its General Comment No. 20 that:

Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.\(^{550}\)

As Sudan has neither comprehensive nor specific anti-discrimination law, there is no legal instrument which makes specific provision for the rules on the burden of proof in cases of discrimination. Instead, cases of discrimination are subject to the rules set out in the Civil Procedures Act 1983 and the Evidence Act 1994, with mandatory reference to the principles included in the Sources of Judicial Decisions Act 1983 and the Interpretation of Laws and General Clauses Act 1974. Section 5 of the Evidence Act states that in civil matters, the burden of proof is on the claimant, while in criminal matters, “the presumption is the innocence of the accused unless proven guilty beyond reasonable doubt”. The Act makes no provision for the shift of the burden of proof in discrimination cases.

\(^{550}\) See above, note 446, para. 40.
As with the burden of proof, the rules regarding evidence in discrimination cases are the same as those governing all other civil cases, being found in the Sources of Judicial Decisions Act 1983.

**Remedies and Sanctions**

The HRC has stated that remedies must be “accessible and effective”\(^\text{551}\) while the CESCR has said that “effective” remedies include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.\(^\text{552}\)

Under section 16(1)(a) of the Constitutional Court Act, the Court is able to

> consider and adjudge and annul any law, or work, in contravention of the Constitution, and restitute the right, and freedom, to the aggrieved person, and compensate him [or her] for the injury.

The Court may also order interim measures to avoid irreparable harm and effectively guarantee rights and freedoms under section 16(2). In addition to making declarations as to the constitutionality of a particular law or action, the Constitutional Court is able to provide compensation as a remedy as per the general rules on civil proceedings.\(^\text{553}\)

**The Sudan Human Rights Commission**

Principle 23 of the Declaration of Principles on Equality highlights the important role of specialised bodies in the protection of the right to equality:

> States must establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. States must ensure the independent status and competences of such bodies in line with the UN Paris Principles, as well as adequate funding and

\(^{551}\) See above, note 477, Para 15.

\(^{552}\) See above, note 446, Para 40.

\(^{553}\) Email correspondence from Ebtisam Sanhouri Elrayh, received 12 March 2014.
transparent procedures for the appointment and removal of their members.\textsuperscript{554}

While Sudan has not established a specialised body focussed on the protection and promotion of the right to equality, it does have a National Human Rights Commission (NHRC) established by Parliament under the \textbf{National Human Rights Commission Act 2009}. The creation of a NHRC was stipulated both in the CPA and the Constitution. However, the establishment of the Commission was significantly delayed and it was not until January 2012 that the 15 Commissioners were appointed by presidential decree.\textsuperscript{555}

The general competence of the NHRC is to “protect and strengthen human rights, create awareness of human rights, publish the same and monitor the application of the rights and freedoms enshrined in the Bill of Rights provided for in the Constitution".\textsuperscript{556} The specific functions of the NHRC include:

\begin{itemize}
  \item[a.] To operate as reference for information to government, different States organs concerned and civil society organisations working in the field of human rights;
  \item[b.] To enlighten the public on human rights and the necessity to respect them and to apply them by all bodies;
  \item[c.] The preparation of human rights studies and researches;
  \item[d.] To study national matters relating to human rights referred to by Government/state organs/civil society organisations and make recommendations on the same;
  \item[e.] To provide advice to government on matters relating to human rights whether referred to by government/ initiated on its own motion;
  \item[f.] To prepare studies and initiate, through bodies concerned, bills, legislations or decisions relating to human rights and prepare reports and submit recommendations on the same to the bodies concerned;
\end{itemize}

\begin{flushleft}
\textsuperscript{554} See above, note 453, Principle 23, p. 13.
\textsuperscript{556} National Human Rights Commission Act 2009, section 9(1).
\end{flushleft}
g. To submit recommendations, proposals and reports to the government or to the National Assembly or to any other body concerning any matter relating to human rights, including request to review legislative provisions or administrative decisions to be in conformity with the basic principles of human rights;

h. To receive complaints from individuals and other bodies and to conduct investigations thereon and take necessary measures in accordance with provisions of the Act or any other law and to recommend appropriate remedies to the relevant body;

i. To address competent authorities regarding any matter relating to any violation of human rights and request them to end such violation;

j. To encourage government to join international treaties, conventions and agreements on human rights;

k. To endeavour to harmonise national legislations and practices with human rights standards;

l. To prepare annual reports on the situation of human rights in the Sudan;

m. To spread awareness of human rights among different sectors of the people of the Sudan, through media, seminars, publications and any other means of information;

n. To cooperate with the United nations and specialised agencies, regional organisations, human rights centres, non-governmental organisations and any other similar organisations working in the field of human rights;

o. To establish close relations with organisations which are active in the field of human rights outside and inside the Sudan;

p. To submit reports to the National Assembly on any specific matter concerning human rights (...)\(^{557}\)

The NHRC is further empowered to: (a) look into complaints of human rights violations raised with it by individuals or civil society organisations or by any

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\(^{557}\) *Ibid.*, section 9(2).
other body to ascertain whether or not there is violation of human rights and take appropriate measures; (b) form committees or task force groups or seek help of any person or any entity on a permanent or temporary basis, to assist in the discharge of its responsibilities; (c) investigate with full freedom any matter falling within its competence, whether referred to it by government, undertaken on its own motion, or referred to it by some other body concerned with human rights causes; (d) address the public directly or through available means of information in order to disseminate its opinions and recommendations, to all sectors of the society; (e) coordinate with the Human Rights Commission in Southern Sudan and other states on matters pertaining to fulfilling constitutional commitments in relation to human rights; and (f) make internal regulations for the conduct of its business and procedure of its meetings.\textsuperscript{558}

If the Commission decides that there has been a violation of human rights by any public servant, any government or non-government organisations or any other body, it may: (a) recommend to the relevant government authorities to take appropriate measures for prompt reparations of the aggrieved person, or publish its findings, or take any other appropriate measures as it deems appropriate; and (b) provide the complainant or his representative, if they so request, with a copy of the summary of the report of the investigation. The relevant government organs are required to inform the Commission within 60 days of the measures taken concerning the recommendations submitted to it.\textsuperscript{559}

Additionally, the NHRC may request all governmental and non-governmental institutions to provide any information concerning the extent of implementation of the Bill of Rights and to report on any derogation or deprivation of these rights.\textsuperscript{560}

The NHRC has not yet submitted an application for accreditation to the Subcommittee on Accreditation of the International Coordinating Committee of National Human Rights Institutions. Since the NHRC has not been accredited or ranked, it is difficult to fully assess its compatibility with the Principles re-

\textsuperscript{558} Ibid., section 10(1).
\textsuperscript{559} Ibid., sections 11(1) and (2).
\textsuperscript{560} Ibid., section 11(3).
Principle 2 of the Paris Principles states that national human rights institutions should have “as broad a mandate as possible” which should be set out in the text establishing the institution. Section 9(1) of the Act provides the Commission with a broad sphere of competence, covering protection and strengthening of human rights, creating awareness, publishing reports and monitoring application. Principle 3 of the Paris Principles sets out a list of responsibilities which a national institution should have. Section 9(2) lists seventeen different functions of the Commission, which together cover almost all of the responsibilities set out in Principle 3.

In addition to Principles 2 and 3, the Paris Principles contains a section dedicated to “additional principles concerning the status of commissions with quasi-jurisdictional competence”. The section states that:

> A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations.\(^{562}\)

The section then goes on to set out four principles which should govern the exercise of such quasi-judicial functions. In this respect, the Act is strong, with sections 9(2)(h) and 9(2)(i) reflecting closely the language of the Principles, and establishing a system for the hearing of individual complaints which appears largely consistent with the Principles.

However, while the functions and powers of the Commission, as provided in the Act, appear to be largely consistent with the requirements of the Paris Princi-


\(^{562}\) Ibid., Additional principles concerning the status of commissions with quasi-jurisdictional competence.
The Legal and Policy Framework Related to Equality

The Act falls far short in respect of the guarantees of independence and pluralism which the Principles require. Paragraph 1 of the Principle entitled “Composition and guarantees of independence and pluralism” states that the process for appointment of commissioners should afford “all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society)”. The Act fails to meet this requirement, in a number of ways. Section 6(1) provides that the Commission’s fifteen members are to be appointed by the President, calling into question both the independence of commissioners and the plurality of their views. Section 6(1) also establishes a number of criteria for appointments to the Commission, including that appointees “be of sound mind” and “be of not less than twenty one (21) years of age”; these provisions may be applied in ways which discriminate on the basis of mental disability and age.

Paragraph 2 of the Principle relating to the independence of national institutions states that such an institution should have:

[I]nfrastructure which is suited to the smooth conduct of its activities, in particular adequate funding (...) in order to be independent of the Government and not be subject to financial control which might affect its independence.

The financial independence of the Commission, as established by the Act, is severely limited. Section 20(1) of the Act states that the Commission shall have an independent budget, but goes on to state that this should be submitted to the Presidency for endorsement, and to the National Assembly for approval as part of the state budget. This risks significantly undermining the Commission’s financial independence. In addition, section 15 states that the emoluments and entitlements of the commissioners themselves are to be determined by the President, placing a further question mark over their independence in practice.

Since it began operations in 2012, the NHRC has conducted a number of activities indicating adherence to its statutory purposes. In April 2012, its chairperson, Miss Amal Hassan Babiker al-Tinay, visited Darfur to meet people affected by the conflict and to raise awareness about the protection of human rights under Sudanese law. With the assistance of the United Nations

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Development Programme, the Commission has organised a series of human rights awareness workshops in South Darfur, South Kordofan, Blue Nile and Red Sea states to raise public awareness about human rights and to educate the public about the Commission’s role and mandate. This awareness raising campaign resulted in a Human Rights Forum, held on 24-25 November 2013, entitled “Protection and Promotion of Human Rights is our Collective Responsibility”, in Khartoum, with participants from all states of Sudan representing the Sudanese government, civil society organisations, police, judiciary, media, political parties and universities.\textsuperscript{564} In addition, seven commissioners completed a study tour at the National Human Rights Council in Morocco to gain experience and learn best practices.\textsuperscript{565}

According to media reports, the NHRC complaints committee received 42 complaints of human rights abuses in 2012 and a further 83 in 2013. The majority of complaints involved “cases of security and freedoms abuses” with others relating to land disputes.\textsuperscript{566} The deputy chair of the NHRC noted that few complaints had been brought alleging violations committed by the police.\textsuperscript{567} All of the complaints were examined and recommendations submitted to the presidency, the Parliament and the Minister of Justice on the necessary action to be taken.\textsuperscript{568} In January 2014, the NHRC chairperson, Ms al-Tinay, reportedly said that two thirds of the 125 complaints brought to the Commission in 2012-2013 had been against security services. She also stated that of the complaints filed, only 53 had been settled.\textsuperscript{569}

In addition to the study tour to Morocco, the NHRC has received training from, \textit{inter alia}, human rights trainers from Egypt, Palestine and the United King-

\begin{itemize}
  \item \textsuperscript{565} \textit{Ibid}.
  \item \textsuperscript{566} Sudan Tribune, “Sudan’s rights body admits existence of human rights violations”, sudantribune.com, 22 November 2013.
  \item \textsuperscript{567} \textit{Ibid}.
  \item \textsuperscript{568} \textit{Ibid}.
  \item \textsuperscript{569} Al-Samm, A., “Human Rights in Sudan...Who Saves them?!”, \textit{The Citizen}, 20 January 2014.
\end{itemize}
However, members of the NHRC have admitted that the Commission faces “numerous problems including lack of a specific budget and experienced cadres”. The UN Independent Expert on the situation of human rights in the Sudan, Mashood A. Baderin, stated in 2013 that the NHRC had made “some good operational progress, but needs to deliver on its substantive mandate of ensuring improvement in the human rights situation in the Sudan”.

The effectiveness of the NHRC has been impeded by the power exercised by the National Intelligence and Security Services (NISS). For example, on 30 December 2012, the Confederation of Sudanese Civil Society Organisations attempted to submit a petition to the NHRC condemning restrictions on non-governmental organisations by the government. Although the Commission’s chair was willing to receive the memorandum, plain-clothed NISS agents surrounded the building and prevented the petitioners from entering. The NHRC condemned the actions of the NISS as “a flagrant violation of the Interim Constitution of 2005 and the National Human Rights Commission Act of 2009” and “an attack on the integrity of the Commission and on its immunity”.

3.4.2 Jurisprudence on Equality and Non-Discrimination

Judicial practice related to discrimination and equality has been affected heavily by the major shift from common law to sharia law, with the corollary that the courts have to apply laws plagued with pervasive gender and religiously-based discrimination. All legislation adopted by parliament after 1983 has been influenced by sharia principles, and, while courts are secular, they are expected to make judgments based on sharia principles. Prior to 1983, the rules of judicial interpretation were the same as in other common law systems, with judges required to refer to statute, and if the issue had not been regulated by statute then to consider juridical consensus followed by case law, customary law and the principles of justice. However, in 1983, the


571 See above, note 566.

572 See above, note 507, Para 58.

573 Sudan Tribune, “Police brutally prevent Sudanese activists from reaching rights commission”, sudantribune.com, 30 December 2012.
Nimeiry regime adopted the Sources of Judicial Decisions Act 1983, which introduced principles of sharia into the judicial process. According to Ebtisam Sanhouri Elrayh, Lecturer of Constitutional Law and Human Rights at Faculty of Law, University of Khartoum:

_This Act is a source of unprecedented confusion and uncertainty. Section 2 provides inter alia that in the interpretation of legislative provisions, the court shall assume that the legislature does not intend to run counter to the sharia and that such provisions and any discretion thereby vested are intended to be consistent with its spirit and principles. Section 3 provides that where there is no enactment governing the issue, the court shall apply the express provisions of the Qur’an and the Sunna and also seek guidance from such Sudanese decisions as are consistent with the sharia and if no relevant rule is found therein it shall strive to form an opinion, having regard to the principles of the promotion of benefit and the avoidance of harm._

Given this environment, it is quite remarkable that courts have nonetheless referred to international human rights law in some cases, for example to the CRC on matters of a child’s criminal responsibility, or age of consent. It is also noteworthy that there is some, albeit very limited, constitutional jurisprudence on discrimination.

**Case Law under the Interim National Constitution 2005**

Jurisprudence on the interpretation of the rights to equality and non-discrimination to the extent that they are protected under the Constitution is relatively limited. Of the cases that have been decided by the Constitutional Court, three, all concerning the issue of nationality, provide some indication of how provisions in the Constitution relevant to equality and non-discrimination are interpreted in practice.

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574 Email correspondence from Ebtisam Sanhouri Elrayh, received 25 March 2014.
In *Dario Ivan Klocan and another v Sudan Football Association*, two football players who had acquired Sudanese nationality by naturalisation challenged Article 14 of the “Regulation for Premier League Competition for the Year 2008”, issued by the Sudan Football Association, which provided that:

> [N]o club is allowed to involve more than one ‘naturalised player’ during the premier league games. The club that intends to involve one shall provide the name of the naturalised player and his number to the organising committee before commencement of the tournament.

The claimants had acquired their Sudanese nationality on 2 and 13 January 2008, shortly before the Regulation was issued on 14 January 2008. They argued that Article 14 of the Regulation was unconstitutional in that it discriminated between Sudanese citizens who had acquired their nationality by birth and those who had acquired it by naturalisation. Specifically, the claimants also argued that Article 14 violated Article 7(1) of the Constitution, which states that “[c]itizenship shall be the basis for equal rights and duties for all Sudanese”, and the right to equality before the law guaranteed under Article 31. They also argued that Article 14 of the Regulation violated Article 12(1) of the Constitution, which requires the state to “develop policies and strategies to ensure social justice among all people of the Sudan, through ensuring means of livelihood and opportunities of employment”. The defendant refuted the claims and argued that the Constitution permits distinctions between those who acquire Sudanese nationality by birth and those who acquire it through naturalisation via Articles 53 and 62(2) which require candidates for the office of President and the two Vice-Presidents to be Sudanese by birth.

By a majority of four to three, the Constitutional Court found in favour of the claimants and found Article 14 of the Regulation to be unconstitutional in that it discriminated between Sudanese nationals in violation of Articles 7(1) and 31 of the Constitution. A majority of the Constitutional Court rejected the argument put forward by the defendant. Both the Constitution and the Nationality Act had to be considered in light of the UN Charter and Articles 2, 25 and 26 of the ICCPR, which form part of the Constitution by virtue of Article 27(3). The Court disputed the authority of the defendant to issue a regulation
which contradicts constitutional and legislative provisions and enforce it retrospectively in a way which harmed the claimants and the club for which they played. The Court reached the same decision in a similar case, *Al-Hilal Club for Fitness v Sudan Football Association* (2009).  

In a third case, *Albushra Abdulhameed Mahmoud and others v Government of Sudan*, a group of 14 Sudanese nationals living abroad in various countries challenged section 22(3) of the National Election Act 2008 which stated that:

A Sudanese who resides outside of Sudan, possesses a Sudanese passport and valid residence permit in the country where they reside, and satisfies the conditions provided for under Section 21 of the Election Act, shall have the right to apply for registration or inclusion in the electoral register for the election of the President of the Republic or the Referendum, in accordance with the regulations set by the Rules.

Section 21 of the National Election Act 2008 sets out a number of conditions for individuals to be eligible to vote, namely that they be: (i) Sudanese; (ii) registered; (iii) at least 18 years old; and (iv) of sound mind. The claimants argued that although section 22(3) of the Act secured the right to participate in elections for the President and in referenda, it prohibited them from voting in elections for the President of South Sudan, state governors and the national and state legislative assemblies. They argued that the prohibition constituted a violation of Article 7(1) of the Constitution which states that “[c]itizenship shall be the basis for equal rights and duties for all Sudanese” (emphasis added) and was also a violation of Article 23(2)(f), which states that every Sudanese citizen shall “take part in the general elections and referenda as stipulated in this Constitution and the law”. They also argued that the prohibition was in violation of Article 27, which states that the Bill of Rights is integral to the Constitution, and Article 41(2) which guarantees the right of every citizen “to elect and be elected in periodic elections”. As section 22(3) restricted Sudanese nationals residing abroad from voting in elections (other than for the President) or in referenda, the claimants also argued that section

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The Legal and Policy Framework Related to Equality

The Constitutional Court unanimously dismissed the claim on the basis that it had not been brought within six months of the alleged violation, as required by Section 20 of the Constitutional Court Act 2005. However, the Court nevertheless discussed the substantive issues raised and, although not binding, its comments are of interest. In considering Article 41 of the Constitution, the Court stated that the right of citizens to participate in elections and referendums was secured by the Constitution, but regulated by statutory legislation. Regulations on the eligibility of voters fall within the discretionary power of the legislature on the basis of public interest.

The Court also stated that section 22(3) of the National Election Act 2008 did not expressly restrict the appellants' rights to participate in the election of state governors, members of the national parliament and legislative bodies, but also that there was no provision specifically guaranteeing the right. Sections 21 and 22(2) of the Act required registration in the general election register, which in turn required the citizen to be a resident of a particular geographical area for specific periods of time; citizens living abroad could only enjoy their right to vote when they resumed their residence in Sudan. One justice noted that Sudanese citizens living abroad could not represent those living inside Sudan, and therefore should not be allowed to participate in elections. A comparison was drawn between a similar restriction on the right to vote in specific geographic constituencies by those living outside the constituency. The Court took the view that the section did not contradict the Constitution, concluding that on the contrary, it put its objective into effect.

The Court’s decisions in both Dario Ivan Klocan and Al-Hilal Club for Fitness are, to some extent, in contrast to the tone of its comments in Albushra Abdulhameed Mahmoud. In all three cases, the issue was discrimination between different classes of citizens of Sudan: in the first two cases, between citizens who had obtained their nationality by birth and those who had obtained it by naturalisation; and in the third case, between citizens resident in the country and citizens resident outside of the country. While in the first two cases the Regulation was found to have distinguished between two classes of citizens in a way which was discriminatory, in the third, the court took the view that the
denial of voting rights based on the residency of a particular class of citizen was consistent with the Constitution.

In *Sudan People's Liberation Movement (SPLM-Democratic Change) v First Vice-President of Government of Southern Sudan (President of Sudan People's Liberation Movement) and others*, the defendant, the First Vice-President of the government of South Sudan, had issued a Resolution requesting the governors of the 10 southern states to cooperate with all political parties except the Sudan People's Liberation Movement – Democratic Change (SPLM-Democratic Change). The claimant, SPLM–Democratic Change, appealed to the Constitutional Court requesting that the Resolution be annulled on the grounds that it violated their rights under Article 29 (on personal liberty), Article 31 (on equality before the law), Article 39 (on freedom of expression) and Article 40 (on freedom of association and assembly) of the Constitution. The claimant also argued that the Resolution breached the Political Parties Act of 2007, as the SPLM–Democratic Change party was registered and carrying out its work according to Articles 1 and 4 of that Act, and was not suspended under Article 19.

The Constitutional Court found, by a majority, that there had been a violation of Article 31 of the Constitution and annulled the Resolution on the grounds that it infringed upon the right of SPLM-Democratic Change, which was lawfully registered on good standing and was therefore entitled to engage in all political activities without discrimination. Instructing governors of states to cooperate with all parties except for a single specified party amounted to unequal treatment before the law on grounds of political opinion, and was a violation of Article 31.

Other cases brought before the Constitutional Court have been dismissed on procedural grounds, despite otherwise raising an arguable claim of discrimination. In *Alhadi Hasshim Mohammed v 1. Kenana Sugar Company and 2. Government of Sudan (National Security Services)*, the claimant, Alhadi Hasshim Mohammed, was one of a number of employees who had been dismissed from their employment by the first defendant, the Kenana Sugar Company, in the period between December 1989 and February 1990. In October

2007, the claimant brought a claim before the Constitutional Court challenging the dismissal which had been based upon a recommendation from the National Security Services, the second defendant. He had also been arrested alongside other employees for holding political opinions which differed from those of the government.

The Constitutional Court dismissed Mohammed’s claim on the basis that a Committee formed by the Cabinet of Ministers to rule on cases of arbitrary dismissal had not issued a decision on the case. The Court also pointed out that the claimant had not included any documents indicating that he had submitted an appeal to the Committee and so had not proved that he had exhausted all other domestic remedies before bringing a claim to the Constitutional Court.

In November 2007, the claimant submitted a modified claim arguing that a dispute on an administrative decision did not require exhaustion of all available means of adjudication. Moreover, he argued that there had been a violation of a number of constitutional rights which justified the claimant bringing a claim to the Constitutional Court, in particular Article 27 (the Bill of Rights), Article 28 (right to life and human dignity), Article 29 (personal liberty), Article 34 (fair trial), Article 43(1) and (2) (right to own property) and Article 48 (sanctity of rights and freedoms). Additionally, he brought a claim, under Article 122 of the Constitution, on the competence and jurisdiction of the Constitutional Court to hear the case. He further argued that he was dismissed from his employment on the basis of his political opinions at the order of the security services and not due to his performance. He also argued that one of the Board of Directors of the Kenana Sugar Company was a member of the Cabinet of Ministers, which compromised the objectivity of the Committee.

In August 2008, the Constitutional Court dismissed the claim, holding that the claimant’s relationship with the first respondent was a contractual one governed by the Labour Act. The Labour Act specified the compensation available to employees who had been dismissed arbitrarily and the Court held that it could not adjudicate on that question. Concerning the reason behind the dismissal, the Court held that the Kenana Sugar Company had no alternative but to act pursuant to the recommendation of the security service, as it had no power to challenge it, irrespective of the fact that one of the Board of Directors was a Minister. The Court held that it was obliged to dismiss the claim
against both respondents, due to the temporal limit of six months provided in Section 20(1) of the Constitutional Court Act 2005. In addition, on the claim against the second respondent, the Court held that it was not qualified to rule or provide an opinion on the matter, as there was already a special Committee established to handle cases of arbitrary dismissal.

**Case Law under Pre-2005 Constitutions**

Prior to the introduction of the Interim National Constitution in 2005, the Sudanese courts made a number of decisions related to the protection of the rights to equality and non-discrimination under earlier Constitutions. As these earlier Constitutions contained different definitions of the rights to equality and non-discrimination, the precedential value of these cases is likely to be limited. Nevertheless, the findings of the courts in these cases may be of some interest.

**Constitution of 1998**

In *Mohamed Mamoun Yahia Monwr v Minister of Higher Education and Scientific Research*,\(^{580}\) the claimant, Mohammed Mamoun Monwr, challenged an Order issued by the Minister of Higher Education and Scientific Research, which stated that high school students who had acquired International General Certificates of Secondary Education (IGCSEs) from schools within Sudan were not entitled to study at Sudanese institutions of higher education. However, students of parents working abroad who had acquired such IGCSEs from schools outside Sudan were allowed to apply to Sudanese institutions of higher education upon proof that they had stayed abroad for a minimum of one year before being awarded their certificates.

The claimant was a student living with his parents in Khartoum. He had studied at Unity High School in Khartoum, which had adopted the British curriculum and awarded IGCSEs. The claimant had successfully passed his exams at the school. When he attempted to apply to universities in Sudan, he faced obstacles due to the Order, which meant that his applications were automatically declined as his IGCSEs had been acquired in Sudan. He brought his claim before the court challenging the constitutionality of the Order, on the grounds

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that it discriminated between students holding the same type of certificate. Citing Article 21 of the 1998 Constitution, the claimant argued that the Order infringed on the right to equal treatment before the Higher Education Admission Board and deprived him of opportunities available to others, based on an irrational distinction.

The Constitutional Court dismissed the claim, holding that the Order was intended to oblige schools operating in Sudan to apply the Sudanese curriculum. The Order had been issued in 1996 and communicated to parents by the school in 1998, giving the claimant time to contest it at an earlier stage in accordance with section 21(1) of the Constitutional and Administrative Law Act 1996. Additionally, the Court held that the Order did not give preferential treatment to those coming from abroad, as argued by the claimant, but was intended to regulate education within Sudan. The Court concluded by stating that the “the door is open for the appellant to apply to universities outside of Sudan”.

In Sudanese Women General Union v the Governor of Khartoum State, the Governor of Khartoum State had issued a Provincial Order in 2000, prohibiting women from working in certain sectors, namely hotels, restaurants and petrol stations. According to the Order, working in such sectors would harm women’s health and women’s dignity. The Sudanese Women General Union brought a claim to the Constitutional Court challenging the constitutionality of the Order under Article 34 of the 1998 Constitution (right to resort to the Constitutional Court to protect the rights contained in the Constitution). The Union argued that the Order violated Article 21 of the 1998 Constitution, which stated that:

All people are equal before the courts, and all Sudanese are equal in rights and duties as regards to functions in public life; it is impermissible to discriminate only due to race, sex or religious creed. They are equal in eligibility for public posts and offices and shall not be privileged based on wealth.

The Union argued that the Order also violated Article 15, which obliged the state to “care for the institution of the family (...) and emancipate women from injustice in all aspects and pursuits of life and encourage the role thereof in
family and public life”. The claim was upheld by the Constitutional Court which declared the Order unconstitutional on the basis that it violated the right to equality under Article 21 of the Constitution and explicitly discriminated against women by limiting their right to work.

*Permanent Constitution of 1973*

Prior to the Constitution of 1998, at least one case was brought alleging violation of the rights to equality and non-discrimination under the Permanent Constitution of 1973.

In *President of Sunni Supporters’ Group v Government of Sudan*, a case was brought by the Sunni Supporters’ Group challenging an Order issued by the Governor of the Province of Khartoum. The Order prohibited celebration and festivities organised every year for the birthday of Prophet Muhammad. In their claim, the claimants requested that the High Court invalidate the Order as it prevented them, and other Islamic groups and associations, from enjoying their right to freedom of belief and worship under Article 47 of the Permanent Constitution.

The claimants argued that celebrating the birthday of the Prophet was a part of their religious traditions and that the ban violated Article 38 which provided:

> [A]ll people are equal before the court and all Sudanese are equal in rights and duties without discrimination between them by reason of ethnicity, race, local origin, sex, language or religion.

In response, the Attorney General of Sudan agreed with the claimants’ interpretation of the Order as a clear violation of the right to freedom of belief and worship, as guaranteed by the Constitution under Article 47. Based on that reasoning, the High Court issued a decision invalidating the Order.

Case Law under the National Civil Service Act 2007

In Alsier Mustafa Khalfalah and others v Civil Service Recruitment Committee of Khartoum State, the claimant argued that the Civil Service Recruitment Committee of the State of Khartoum had failed to discharge its obligations under the National Civil Service Act 2007. In 2010, the Committee announced a number of vacancies for teachers at the Ministry of General Education. This was followed shortly afterwards by an Order issued by the Governor of the State of Khartoum, also published in newspapers, instructing the Recruitment Committee to ensure that 5% of the vacancies were filled by persons with disabilities who were otherwise qualified and who met the conditions of recruitment. The Recruitment Committee selected 18 persons with disabilities out of 1,050 persons recruited in total. The claimants, who were unsuccessful in their applications, appealed against the decision of the Recruitment Committee to reject their applications despite the fact that persons with disabilities were allotted 5% of vacancies in the Governor’s Order. They argued that the 1.8% of selected candidates with disabilities was far less than the 5% required by the Order.

The claimants’ case was dismissed at first instance and on appeal by the High Court (Administrative Circuit). The High Court upheld the decision of the lower court on the basis that the Governor’s Order contradicted the National Civil Service Act 2007 which only requires a quota of 2% for persons with disabilities. Thus, the defendant was not bound by the 5% quota set out in the Governor’s Order.

Some have argued that the court wrongly interpreted the National Civil Service Act 2007, which states that “all units of the states shall allocate not less than 2% of the approved announced vacancies for persons with disabilities” (emphasis added). The 2% figure in the 2007 Act was therefore a minimum and the Governor’s Order was not inconsistent with the Act, but instead an attempt to implement the positive action clause in the Act. Additionally, neither the claimants, nor the court, made reference to Article 136 of the Constitution, which concerns inclusiveness in the civil service and, in particular, the requirement, set down in Article 136(e) of the “application of affirmative

582 Citation in the court register: High Court, Administrative Appeal No. 127/2012. Case not among those selected for report in the law reports.
In search of Confluence

In search of Confluence

action and job training to achieve targets for equitable representation within a specified time frame”.

In Wissal M. Ibrahim v Federal Ministry of Health, the claimant was a statistics technician at the Federal Ministry of Health in Khartoum. After giving birth, she took delivery leave of 8 weeks and thereafter requested annual leave, in accordance with her legal entitlement. After having given birth, she applied for unpaid maternity leave, on the basis that she needed to look after her children, as she had difficulties in finding a nursery and lived far from her workplace. The Ministry refused to provide her with unpaid leave, stating that she had already exhausted her delivery leave and annual leave and that there was no one who could take her position as an alternative.

The claimant challenged the decision of the Federal Ministry at the Justice Chamber for Civil Service Employees, repeating the reasons for her request. The Chamber dismissed her complaint on the grounds that, under Section 102 of the Civil Service Regulation for the State of Khartoum 2009, it is within the sole discretion of the head of the unit or department to decide on leave. It was not an absolute right for an employee to take leave. Therefore, if the head of the unit believed that to approve an individual’s request for maternity leave would affect their work, and there was no replacement to fill their position, their decision could stand.

Although the court’s decision was in accordance with the relevant legislation, it is arguably inconsistent with the relevant constitutional requirements. Legislation on employees’ leave is, for the most part, governed by the Labour Act 1997 for employees in the private sector and the National Civil Service Act 2007 for employees in the public sector, with some exceptions. Section 45 of the National Civil Service Act 2007 leaves the issue of leave to be governed by Regulations. Section 102 of the Civil Service Regulation of the State of Khartoum 2009 provides a working mother with the right to 8 weeks of delivery leave and up to 2 years of maternity leave, subject to the approval of the relevant Minister. Approval is only granted if the work will not be affected by the mother’s leave. However, Article 15(2) of the Constitution states that “the state shall protect motherhood and women from injustice, promote

gender equality and the role of women in the family, and empower them in public life”. Article 136(1)(c) provides that “no level of government shall discriminate against any qualified Sudanese citizen on the ground of religion, ethnicity, region or gender”. Despite these provisions, the state has done little to accommodate the needs of working mothers.

3.5 Conclusion: a Weak Legal and Policy Framework

The report finds that Sudan’s legal and policy framework is manifestly inadequate to address the patterns of discrimination and inequality identified in part 2. Sudan has a poor record of participation in international instruments, having acceded to only five of the nine core UN human rights treaties. Sudan has not ratified either the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the Convention on the Elimination of Discrimination against Women. Similarly, Sudan has refused to accede to calls to ratify the optional protocols which allow individual complaints under the international instruments to which it is party. Article 27(3) of the Interim National Constitution, which provides for the direct effect of international human rights instruments to which Sudan is party, has not been applied in practice.

Despite providing arguably the best level of human rights protection of any of Sudan’s eight constitutions since independence, the Interim National Constitution provides weak protection for the rights to equality and non-discrimination. Article 31 of the Constitution does not prohibit discrimination either in the enjoyment of human rights, as required by both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, nor does it provide a general prohibition on discrimination in all areas of life governed by law, as required by Article 26 of the ICCPR. Instead, Article 31 guarantees equal protection of the law without discrimination on a strictly limited list of grounds. The personal scope of protection from discrimination is limited, omitting grounds such as disability, sexual orientation and health status. Article 32, which prohibits discrimination against women, is broader in scope than Article 31, but is effectively negated by the large number of gender-discriminatory laws that remain in force today and have not been found unconstitutional.
Beyond the Constitution, Sudanese legislation provides very little protection from discrimination. Sudan has neither comprehensive anti-discrimination legislation, nor any specific anti-discrimination laws. The National Disability Act does not prohibit discrimination on grounds of disability, and falls far short of the standard required by the Convention on the Rights of Persons with Disabilities, a treaty to which Sudan became party in 2009. Legislation governing education, healthcare and other important areas of life contains no guarantees of non-discrimination. Government policies do not fill the gaps in protection which result from the absence of an effective legislative framework: a National Human Rights Action Plan, adopted in 2013, does not set out concrete targets and provides no mechanism to allow civil society, the media or the public to hold state actors accountable.

The absence of effective constitutional and legislative protections for the rights to equality and non-discrimination are exacerbated by a weak and ineffective system of implementation and enforcement. The Constitutional Court, which is empowered to receive complaints of discrimination under the Constitution, has a weak record. Members of the National Human Rights Commission were not appointed until 2012, despite the Commission having been established by statute in 2009. At the time of writing, the Commission has not been rated by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Commission has been widely criticised by civil society actors as ineffective, although on account of its very young age, it should be given the benefit of the doubt.
4 CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

This report assesses the extent to which people in Sudan enjoy their right to equality. It does so by researching both the lived experience of different groups commonly exposed to discrimination and the legal and policy framework in place to combat discrimination and promote equality.

The Equal Rights Trust’s research and consultations resulted in evidence of widespread and systematic discrimination on grounds of religion or belief, race and ethnicity, political opinion, gender, disability, sexual orientation and health status. The evidence reveals that the government has played a major role in causing and perpetuating discrimination – either through the enactment and enforcement of discriminatory laws, or through the actions of the armed forces, security services, police and other state bodies. The state is the principal perpetrator in many of the most serious patterns of discrimination which prevail in Sudan. The report presents evidence of extrajudicial killings, torture and ill-treatment, and other human rights abuses by state actors which are discriminatory in nature, as they are caused wholly or in part by the ethnicity, religion or political opinion of the victims.

The report highlights a significant number of laws which discriminate, or which are open to discriminatory application, on the grounds of religion, ethnicity, political opinion, gender and sexual orientation. It also exposes the hostility of some sections of society towards particular groups – religious minorities and lesbian, gay and bisexual persons, for example – and the serious discrimination which these groups suffer as a result. The report finds that groups which are, or which are perceived to be, in opposition to the authorities, suffer discriminatory denial of their freedoms of expression, association and assembly, among other human rights. Finally, it documents discrimination in employment, education, healthcare and other areas of life, which restricts the ability of certain groups to participate on an equal basis with others.

In respect of discrimination and inequality arising on grounds of religion and belief, discriminatory legal provisions present arguably the most significant problems, both for members of religious minorities and for all
those whose understanding of Islam is different from the conservative version promoted by the government. The imposition of sharia law in 1983 and the subsequent programme of legal reform to bring national legislation into line with sharia principles have had a negative impact on religious minority communities. The Criminal Law Act explicitly prohibits apostasy and contains a vague provision which has been used to prohibit blasphemy, suppressing free expression. Religiously motivated dress code laws are enforced against women. Christians face particular challenges in exercising their religious freedom, suffering arrests, destruction of religious buildings and interference with their right to manifest their beliefs. Both religious minorities and non-complying Muslims experience discrimination, apparently with the acquiescence of state bodies.

The report further finds that discrimination on the basis of race and ethnicity is at the heart of Sudan’s cycle of injustice and conflict. Sudan’s history of inter-ethnic conflicts in the periphery (South Sudan, Darfur, some areas in the East, and latterly in Blue Nile and South Kordofan states) is well-publicised. However, this report contributes to a deeper understanding of the conflicts through the prism of the unified human rights framework on equality. In our view, inequality is the integral root cause of all of Sudan’s continuing conflicts, and at the centre of this inequality is the racial/ethnic factor, tinted by religion. The al-Bashir government has continued and strengthened the identity politics of its predecessors by promoting a narrow vision of Sudan as a singularly Arab and Islamic state.

The report finds a clear pattern of armed violence, by both state and non-state actors, motivated by, or otherwise connected to, the ethnicity of the victims. It also presents evidence of the involvement of state actors who, operating with immunity from prosecution, carry out discriminatory arrests and ill-treatment of individuals from particular ethnic groups, such as those from Darfur and the South. Further, particular ethnic groups experience severe difficulties in accessing citizenship: persons judged to be of South Sudanese origin were effectively denationalised in 2011, on the South’s independence, leaving a significant part of the population at risk of statelessness, solely because of their ethnic origin. Finally, the Equal Rights Trust documented discrimination in the distribution of land and resources, political participation, and discrimination in education or employment for persons from particular ethnic groups, limiting their ability to participate equally in these areas of life.
Political opinion – both real and perceived – is a major ground of discrimination in Sudan. Political freedom is severely limited, and the Equal Rights Trust has been able to identify a clear pattern of discriminatory denial of freedom of expression, association and assembly, directed by state security forces against opposition groups and individuals. Actual or perceived political opponents to the government, including journalists, civil society activists and academics, have experienced less favourable treatment generally, as well as during and after protests against the regime. Moreover, the report provides substantial evidence of discriminatory torture and ill-treatment by members of the security services against those arrested in connection with criticism of the government. The report also concludes that discrimination on the basis of political opinion can limit the ability of those affected to access land, employment and education, restricting their economic and social opportunities.

Women in Sudan suffer discrimination and disadvantage in a number of areas of life, despite ostensibly enjoying legal protection from discrimination under Article 32 of the Constitution. The Equal Rights Trust’s research found two key causal factors which inform women’s experience of discrimination. First, the significant number of discriminatory laws and legal provisions, in particular in the areas of criminal law and personal status law. Second, the prevalence of repressive, conservative social attitudes toward women. The report finds that both laws and practices entrench inequality in the family, workplace and other areas of life. The report also presents distressing evidence of the level and severity of violence against women, identifying in particular the role of state agents. In the context of legal discrimination and negative social attitudes, women are unable to participate in employment and education on an equal basis with men.

In the area of disability, the Equal Rights Trust welcomes the authorities’ efforts to improve the situation of persons with disabilities, which stands in contrast to the weakness of such efforts in other areas. However, the report finds little evidence of the impact of recent laws and policy initiatives. Testimonies from persons with disabilities provide evidence of direct, overt discrimination on the basis of disability. There is little evidence of public or private actors taking reasonable accommodation measures, even where required to do so by law. Persons with mental health problems and intellectual disability are still invisible in the growing disability discourse.
Lesbian, gay and bisexual (LGB) persons are at risk of – and experience – discrimination and a range of other serious human rights abuses because of their sexual orientation. Men who have sex with men are prosecuted on the basis of legal provisions that explicitly prohibit “sodomy”, as well as provisions neutral on their face but used in a discriminatory manner against them. In addition, LGB persons face severe social stigma and a high risk of discriminatory violence from homophobic members of the public. There is effectively no openly LGB population in the country, while those who are exposed by the media as homosexual risk persecution.

The final section of Part Two of the report finds that, despite a number of commendable policy measures, persons living with HIV and AIDS and those who have tuberculosis experience prejudice and discrimination on the basis of their health status. The government is implementing, with mixed success, comprehensive policies to address HIV/AIDS issues, including the discrimination suffered by people living with the condition.

In assessing the legal and policy framework, the report concludes that the system of laws, policies and practices in Sudan is manifestly inadequate to effectively combat discrimination. Indeed, the sheer number of discriminatory laws, including many which exist despite their obvious unconstitutionality, raises a fundamental question over whether the legal and policy system in Sudan is in fact predominantly an instrument to promote and perpetuate – rather than prevent – discrimination.

In the area of participation in international treaties relevant to equality, the report finds a number of important gaps in Sudan’s record of participation, including notably the failure to ratify the Convention on the Elimination of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, Sudan has signed none of the optional protocols which allow individuals to bring individual complaints under those instruments which it has ratified. While the fact that international human rights instruments are part of the domestic legal system, by virtue of Article 27(3) of the Constitution, is to be welcomed, the report finds that the Sudanese courts have appeared reluctant to enforce international human rights law in practice.

The report finds that the Interim National Constitution 2005, despite representing a step-change in human rights protection, provides limited protec-
Conclusions and Recommendations

The equality provisions in the Constitution fall short of the requirements of international law. The content of the right to equality is limited and the personal and material scope of protection provided by Article 31 is narrow. Article 32 provides women with a far more substantial right than that provided in Article 31, guaranteeing equal enjoyment of all other human rights. Yet the report concludes that Article 32 represents an unfulfilled commitment to women’s rights, given the severe limitations on women’s rights which are maintained in other areas of law. Other provisions of the Constitution – Article 45, which relates to the rights of people with “special needs” and the elderly, and Article 47, which relates to the rights of minorities – provide equality rights, though their scope and application are unclear, given the absence of judicial interpretation. The report also concludes that, even in areas where constitutional protections are strong – in respect of discrimination against women or the protection of religious freedom, for example – these are negated by the continued unchecked operation of discriminatory laws or the persistent abuse of rights by state agents.

Beyond the Constitution, there is extremely limited protection from discrimination. **Sudan has neither a comprehensive equality and anti-discrimination law, nor ground-specific or area-specific anti-discrimination laws.** The government has made no attempt to pass legislation providing protection from discrimination based on any of the characteristics protected under international law. The only piece of legislation targeted at improving the situation of a group exposed to discrimination – the National Disability Act – neither prohibits discrimination, nor provides for a generalised right to reasonable accommodation. There are very few, extremely limited provisions relevant to equality in other areas of law. The National Civil Service Act, the Criminal Law Act and the Child Act all contain some equality-relevant provisions, but these are limited in scope. There are no prohibitions of discrimination within nationality, citizenship and immigration law, health law or family law.

The government has not adopted a comprehensive equality policy, while the National Action Plan for Human Rights, adopted in 2013, makes no explicit reference to the rights to equality and non-discrimination. Several **policies related to equality** do exist and are generally compliant with international best practice, but there is no convincing evidence of much progress in their implementation. While a limited number of positive action measures are pro-
vided for in law and through policy, these are not well applied in practice; moreover, the government’s failure to provide effective protection from discrimination – a first and most basic obligation within the equality area – critically blocks any effort to eliminate existing substantive inequalities in Sudan.

The institutions and procedures in place to ensure the enforcement of equality provisions and the implementation of equality policies are weak and a number of essential elements of an anti-discrimination regime are absent. The procedure for bringing a constitutional claim of discrimination contains a number of obstacles which may limit the ability of a victim to bring a case to court, while legal aid is not available in discrimination cases. The jurisprudence on discrimination is weak, offering little hope for victims. The National Human Rights Commission, established by law in 2009, but only operational from 2012 onwards, has not made a difference yet.

Thus, the overall conclusion of this report is that the government of Sudan is failing in its obligation to respect, protect and fulfil the rights to equality and non-discrimination. Sudan has made very little progress towards meeting its obligations to provide an effective system of protection from discrimination through laws, policies and institutions. Yet this failure is only a part of the story. The research for this report leads to the inevitable conclusion that the inadequacy of the system of protection from discrimination in Sudan is a symptom of a deeper and historically entrenched failure by the government to accept and prioritise equality as a human right and a basic principle of social justice.

4.2 Recommendations

In the light of the foregoing conclusions, the Equal Rights Trust offers to the government of Sudan a set of recommendations, whose purpose is:

1. to strengthen the protection from discrimination through improving the legal and policy framework in respect to equality; and
2. to enable Sudan to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality.
All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The recommendations are presented below:

1. **Mainstreaming Equality in Conflict Resolution, Peace Building and Development Policies**

Sudan is urged to mainstream the principles of equality and non-discrimination in all its initiatives aimed at conflict resolution and peace building. As a pre-condition of the comprehensive legal reform in the area of equality which is in order, Sudan’s government should deliver on the promises contained in the Comprehensive Peace Agreement and the Doha Document for Peace on Darfur, including by ensuring equal participation in referenda and popular consultations for people in the conflict areas.

Sudan should integrate equality principles based on non-discrimination in all its development policies, and ensure non-discrimination in investment, budgeting, provision of goods and services, and equitable distribution of resources, including land and oil revenue, to all its regions.

2. **Ensuring Justice for Victims of Serious Cases of Past Discrimination**

Sudan should integrate equality principles based on non-discrimination and positive action in comprehensive policies to redress past abuses, including severe forms of discrimination committed against groups and persons on grounds of religion, ethnicity and other protected characteristics. Victims of past abuses should be rehabilitated and they or their heirs should be compensated for the material and moral damages suffered in the past. Mahmoud Mohamed Taha should be officially rehabilitated and his followers should be allowed to exercise their rights without discrimination.

Alleged perpetrators of gross human rights violations including discriminatory torture, sexual and other violence and ill-treatment, should be brought to justice. Victims of discriminatory violence should be consulted on the types of remedy or compensation that they should receive.
3. Strengthening of International Commitments Related to Equality

3(a) Sudan is urged to ratify the following international human rights instruments which are relevant to the rights to equality and non-discrimination:

**United Nations Instruments:**

i. The First Optional Protocol to the International Covenant on Civil and Political Rights;

ii. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

iii. The Convention on the Elimination of All Forms of Discrimination against Women;

iv. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

v. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

vi. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

vii. The Third Optional Protocol to the Convention on the Rights of the Child;

viii. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

ix. The International Convention for the Protection of All Persons from Enforced Disappearances;

x. The Convention relating to the Status of Stateless Persons;

xi. The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

xii. The United Nations Educational, Scientific and Cultural Organisation Convention against Discrimination in Education;

xiii. International Labour Organisation Convention 183 on Maternity Protection;


**African Union Instruments:**

iii. African Charter on Democracy, Elections and Governance;

3(b) Sudan is urged to make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination allowing individual complaints.

4. Repeal or Amendment of National Legislation

Sudan is urged to undertake a review of all legislation and policy in order to (i) assess compatibility with the rights to equality and non-discrimination, as defined under the international instruments to which it is party; and (ii) amend, and, where necessary, abolish existing laws, regulations and policies that conflict with the right to equality. This process should include review of:

**Constitutional Provisions:**

i. Article 5 establishing the elevated status of Islam and basing all legislation on sharia principles;
ii. Article 16(1) which requires the state to pass legislation to “protect the society from corruption, delinquency and social evils, and steer the society as a whole towards virtuous social values consistent with religions and cultures of Sudan”.

**Legislative Provisions:**

**Criminal Law**

i. The following sections of the Criminal Law Act 1991:
   a. Section 125 which criminalises anyone who “publicly abuses, or insults any of the religions, their rites, or beliefs, or sanctities or seeks to excite feelings, of contempt and disrespect against the believers thereof”;
   b. Section 126 which criminalises apostasy;
   c. Section 146 which criminalises adultery;
d. Section 148 which criminalises sodomy, particularly section 148(2)(c) which imposes the death penalty for a third offence;

e. Section 149 which has the effect of turning rape victims into adulterers – and therefore liable to prosecution – where they cannot prove a lack of consent;

f. Section 151 which criminalises gross indecency;

g. Section 152 which creates an offence of “indecent and immoral acts”, prohibiting conduct in a manner contrary to public morality as well as the wearing of “indecent or immoral dress”; and

h. Section 154 which provides for a general offence related to improper conduct which has been open to discrimination in its application.

ii. Section 62 of the Evidence Act 1994 which, together with Section 149 of the Criminal Law Act 1991, requires the testimony of four men in rape proceedings to prove rape.

Family Law / Personal Status Law

i. The Personal Status Law Act 1991, particularly those provisions which relate to marriage, divorce, custody, inheritance and the institution of the wali (guardian).

Nationality Law

i. The Nationality Act 1994, particularly:
   a. Section 4, which discriminates between fathers and mothers in automatic acquisition of Sudanese nationality; and
   b. Section 10(2), which provides that “Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan”.

State Public Order Laws

i. The following Sections of the Khartoum Public Order Act 1996:
   a. Section 7(1)(b) which prohibits dancing between men and women and women dancing in front of men;
b. Section 9 which requires women to use certain doors and seats in public transport;

c. Section 13 which prohibits women from running a hairdressing business without a licence;

d. Section 14 which prohibits men from working in the hairdressing business and starting a hairdressing business;

e. Section 15 which provides that men can only own a hairdressing business if it is managed by a woman and under certain other conditions and requirements;

f. Section 16 which prohibits women from working in a hairdressing business unless they are 35 years or older;

g. Section 18 which prohibits businesses from making women’s dresses unless they have a licence and follow regulations on “public morality”;

h. Section 20 which requires men and women to queue separately; and

i. Section 24 which prohibits the selling of food and drink during Ramadan.

ii. All other public order legislation at the state level, particularly any provisions which (i) segregate men and women, (ii) prohibit men or women from carrying out activities which the other sex is permitted to carry out, or (iii) discriminate between men and women in any other way.

5. Substantive Law Protecting the Rights to Equality and Non-Discrimination

5(a) Sudan should adopt appropriate constitutional and legislative measures for the implementation of the right to equality. Such measures should ensure comprehensive protection across all grounds of discrimination and in all areas of activity regulated by law. The constitutional protections of the right to equality and non-discrimination in the Interim National Constitution are currently significantly limited. It is therefore recommended to **amend the Interim National Constitution** in order for Sudan to comply fully with its international human rights obligations. Such amendments should include:
i. Providing a distinct right to non-discrimination applying to all areas of life regulated by law, in addition to the right to equality before the law and to equal protection of the law; providing a broader right to equality whose content includes participation, on an equal basis, in economic, social, political, civil and cultural life.

ii. Expanding the list of grounds of discrimination in Article 31 so as to include all grounds enumerated in Principle 5 of the Declaration of Principles on Equality – adding to the currently recognised grounds also descent, pregnancy, maternity, civil, family or carer status, birth, national or social origin, nationality, economic status, sexual orientation, gender identity, age, disability, health status, and genetic or other predisposition toward illness; and introducing criteria for the inclusion of additional grounds, so that such grounds could be incorporated as necessary over time without requiring constitutional amendment;

iii. Providing a definition of the behaviours and conducts which are prohibited as discrimination.

5(b) Sudan should strengthen any constitutional protections of the rights to equality and non-discrimination through the enactment of comprehensive equality legislation.

5(c) The enactment of comprehensive equality legislation should give effect to the principles of equality under international law and ensure the expanded constitutional protection against discrimination and the promotion of the right to equality. Equality legislation should aim at eliminating direct and indirect discrimination in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

5(d) Comprehensive equality legislation could either take the form of:

i. A single equality law, which offers consistent protection against discrimination across all grounds of discrimination and in all areas of life regulated by law; or
ii. A coherent system of Acts and provisions in other legislation which together address all grounds of discrimination in all areas of life regulated by law.

5(e) Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.

5(f) It is recommended that a thorough review of the National Disability Act 2009 is undertaken in order to bring it into line with Sudan's obligations under the Convention on the Rights of Persons with Disabilities. Most importantly, the rights enshrined in the Act must be made enforceable, either through the civil courts, or through an enforcement mechanism designed for this specific purpose.

5(g) Sudan is urged to amend its disability legislation and policies and to develop programmes aimed at ensuring equal rights, in full compliance with the Convention on the Rights of Persons with Disabilities, to persons with mental health problems and intellectual disabilities.

5(h) Sudan is urged to enact the proposed legislation on the rights of persons with HIV as a matter of priority ensuring that such legislation protects the rights of persons living with HIV and includes measures to prevent the spread of HIV.

5(i) Sudan is urged to introduce policies combatting stigma and discrimination against persons who have had tuberculosis or other infectious diseases, including sexually-transmitted diseases, or who are addicted to drugs.

5(j) Sudan is urged to enact, as a priority, legislation prohibiting female genital mutilation at both national and state levels and to ensure its robust practical enforcement.

5(k) In order to ensure that the right to equality is effective in Sudan, the government should review its current positive action measures and consider taking further positive action, which includes a range of legislative, administrative and policy measures, in order to overcome past disadvantage and to accelerate
progress towards equality of particular groups, including under-represented ethnic and religious groups, women and persons with disabilities.

6. Enforcement

6(a) Sudan is urged to review its procedural law to ensure that persons who have been subjected to discrimination have a right to seek legal redress and obtain an effective remedy. They must have effective access to judicial and administrative procedures, and appropriate legal aid for this purpose.

6(b) Sudan should introduce legislation or other measures to protect individuals from victimisation, defined as any adverse treatment or consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions.

6(c) In amending its procedural law related to equality, Sudan should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.

6(d) In amending its procedural law related to equality, Sudan should adapt legal rules related to evidence and proof in order to ensure that victims of discrimination are not unduly inhibited from obtaining redress. In particular, rules on evidence and proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the right of equality.

6(e) Sudan must ensure that sanctions for breach of the right to equality are effective, proportionate and dissuasive. Appropriate remedies should include reparations for material and non-material damages. Sanctions should also include the elimination of discriminatory practices and the implementation of structural, institutional, organisational or policy changes that are necessary for the realisation of the right to equality.
6(f) Sudan is urged to establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality; or empower the National Human Rights Commission to play the role of a specialised equality body. Equality bodies must comply with the UN Paris Principles, including in terms of their independent status and competences, as well as adequate funding and transparent procedures for the appointment and removal of their members.

6(g) It is recommended that Sudan establish a focal point within government to coordinate policy and action relating to the right to equality.

7. Duty to Gather and Disseminate Information

During the research for this report, it has been established that there is a significant lack of information, including statistics, in relation to key indicators of equality in Sudan. Sudan should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Sudanese society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Sudan should further ensure that such information is not used in a manner that violates human rights.

Laws and policies adopted to give effect to the right to equality must be accessible to all persons. Sudan must take steps to ensure that all such laws and policies are brought to the attention of all persons who may be concerned by all appropriate means.

Sudan should adopt a freedom of information law which would create a legal right to individuals and organisations to obtain information held by the government, and regulate the process for requesting and releasing such information.

8. Policies to Respect and Promote the Rights to Equality and Non-Discrimination

Sudan should take appropriate measures and adopt policies to ensure that all public authorities and institutions, as well as private sector bodies, respect
the rights to equality and non-discrimination. Such measures could include, for example:

i. Reviewing existing guidelines, policies and practices to ensure that they do not contravene the rights to equality and non-discrimination;
ii. Developing guidelines for public bodies to ensure respect for the rights to equality and non-discrimination;
iii. Taking steps to educate public officials and other agents of the state as to their obligations with respect to the rights to equality and non-discrimination.

9. Education on Equality

Sudan is urged to take action to raise public awareness about equality, and to ensure that all educational establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices and customary practices which are based on the idea of the inferiority or superiority of one group within society over another.

10. Prohibition of Regressive Interpretation, Derogations and Reservations

In adopting and implementing laws and policies to promote equality, Sudan should not allow any regression from the level of protection against discrimination that has already been achieved.

No derogation from the right to equality should be permitted. Any reservation to a treaty or other international instrument, which would derogate from the right to equality, should be considered null and void.
BIBLIOGRAPHY

INTERNATIONAL AND REGIONAL TREATIES, AUTHORITATIVE INTERPRETATIONS AND GUIDELINES

United Nations Human Rights Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 1984.


Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G. A. Res. 57/199, 2002.


**Other International Treaties**

International Labour Organisation, Equal Remuneration Convention C100, 1951.


**Regional Treaties**


Cairo Declaration on Human Rights in Islam, Organisation of Islamic Cooperation.

**Resolutions**

Commission on Human Rights Resolution 2002/77 (The question of the death penalty).

Commission on Human Rights Resolution 2003/77 (The question of the death penalty).

Commission on Human Rights Resolution 2004/67 (The question of the death penalty).

Commission on Human Rights Resolution 2005/59 (The question of the death penalty).

General Comments and Recommendations


Lists of Issues and Concluding Observations


**Special Procedures and Other Reports by International Governmental Organisations**


Documents of Best Practice


**NATIONAL LAW**

Child Act 2010.

Civil Procedures Act 1983.


Laws and General Clauses Act 1974.


National Civil Service Act 2007.


Sources of Judicial Decisions Act 1983.


**NATIONAL POLICIES AND STATE REPORTS**

**National Policies**


**State Reports**


**NATIONAL JURISPRUDENCE**

*Adam Mohamed Hamid v National Civil Service Recruitment Board & Ministry of Electricity and Dams* (unreported).


*Alsier Mustafa Khalfalah and others v Civil Service Recruitment Committee of Khartoum State, High Court, Administrative Appeal No. 127/2012*, (unreported).


*Government of Sudan v Amira Osman Hamed*, Case pending.

*High Court Case No. 207/2006*, Case pending

*High Court Appeal No. 60/1997*, Case pending.


*Sudanese Women General Union v the Governor of Khartoum State*, (unreported).

*Sudan People’s Liberation Movement (SPLM-Democratic Change) v First Vice-President of Government of Southern Sudan (President of Sudan People’s Liberation Movement) and others*, Constitutional Court Journal, Vol. 2, 2011, pp. 599–611.

**BOOKS, ARTICLES, REPORTS AND STUDIES**


African Centre for Justice and Peace Studies, *Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan’s conflict-affected areas*, 19 May 2014.


Association for World Education, *Report of the UN High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights – Written Statement*


Chinweizu, “South Sudan and the problem of Arab racism in Black Africa – an introduction”: *A presentation to the Nigeria-South Sudan Friendship Association (NISSFA) in Lagos, 26 March 2008*.


Inter-Parliamentary Union, *Sudan: Majlis Watani (National Assembly): Last Elections*.

Inter-Parliamentary Union, *Sudan: Majlis Welayat (Council of States): Last Elections*. 

270


Musawah, Report submitted to Musawah as the result of consultations held with representatives of Sudanese Organisation for Research and Development (SORD), Motive (Partnership against VAW), Legal Forum, Mutawinat Group Khartoum, Gender Centre for Research and Training, Salmmah Centre, and Asmaa Development Association, as well as a number of activists and specialists, 2012.


REDRESS and the African Centre for Justice and Peace Studies, Sudan’s human rights crisis: High time to take article 2 of the Covenant seriously – Submission to the UN Human Rights Committee ahead of its Examination of Sudan’s Fourth Periodic Report under the International Covenant on Civil and Political Rights, June 2014.


REDRESS, Complaint: Safia Ishaq Mohammed Issa v Sudan, 16 February 2013.


United Nations Development Programme, *Share the Land or Part of the Nation: The Pastoral Land Tenure System in Sudan (Study 3)*, 2006.

United Nations Development Programme, *Strengthening the Capacity of the Sudan National Human Rights Commission – About the project*.


United Nations High Commissioner for Refugees, *2014 UNHRC country operations profile – Sudan*.


**NEWSPAPER AND MAGAZINE ARTICLES**

Abdallah, M. “Sudan constitution to be ‘100 percent Islamic’: Bashir”, *Reuters*, 8 July 2012.


CBC News, “Darfur death toll could be as high as 300,000: UN official”, 22 April 2008.

Day, E., “I was terrified that the guards would come in and teach me a lesson”, *Observer*, 9 December 2007.


Jal, E., “We must act to stop South Kordofan becoming the next Darfur”, *The Guardian*, 8 August 2011.


Sudan Tribune, “Pastor confirms attack by Islamic fundamentalists on Sudan church”, *sudantribune.com*, 23 April 2012.


Sudan Tribune, “Sudan downplays death sentence against woman accused of apostasy”, 16 May 2014.


OTHER SOURCES

Comprehensive Peace Agreement signed in Naivasha, Kenya, 2005


Khartoum, the capital of Sudan, sits at the confluence of the Blue and White Niles. Sudan itself, recipient of the rich and diverse influences from both northern and sub-Saharan Africa, sits at the confluence of different races, religions and cultures. However, unlike the Nile, whose two branches meet and together form one of the world’s mightiest rivers, Sudan remains racked by division and divergence.

This report reveals just how significant the policies of the al-Bashir government are in the metamorphoses of entrenched patterns of discrimination. The regime has sought to diminish the country’s immense diversity, in favour of a narrow vision of Sudan as a singularly Arab and Islamic state. This report argues that inequality is the integral root cause of all of Sudan’s continuing conflicts. Discrimination on the basis of religion and political opinion is routine and systematic, made worse for non-Arabs, especially from the conflict-ridden periphery: the South, Darfur, and the Eastern states. Women’s inequality is sanctioned by discriminatory laws. Lesbian, gay and bisexual persons are condemned to a life underground.

Yet in the midst of this bleak picture, this report finds a source for hope in Sudan’s people, many of whom continue to pursue a broader, more diverse and cohesive vision for Sudan.