1. The Equal Rights Trust (ERT) submits this alternative report to the United Nations Human Rights Committee (the Committee) commenting on the fourth periodic report by Sudan submitted under Article 40 of the International Covenant on Civil and Political Rights (the Covenant).

2. ERT exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. It focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.

3. ERT has been actively involved in the promotion of improved protection from discrimination in Sudan since 2010. Over this time, ERT has worked in partnership with the Sudanese Organisation for Research and Development (SORD) and the Sudanese Journalists for Human Rights (JHR) network, on projects designed to strengthen the protection from discrimination and related human rights abuses.

4. In the course of its work in Sudan, ERT has undertaken extensive research on equality and non-discrimination in the country, in preparation for the publication of the first ever comprehensive report on discrimination and inequality in Sudan. ERT has coordinated and conducted field research with victims of discrimination on various grounds and undertaken interviews with academics, lawyers, journalists and human rights defenders. In 2011, ERT coordinated field research in five of Sudan's 18 states: Kassala, Khartoum, River Nile, South Darfur and White Nile. In total, 260 persons participated in the field research in the five states, with a slight gender imbalance favouring women (145 women against 115 men). ERT has also conducted independent secondary desk-based research on patterns of discrimination and inequality in Sudan and on the legal and policy framework in place to prevent discrimination and promote equality.
5. In addition, ERT has conducted a detailed analysis of Sudan’s laws and policies on equality and non-discrimination, in order to assess the extent to which Sudan has a legal and policy framework in place which is adequate to meet its obligations under international law. In order to ensure the accuracy of the research findings and conclusions, a draft of ERT’s report was exposed to a validation process. In early 2014, ERT visited Sudan to present and discuss a draft of the report with interested parties from civil society, government, academia, the media and other fields. A further 20+ interviews and two focus groups were conducted with experts and particularly vulnerable groups during this validation visit.

Introduction

6. The research for ERT’s forthcoming report on discrimination and inequality in Sudan informs this submission to the Committee. ERT’s report focuses on the extent to which Sudan has met its obligations to respect, protect and fulfil the rights to non-discrimination and equality. Thus, this submission is primarily concerned with Sudan’s performance under two Articles of the Covenant: first, Article 2(1) of the Covenant which requires that states parties respect and ensure the enjoyment of the rights provided in the Covenant without distinction; and second, Article 26 of the Covenant which, as the Committee has stated, provides an “autonomous right”1 to non-discrimination.

7. In assessing Sudan’s adherence to its obligations under Articles 2(1) and 26, the submission relies, in part, on the interpretation of these provisions which has been provided by the Committee in its General Comment No. 18.2 The submission also relies upon the Declaration of Principles on Equality (the Declaration),3 a document of international best practice. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as “the current international understanding of Principles on Equality”.4 It has also been endorsed by the Parliamentary Assembly of the Council of Europe.5

8. ERT’s forthcoming report sheds new light on well-publicised human rights abuses in Sudan and exposes little-known patterns of discrimination. Given the comprehensive nature of the forthcoming report, this submission does not provide an exhaustive account of its findings. Instead, it focuses on providing the Committee with new information on the enjoyment of the right to non-discrimination in Sudan, with a particular emphasis on the first-hand testimony of victims, and on providing evidence on the shortcomings of the legal and policy framework in place to protect the right to non-discrimination.

9. ERT’s research has identified patterns of discriminatory violation of other rights protected by the Covenant, including the rights to life, to be free from torture and other forms of ill-treatment and the rights to freedom of expression and freedom of conscience. In addition, it has identified patterns of discrimination in areas of life which are not the subject of protection under other Covenant rights, but which nevertheless enjoy protection under Article 26. Finally, ERT’s research and analysis has found serious shortcomings in the legal and policy framework in place to prevent discrimination. Thus, this submission is structured in three sections: (1) Evidence of violations of Article 2(1) in connection with other Covenant Articles; (2) Evidence of patterns

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1 Human Rights Committee, General Comment No. 18: Non-discrimination, 1989, Para 12.
2 Ibid.
4 Naz Foundation v Government of NCT of Delhi and Others WP(C) No.7455/2001, Para 93.
and incidences of discrimination in violation of Article 26; (3) Evidence of gaps, inconsistencies and other shortcomings in the legal and policy framework, such that it fails to meet the requirements of Article 26.

Part 1: Evidence of Violations of Article 2(1) in connection with other Covenant Articles

10. ERT’s research in Sudan has identified discrimination on various grounds, including race and ethnicity, political opinion, gender and sexual orientation, in respect of rights protected by the Covenant. This section examines evidence of discriminatory violations of: Article 6 (the right to life); Article 7 (the right to be free from torture and other forms of ill-treatment); Article 9 (the right to be free from arbitrary detention); Article 10 (the right to be treated with dignity while in detention); Article 18 (the right to freedom of thought, conscience and religion); Article 19 (the right to freedom of expression); Article 21 (the right to freedom of assembly); and Article 22 (the right to freedom of association).

Article 2(1) and Article 6: Discriminatory denial of the right to life

Denial of the right to life on the basis of political opinion

11. Despite constitutional guarantees of civil and political freedoms, the Sudanese government, through the state security services, has a record of suppressing political opposition, including through the use of force. The repressive tactics of the security services have been most clearly evidenced in response to public protests, such as those which arose in the summers of 2011, 2012 and 2013. ERT has collected allegations of extrajudicial killings of protesters by the security services.

12. During a field mission to Sudan in January 2014, ERT interviewed many people who had been involved in the most recent protests – in September and October 2013 – and who had been arrested and abused. Some testified to the shooting of protestors by security services. Ebtisam Sanhouri Elrayh, a Lecturer of Constitutional Law and Human Rights at Faculty of Law, University of Khartoum told ERT about the death of her cousin – Salah Sanhouri – who had been shot while involved in the protests against fuel price rises. Salah Sanhouri, a pharmacist, was one of at least 34 people killed in early October 2013.

13. Estimates of the total number of people killed in the 2013 protests vary. According to the Sudan Tribune newspaper, the “governor of Khartoum state, Abdel Rahman Al-Khidir, had said more than 60 people died during the recent wave of protests”. However, Amnesty International estimated that 210 people had been killed in Khartoum alone. In an interview with ERT, Dr M., a psychologist who provides assistance to victims of violence and torture, including some of those involved in the protests, stated that approximately 230 activists had been killed. Dr M. also told ERT that the police and security services had been ordered to shoot to kill protestors; speaking about the history of repression under the Al Bashir regime, he said:

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7 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.”
10 ERT interview with Dr M, 20 January 2014, Khartoum.
The government’s attitude has not changed. Last September, during the street protests, NISS [the National Intelligence and Security Service] and police were apparently told to shoot to kill. Those who were detained were sometimes brought to secret places and not to the known offices of the security service.\textsuperscript{11}

\textbf{Denial of the right to life on the basis of sexual orientation}

14. Same-sex sexual activity between men is explicitly criminalised in Sudan under section 148(1) Criminal Law Act 1991, which provides for an offence of 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; for a third offence, the penalty is death or life imprisonment.

15. The Committee criticised Sudan for retaining the possibility of the death penalty as a punishment for same-sex sexual activity at its last review in 2007.\textsuperscript{12} At its first Universal Periodic Review in 2011, a number of states called upon Sudan to abolish the death penalty. Sudan responded by stating that the death penalty was imposed for “the most serious crimes”.\textsuperscript{13} The Commission on Human Rights and the Committee 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{14} 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{15}

\textbf{Article 2(1) and Article 7: Discriminatory denial of the right to freedom from torture and cruel, inhuman or degrading treatment or punishment}

\textbf{Denial of the right to freedom from torture and other forms of ill-treatment on the basis of political opinion}

16. ERT’s research confirmed reports that the Sudanese authorities have suppressed political opposition, including through the excessive use of force. 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 illegal ill-treatment. The issue has been highlighted by, among others, the Independent Expert on the human rights situation in Sudan, who expressed concern about

\textsuperscript{11} Ibid.


\textsuperscript{14} See 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 6.

the arbitrary detention of political activists at various points in 2013\textsuperscript{16} and by Sudanese and regional NGOs, in a submission to the UN Human Rights Council in September 2013.\textsuperscript{17}

17. In 2012 and 2013, ERT met dozens of independent journalists and human rights defenders who had been subjected to discriminatory torture and ill-treatment, particularly in the aftermath of public protests. For example, Anwar Awad Ali Elsamani was subjected to torture following his arrest on 29 June 2012, in the wake of a major protest in Khartoum. He testified that, having been detained:

\begin{quote}
I was forced to sit on my knees after lifting my trousers well above my knees and putting my elbows on the wall while looking at the floor. They started to verbally abuse us (...) They hit anyone that makes even a slight change in their posture. After almost 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 (...) 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. (...)\end{quote}

18. In the early hours of the next day, Mr Elsamani was released, without explanation and without ever having been notified of any charges against him. The torture to which he was subjected had lasting impacts on his health, requiring him to have surgery on his neck and affecting his hearing.

19. In January 2014, ERT interviewed Dr M., who has provided counselling to a number of people who have been tortured or subjected to other forms of ill-treatment by the state security services since the early 1990s. He confirmed that the ill-treatment of the journalist Mr Elsamani was part of a wider pattern of torture and ill-treatment against those who challenge the regime. Dr M. told ERT that:

\begin{quote}
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 (...)\end{quote}


\textsuperscript{17} Human Rights Council, \textit{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 Leagues, non-governmental organizations in special consultative status}, A/HRC/24/NGO/64, 3 September 2013, p.3.

\textsuperscript{18} 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.
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.19

20. On the basis of numerous interviews with Sudanese respondents, ERT believes that the worse treatment is meted out to protesters originating from Darfur or the South. This was evidenced by many personal testimonials. For example, as late as March 2014, Darfuri men deemed to be political opponents were allegedly injected with a Hepatitis virus while held in detention in cells of the NISS, in Bahri near Shendi station in Khartoum.20 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.

**Sexual and other forms of gender-based violence: denial of the right to freedom from torture and other forms of ill-treatment on the basis of gender**

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

> Sexual violence is happening on an almost daily basis. Since the beginning of the conflict, no-one has ever been convicted of rape. Women are victims of the occupation – rape is used as a weapon of occupation. Around the camps, these cases are everywhere.21

22. ERT heard similar allegations regarding sexual and other forms of violence against women and girls in the conflict zones in Blue Nile and South Kordofan from Dr M., a psychologist who provides assistance to victims of violence and torture.22 Dr M. told ERT 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 victims coming to Khartoum and filing complaints represent a fraction of the total number. He also explained the stigma associated with making allegations of sexual violence, and rape in particular, with reference to a case from South Kordofan:

> I worked with one woman, a sexual harassment case involving a woman from an international NGO working in 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 (...) It is very sensitive in our culture for women to speak about sexual violence. Usually they call what happened to them harassment even if it involved rape.23

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19 See above, note 11.

20 ERT interview with W.W., 14 May, Brussels.


22 See above, note 11.

23. Recent cases reported by the African Centre for Justice and Peace Studies (ACJPS), in its Sudan Human Rights Monitor, also confirm that patterns of sexual and other forms of violence against women in conflict areas have continued in recent years. 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 were allegedly perpetrated by the NISS.\(^{24}\) 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.\(^{25}\)

24. ERT also found evidence of state agents committing acts of violence against women involved in protesting against the authorities. 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 protesters with female demonstrators, who play a major role in mobilising the population, targeted in particular for sexual and verbal abuse.\(^{26}\) Over 100 female demonstrators were detained including 14 human rights defenders who were held for two months.\(^{27}\)

25. The case of Safia Ishaq – a youth activist raped by persons she believes to be members of the NISS – is indicative of the particular vulnerability of female political protestors and activists to violence by the security services. In February 2011, Ms Ishaq, having been apprehended by two men in plain clothes and forced into a car, was taken to a building known to belong to the security services. She was beaten, both while in the car and on arrival at the facility, while being asked questions about her political activities. When she denied allegations put to her, she was verbally abused and beaten. According to REDRESS, 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.*\(^{28}\)


In October 2012, a second case involving a female journalist was reported to ERT. Somaya Ibrahim Hindosa was 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. Ms Hindosa was able to flee the country, with support from the JHR.

In another well publicised case from 2013, Samar Margani was sexually abused while in detention for her involvement in protests against the regime. 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:

_They threw me into a police vehicle with other protesters, beat me and threatened to rape me when I resisted (...) Some of 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)._  

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 the original video-recording, and for speaking about the abuse she suffered. 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. 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 fine of 5,000 Sudanese pounds.

In January 2014, ERT interviewed N., a women’s rights activist. On the basis of its interview with N. and other experts, ERT believes that the cases of Ms Ishaq, Ms Hindosa and Dr Mergani, while among the most severe, are not isolated incidents, but part of a widespread problem of gender-based violence against female political activists by members of the NISS. During and after the wave of anti-government protests in September 2013, many new cases of abuse of women activists were reported to civil society organisations working with victims of violence.

**Article 2(1) with Articles 9 and 10: denial of the right to liberty and freedom from arbitrary arrest and detention and the right to be treated with humanity while in detention, on the basis of race and ethnicity**

ERT’s research identified a pattern of discrimination against persons from certain ethnic groups in the process of arrest and in conditions of detention. The testimonies of K., a Nuban activist and journalist, and D., a Darfuri journalist, presented below, provide an insight into the use of

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30. ERT’s research identified a pattern of discrimination against persons from certain ethnic groups in the process of arrest and in conditions of detention. The testimonies of K., a Nuban activist and journalist, and D., a Darfuri journalist, presented below, provide an insight into the use of
ethnic profiling by the police and security services in arresting and detaining people, and of apparent ethnic discrimination in detention facilities.

31. K. told ERT 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 Sudanese People’s Liberation Movement – North (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.

32. K. was taken to Koba prison, and held 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 small "corridor" between them. The mattresses were dirty, there were no 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 light bulbs which got very hot, further worsening the conditions. The prisoners were not allowed to take any walk or exercise outside, and were only permitted to leave the cell for interrogation. Whenever he was taken out of the cell, K. was blindfolded and shackled. K. showed ERT the deep scars from where the shackles had been tightly fastened to his arms and legs.

33. K. stated that he was not given adequate health care while in prison, despite his age and visible 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 only sporadically. 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.

34. K. was never officially charged, and never given access to a lawyer. He told ERT that he had not asked for a lawyer out of fear, as anyone who asked too many questions was threatened with solitary confinement. He was repeatedly interrogated, but the interviews were not recorded and he was never asked to sign anything. When he asked what he was being charged with, he was told, “you must confess what you did, or we will make you to”. 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, without further explanation, he was released without charge.

35. 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 ERT that he was arrested in 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. 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 ERT that he was held for more than 80 days, much of which he spent in solitary confinement. He stated that this is “normal” practice for Darfuris, who are frequently held in solitary confinement.

36. In addition to K. and D., ERT researchers interviewed a number of other people in different parts of the country who had experienced or witnessed harassment, arrest and detention by the police which they believed to be racially or ethnically motivated. In 2013, ERT 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.36 Their

36 ERT interviews with Darfur Student’s Union leaders from four different Khartoum universities, 2013, Khartoum.
cultural activities were banned or severely restricted and their rooms at university campuses were being routinely ransacked and burned down. They believed that this was because the government supporting Arab groups within the university simply wanted them out.

37. In January 2014, ERT interviewed respected human rights activist Dr Mudawi Ibrahim Adam, who stated that cases such as those of K., D. and the Darfuri students are typical of a pattern of ethnic profiling used by the police and NISS. 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.

**Article 2(1) and Article 18: Religious discrimination and denial of the right to freedom of thought, conscience and religion**

38. The legal situation regarding religion in Sudan is complex and somewhat contradictory. A number of provisions in the Interim National Constitution (the 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, while Article 31 prohibits discrimination on the basis of religion. However, Article 5(1) states that legislation “shall have as its sources of legislation Islamic Sharia and the consensus of the people”. Moreover, various laws restrict religious freedom and discriminate on different grounds, notably gender and also religion.

39. 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:

> 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.

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40. 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. In 2007 a British teacher, Gillian Gibbons, was charged under section 125. Recent reports by NGOs indicate that the Gibbons case is neither isolated nor a thing of the past. According to a recent report to the UN Human Rights Council “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

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37 ERT interview with Dr Mudawi Ibrahim Adam, 12 February 2014, London.


religion and belief, but also uses extra-legal violence to violate the rights of its citizens.\textsuperscript{41}

1. Section 126 of the Criminal Act makes ridda (apostasy, or conversion from Islam to another religion) 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 penalty for apostasy shall be remitted if the apostate recants.\textsuperscript{42} While there have been no recorded executions under section 126 of the Criminal Act since it was introduced in 1991,\textsuperscript{43} the recent high profile case of Meriam Yehya Ibrahim Ishag illustrates the severe impact which the provision can have. On 15 May, Ms Ishag, who was eight months pregnant at the time of her trial, was sentenced to death by hanging.\textsuperscript{44} Ms Ashag was charged because she married a Christian man, Daniel Wani, with whom she has two children,\textsuperscript{45} and found guilty because she refused to recant. 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.\textsuperscript{46} However, while Ms Ishag has a Muslim father, her mother is Christian and she considers herself to be a Christian.\textsuperscript{47} During the trial, Ms Ishag reportedly stated that “I am a Christian and I never committed apostasy”.\textsuperscript{48} The judge reportedly said, “we gave you three days to recant but you insist on not returning to Islam”.\textsuperscript{49} Ms Ishag gave birth in a prison hospital on 27 May, reportedly while shackled.\textsuperscript{50} Sudanese media reported that the sentence would not be carried out for two years, in order to allow her to nurse her newborn baby, as required under the Criminal Act.\textsuperscript{51} On 31 May, a spokesperson for the Sudanese Foreign Ministry announced that Ms Ishag would be freed imminently,\textsuperscript{52} though to date, she remains in prison.


\textsuperscript{42} Criminal Law Act 1991, section 126.


\textsuperscript{46} Ibid.

\textsuperscript{47} Ibid.

\textsuperscript{48} See above, note 44.

\textsuperscript{49} See above, note 45.


\textsuperscript{51} See above, note 45.

41. Sections 125 and 126 of the Criminal Act clearly restrict religious freedom and freedom of expression. They also constitute discrimination on the grounds of religion or belief. In practice, provisions which prohibit the “abuse or insult” of religions have been used to 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. Conversely, the apostasy provisions discriminate directly against Muslims, preventing them – on pain of death – from converting to another religion, while leaving those of other religions free to do so.

42. Other criminal offences indirectly discriminate against non-Muslims and Muslims who do not adhere to strict interpretations of Islam. Section 79 of the Criminal Act outlaws dealing with alcohol, “by 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”. 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 prohibiting from possessing alcohol, whereas section 78(2) criminalises the drinking of alcohol by all persons, irrespective of their religion, where this "provokes 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.

43. Section 152 of the Criminal Act prohibits “indecent and immoral acts”, as follows:

(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.

44. Section 152 indirectly discriminates against all those who profess Islam, which is interpreted as imposing more strict conduct or dress requirements than Christianity and other minority faiths in Sudan. Moreover, it is open to discrimination in its application, with atheists, Christians and other groups vulnerable to targeting and harassment under laws which do not reflect their “morality”. Section 152 has been used to prosecute women who dress in ways which do not conform to traditional Islamic norms. Two high-profile cases – those 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", illustrating how section 152 discriminates


54 Sydney Morning Herald, "Sudanese woman Amira Osman Hamed refuses to cover her head, faces flogging", Sydney Morning Herald, 9 September 2013.
against Muslim women who choose not to conform to the regime’s interpretation of Islam, and are thus guilty of an offence within the vague meaning of section 152.

45. In addition to the existence of laws which limit freedom of religion and discriminate on the basis of religion and belief, ERT found evidence of other patterns of religious discrimination and denial of religious freedom. In particular, ERT was informed that Christians have faced increased pressure from both state and non-state actors since the secession of mainly Christian South Sudan in 2011. Participants at an ERT focus group meeting with members of the media, held in January 2014, provided numerous examples of 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 2012.55

46. ERT also gathered evidence of discriminatory violence against religious minorities, in particular Christians, by both state and non-state actors, and of the destruction of Christian buildings and religious icons. In White Nile state, respondents testified to religiously-motivated 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.56

47. In 2014, A., a journalist working for a popular Sudanese newspaper, told ERT that he had witnessed the aftermath of an arson attack on a church in south Khartoum by religious extremists in December 2012.57 A. stated that the police did not intervene to prevent the arson attack from taking place.

Article 2(1) and Articles 19, 21 and 22: Denial of the rights to freedom of expression, freedom of assembly and freedom of association on the basis of political opinion

48. The Constitution provides for the rights to freedom of expression, freedom of assembly and freedom of association.58 It also states that all persons are “entitled without discrimination, as to (...) political opinion (...) to the equal protection of the law”.59 In practice, however, political freedom – including the freedom to express opinions opposed to the regime, and to assemble with others who do so – remains limited. Evidence collected both by ERT 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 directly involved with opposition political parties, but also independent media, civil society organisations and social campaigners.

49. In its list of issues, the Committee asked for information on allegations that State agents, in particular agents of the security services, have prevented the publication of articles, given instructions on news coverage, shut newspapers without court orders and confiscated entire

55 ERT focus group with journalists (names on file with ERT), 22 January 2014, Khartoum.

56 Interview with E. (full name on file with ERT), August 2011, Rabak.

57 See above, note 55.

58 Interim National Constitution, Articles 39 and 40.

59 Ibid, Article 31.
newspaper editions, and have subjected many journalists to arrests, intimidation, harassment and prosecution for offences such as the publication of “false news”. In its report to the Committee, the government of Sudan stated that “freedom of opinion and expression is one of the most fundamental freedoms and is essentially the starting point for other freedoms”.60

50. The government has enacted laws which serve to restrict civil rights, and has acted to repress the actions of independent media, academics and students, and civil society organisations, targeting specifically those critical of the regime. For example, 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.61 Regarding permitted restriction of this right, section 5(2) states that no restrictions may be applied to journalistic freedom:

[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.62

51. 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. Thus, while section 25 of the Act 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 to refrain from offending public decency”.63 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:

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.64

52. Throughout 2013, the ACJPS, in its bi-monthly 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 Al Sahafa newspaper to resign his position or the newspaper would be closed down. The chief editor, Mr Al-Nour, told ACJPS that he “believe[d] that his termination was related to his continuous protest against newspaper censorship”.65 In its June 2013 Monitor, the ACJPS reported that:

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

60 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 143.


63 Ibid, section 26(l).

64 See above, note 61, p. 7.

65 Ibid.
printing by verbal order. (...) Al Midan has been prevented from distribution for one year.\(^6^6\)

53. In addition to closing down newspapers and confiscating printed editions, ERT was informed by journalists that the NISS practiced pre- and post-publication censorship.\(^6^7\) According to journalists participating in an ERT 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 ERT 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.

54. In addition to these methods of restricting media freedoms, ERT also found evidence of journalists being harassed, arrested and detained by the NISS. Since 2010, ERT 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 ERT that since 2012, at least 72 journalists had been arrested in the course of, and because of, their work.\(^6^8\)

55. ERT also interviewed Khalid Ahmed, a journalist facing charges under the Armed Forces Act, after he reported on a military operation in South Kordofan in 2013.\(^6^9\) 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 Sudan Armed Forces. 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 Sudan People’s Liberation Movement - North (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. It described the attack in more detail, stating that the convoy had been forced to retreat to the centre of Abu Karshola, and criticised the military and the Lieutenant General in particular. On 4 June, Ahmed was arrested, based on suspicion that he had authored the article in question. He was 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.

56. ERT 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 ERT’s focus group with journalists in January 2014 spoke of restrictions on the freedom of expression of Darfuri student activists.\(^7^0\) Two journalists informed ERT of student activists being 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.

57. 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

\(^{6^6}\) Ibid., p. 9.

\(^{6^7}\) See above, note 55.

\(^{6^8}\) Email correspondence from Faisal el-Bagir, received 2 March 2014.

\(^{6^9}\) ERT interview with Khaled Ahmed, 21 January 2014, Khartoum. Where necessary, facts have been verified and incorporated from a variety of independent media sources.

\(^{7^0}\) See above, note 55.
their activities and in some cases the closure of organisations. Faisal Salih, Programmes Director of the Teeba Press organisation, told ERT that a number of training and other events which they had organised had been disrupted by officers of the NISS. Dr M. told ERT that in 2010, he had been arrested and detained for 10 days because the non-governmental organisation he directed had hosted a meeting to discuss the torture and ill-treatment of women.

58. 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. At the end of its research visit in January 2014, ERT estimated that of the approximately 60 civil society actors in Khartoum with whom its staff spoke, no more than five or six had not been arrested at some point in recent years, in connection with their work.

Part 2: Evidence of patterns and incidences of discrimination, in violation of Article 26

59. As the Committee has noted, Article 26 of the Covenant provides an autonomous right to non-discrimination which “prohibits discrimination in law or in fact in any field regulated and protected by public authorities” and which “is not limited to those rights which are provided for in the Covenant”.

60. ERT’s research on discrimination and inequality in Sudan has identified significant patterns and incidents of discrimination and inequality, arising on the basis of religion and belief, race and ethnicity, political opinion, gender, disability, sexual orientation and health status. This research indicates a systematic failure on the part of Sudan to effectively respect, protect and fulfil the right to non-discrimination as provided by Article 26. This part of the submission highlights some of the most severe examples of discrimination in areas of life which are not the subject of protection by other Covenant rights.

Discrimination on the basis of race and ethnicity

61. In addition to the examples of ethnic and racial discrimination cited above, ERT found evidence of direct ethnic discrimination against persons of South Sudanese origin, in the removal of Sudanese citizenship following the secession of South Sudan. 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”. Professor 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 appropriate legislations to prevent loss of nationality”. The use of the phrase “acquired (...) de facto, the nationality of South Sudan” has the effect of leaving a wide area of discretion in the evaluation of whether a person has acquired an alternative nationality. Moreover, by using the words “de facto”, the Act created the conditions for widespread discrimination on the basis of ethnicity, inviting officials to use ethnic characteristics, rather than current or former residence, or any other criteria, as the basis for deciding whether a

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71 ERT interview with Faisal Salih, 21 January 2014, Khartoum.
72 See above, note 10.
73 See, for example, above note 25, pp. 12-13.
74 See above, note 1, Para 12.
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.

62. In January 2014, ERT 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. He stated:

*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 longer than most people in the current government. My children were born here too.*

*When the country split in 2011, anyone with a southern name or origin was no longer a citizen. The South Sudanese government sent a team here to register people from South 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 on a resident's permit.*

63. While Dr X. could, at least, acquire a South Sudanese passport and a Sudanese residence permit with relative ease, this is not the case for many other people of South Sudanese origin. The UNHCHR estimates that between 300,000 and 350,000 people may have been rendered stateless by the 2011 changes to the law.

64. Alongside the examples of direct ethnic discrimination by state agents which are discussed above, many of those interviewed by ERT expressed their belief that the al-Bashir regime allocates government investment, services and infrastructure spending towards areas where ethnic groups are perceived to hold pro-government views. For example, Prof Mohammed Yousif told ERT that the al-Bashir regime would “divert resources for its own benefit”, and gave the example of marginalisation of the Beja people, in East Sudan. Dr Yousif explained that the region is extremely poor in resources, and has been almost completely neglected since the Ottomans established cotton production in the region. He stated that, since 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 hunger. This resulted in 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 $5bn in the development in East Sudan. However, a combination of mismanagement and corruption means that, to date, none of this funding has been allocated. The government is trying but is not capable of developing the region, which has

76 ERT Interview with X. (name on file with ERT), 22 January 2014, Khartoum.

77 United Nations High Commissioner for Refugees, *2014 UNHRC country operations profile – Sudan.*

78 ERT Interview with Professor Mohammed Yousif, 19 January 2014.
one of the highest levels of poverty, and as a result Beja leaders have recently renewed attempts at armed resistance.

**Discrimination against women**

65. In addition to the exposure of women to discriminatory violence and ill-treatment which is detailed above, ERT found that women suffer discrimination in a wide range of areas of life. Much of this discrimination is caused, perpetuated or otherwise legitimised by the continuation in force of laws which discriminate directly or indirectly on the basis of sex and gender. One academic with whom ERT spoke has claimed that “there are 26 laws not in conformity with the constitution because of their explicit or implicit discrimination against women”.\(^7^9\)

66. 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 states 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.

67. 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 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”.\(^8^0\) ERT interviewed N., a 20 year old Muslim woman from the Altargam tribe, who spoke of the pressures facing young women who are 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


\(^8^0\) Convention on the Rights of the Child, Article 1.
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.81

68. The Act also establishes a hierarchy within marriage, whereby women are effectively subservient to their husbands, required to obey in all matters, in return for a strictly limited set of rights. 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, rather than reflecting the fact that these are the rights of the woman herself. Section 52, which sets out the rights of the husband, requires a wife to care for and obey her husband, to be faithful and to 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 provides a general obligation on a woman to obey her husband, in 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. Thus, these sections of the Act clearly and directly restrict the freedom of married women to make free choices about various aspects of their life, directly discriminating on the basis of their gender.

69. Sections 157 to 204 of the Muslim Personal Status Act set out the conditions for the dissolution of a marriage. As with those provisions governing marriage and the marital relationship, these provisions, too, institute male supremacy within the marriage, 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.

70. The system of criminal law also contains a number of discriminatory provisions, 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*), 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.82 While section 145 is neutral on its face, evidence collected by

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81 Interview with N. (full name on file with ERT), November 2011, Nyala.

ERT 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. In 2011, ERT researchers interviewed a Muslim woman, Z., belonging to the Zagawa tribe and living in Kosti, about her experience of being charged with the offence of adultery:

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.83

71. 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 criminalises rape, which is defined 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”.

72. There are a number of serious problems with this definition, and consequently with the application of the provision in practice. Most worryingly, as REDRESS has noted, “there is a lack of clarity concerning the definition of rape (...) as a result, a woman who alleges rape may face a prosecution for adultery”.84 This problem is exacerbated by the laws of evidence, which create a high evidentiary threshold for proof of 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, in practice an impossible requirement. This evidentiary requirement further increases the risk that a victim of rape may face charges of adultery if she brings a case to court. Section 63 of the Act also directly discriminates against women, requiring that, in order to prove all hudood offences (the most serious offences) other than adultery before the court, the testimony of either two males or four females is needed.

73. As noted above, section 152 of the Act, which prohibits “indecent and immoral acts”,85 has been used to prosecute women who dress in ways which do not conform to Islamic views. Two high-profile cases from 2009 and 2013 – the cases of Lubna Hussein and Amiera Osman – indicate the severe impact of these provisions on women who do not conform to strict gender norms.86 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.87 Commenting on the current situation. Ebtisam Sanhouri Elrayh, a Lecturer of

83 Interview with Z. (full name on file with ERT), August 2011, Kosti.


85 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.”

86 See Para 45 above.

Constitutional Law and Human Rights at the University of Khartoum, stated that:

*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.*

74. 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 citizenship 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.

75. 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 recognises a family which is headed by a man. Section 1 defines “family” as “the worker’s wives (not exceeding four) and his dependent children”. The Social Insurance Act 1990 includes a very similar definition of “family”.

**Discrimination on the basis of disability**

76. 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. Persons with disabilities can rely on a number of legal provisions in respect of non-discrimination and equality at work and in education. 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. The National Disability Act also contains a number of positive provisions in respect of 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 section for “competent authorities” to enforce the rights contained within the CRPD means that these authorities are obligated to enforce the right to education provided in its Article 24.

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88 Email correspondence from Ebtisam Sanhouri Elrayh, received 25 February 2014.
Despite these provisions, ERT’s research indicates that persons with disabilities in Sudan experience discrimination and disadvantage in accessing employment and education. In early 2014, in interviews with persons with disabilities commissioned by ERT and conducted by researchers from the University of Khartoum, ERT found evidence of overt discrimination on the grounds of disability. 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.

Similarly, despite positive legislative and policy initiatives in the area of education, ERT’s research found evidence of direct discrimination on grounds of disability for those seeking to access education. 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.

Discrimination on the basis of sexual orientation

As noted above, section 148 of the Criminal Law Act explicitly criminalises same-sex sexual activity between men. In addition to section 148, a number of other provisions in the Criminal Law Act criminalise 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.

Section 152(1) provides that:

(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 a fine or with both.

In January 2014, ERT 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. On 13 February 2013, at approximately 8 pm, 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.

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89 Interview with M. (full name on file with ERT), February 2014, Khartoum.

90 Interview with G. (full name on file with ERT), February 2014, Khartoum.

91 ERT interview with Z., X. and others (full names on file with ERT), 21 January 2014, Khartoum.
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.

82. On 19 February 2013, 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 Eltaib 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 sexual orientation. 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.

83. 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 a secret address. 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.

**Part 3: Evidence of gaps, inconsistencies and other problems with the legal framework, such that it fails to meet the requirements of Article 26**

84. As the preceding sections make clear, the Sudanese state is failing both in its obligations to ensure the enjoyment of Covenant rights without discrimination, as required by Article 2(1), and its obligation to provide effective protection from discrimination as an autonomous right, as required by Article 26. ERT’s research indicates that this situation arises in the context of a legal and policy framework which is manifestly inadequate to meet the requirements of Article 26 of the Covenant.

85. The principal provision which exists to provide protection from discrimination in Sudan is Article 31 of the Interim National Constitution. 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.

86. While this provision bears superficial similarity to Article 26 of the Covenant, two key differences are evident. First, while Article 26 states simply that all persons are entitled to equal protection “without any discrimination” (emphasis added), Article 31 of the Constitution enumerates a short 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. Through the omission of this sentence, the Constitution provides only very limited protection from discrimination: a person is only entitled to enjoy equal protection of the law without discrimination. The Article provides neither a free-standing right to non-discrimination, nor a right to non-discrimination in the enjoyment of other human rights. Thus, Article 31 provides a lower degree of protection from discrimination than that provided by Articles 2(1) and 26 of the Covenant.

87. A further potential problem may be created from the lack of explicit prohibition in Article 31 of both direct and indirect discrimination. The Committee on Economic, Social and Cultural Rights has stated that the prohibition on discrimination in Article 2(2) of International Covenant on Economic Social and Cultural Rights includes both direct and indirect discrimination, and both are also included in the definition of discrimination in the Declaration of Principles on Equality. 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.

88. 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 Covenant, it omits five explicitly listed characteristics: national or social origin, other opinion (apart from political), property and birth. Moreover, it omits all those grounds which the Committee, in interpreting the Covenant, has recognised as falling under “other status”: civil and family status, nationality, economic status, sexual orientation, gender identity, age, disability and health status. As is clear from the construction of the provision, the scope of protection provided by Article 31 is also limited by virtue of the fact that the list is exhaustive, rather than indicative. The personal scope of Article 31 is also severely limited in other ways. Notably, the construction of the Article is likely to make it impossible 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. 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.

89. Article 32 of the Constitution, 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. Article 32(1) proclaims that:

> 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.

90. Thus, in respect of women, the Constitution complies with the requirements of Article 2(1) of the Covenant, which requires a guarantee of 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. 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 Committee

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has stated, Article 3 requires that:

[S]tate 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.  

91. As noted above, Sudan retains a significant number of laws which directly or indirectly discriminate against women, while many obstacles continue to limit the equal enjoyment of rights by women. Moreover, 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; take positive action measures in favour of women; and combat harmful customs and practices against women.


93. 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.

94. Finally, it must be acknowledged that the greatest problem with the Sudanese legal and policy framework on equality and non-discrimination is the consistent lack of respect for the principles of equality and non-discrimination in the Sudanese legal system. As illustrated above, a number of laws discriminate directly or indirectly against persons on the basis of their gender, sexual orientation, political opinion or religious belief. In addition, state agents – in particular the armed forces, security services and public order police – regularly contravene Sudan’s obligations under international human rights law. Thus, even the weak protections provided by the Constitution are undermined by the continued operation of discriminatory laws and failure by state agents to respect the right to non-discrimination.

**Recommendations**

**With respect to Articles 6, 7, 9 and 10 of the Covenant:**

1. ERT urges the Committee to call on Sudan to:
   a. Investigate all reports of extrajudicial killings, torture and other forms of ill-treatment, arbitrary arrest and detention and violation of the dignity of detainees, prosecute those found responsible and provide appropriate remedy to the victims;

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b. Take immediate steps to prevent future violations of Articles 6, 7, 9 and 10, including but not limited to providing training to the police, security services and other state actors on how to guarantee these rights in practice;

c. Introduce or reform existing legislation to ensure that the rights are protected, in line with the definitions provided in the Covenant, and that provision is made for sanctions and remedies for violation of the rights which are in keeping with the gravity of the offences.

With respect to Articles 18, 19, 21 and 22 of the Covenant:

2. ERT urges the Committee to call on Sudan to:

a. Investigate all reports of denial of freedom of religion, freedom of expression, freedom of assembly and freedom of association, take appropriate action against those responsible and provide appropriate remedy to the victims;

b. Take immediate steps to prevent future violations of Articles 18, 19, 21, and 22, including but not limited to providing training to the police, security services and other state actors on how to guarantee these rights in practice;

c. Ensure that Constitutional and legislative provisions guaranteeing the rights are brought into line with the definitions provided in the Covenant, and that provision is made for appropriate sanctions and remedies for violation of the rights;

d. Repeal laws which have the effect of limiting the enjoyment of the rights, either for particular groups or for the population as a whole.

With respect to Articles 2(1) and 26 of the Covenant:

3. ERT urges the Committee to call on Sudan to:

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 Covenant; and (ii) amend, and, where necessary, abolish existing laws, regulations and policies that conflict with the right to non-discrimination. This process should include, but not be limited to, review of those laws and provisions cited in this submission;

b. 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;

ii. Providing a broader right to equality whose content includes participation, on an equal basis, in economic, social, political, civil and cultural life;

iii. Expanding the list of grounds of discrimination in Article 31 so as to include all grounds recognised in international law and enumerated in Principle 5 of the Declaration of Principles on Equality, thus adding to the currently listed grounds:
descent, pregnancy, maternity, civil, family or carer status, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, and genetic or other predisposition toward illness;

iv. Introducing criteria for the inclusion of additional grounds of discrimination, such that such grounds could be incorporated as necessary over time without requiring constitutional amendment;

v. Providing a clearer definition of the behaviours and conducts which are prohibited as discrimination, and thus ensuring that the Constitution explicitly prohibits both direct and indirect discrimination;

vi. Providing a clearer definition of the areas of life in which discrimination is prohibited, and thus ensuring that the right applies in all areas of life regulated by law, in both the public and private sectors.

c. Strengthen any constitutional protections of the rights to equality and non-discrimination through the enactment of comprehensive equality legislation, giving effect to the principles of equality under international law and ensuring the expanded constitutional protection against discrimination and the promotion of the right to equality. Such legislation should:

i. Define and prohibit direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation, in line with the definitions provided in the Declaration of Principles on Equality;

ii. Explicitly prohibit discrimination on all grounds recognised in international law, provides a “conditionally open” list of grounds, with a test for the incorporation of new grounds of discrimination and protection from discrimination by association, discrimination on the basis of perception and multiple discrimination;

iii. Prohibit discrimination in all areas of life governed by law, including but not limited to: education, employment, social security (including pensions and housing), provision of goods and services (including public services), clubs and associations;

iv. Attribute obligations to public and private actors, including in relation to the promotion of substantive equality, raising awareness of equality and the collection of data relevant to equality.

d. Review its procedural law relating to equality, to ensure that:

i. Persons who have been subjected to discrimination have a right to seek legal redress and obtain an effective remedy, have access to judicial and administrative procedures and to appropriate legal aid for this purpose.

ii. Individuals are protected from victimisation.

iii. Associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage in any judicial and / or administrative procedure provided for the enforcement of the right to equality.

iv. Legal rules related to evidence and proof are adapted 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.

v. 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.

e. 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 disability.

f. Establish and maintain a body or a system of coordinated bodies, compliant with the UN Paris Principles, 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.

g. Establish a focal point within government to coordinate policy and action relating to the right to equality.