



EQUAL RIGHTS TRUST

Dimitrina Petrova
Executive Director

Honorary President
Bob Hepple

Board of Directors
Saphieh Ashtiany (Chair)
Bob Niven (Vice-Chair)
Danby Bloch
Tapan Kumar Bose
Sonia Correa
Deborah Harding
Hywel Ceri Jones
Claire L'Heureux-Dubé
Gay McDougall
Virginia Mantouvalou
Helen Mountfield
Kate O'Regan
Michael Rubenstein
Stephen Sedley
Theodore Shaw
Sylvia Tamale

314-320 Gray's Inn Road
London WC1X 8DP
United Kingdom

Tel.: +44 (0) 20 7610 2786
Fax: +44 (0) 20 7833 0277
info@equalrightstrust.org
www.equalrightstrust.org

Company no. 5559173
Charity no. 1113288

Equal Rights Trust

Suggestions for the list of issues to be adopted by the
Committee on Economic, Social and Cultural Rights
at its 54th Session (pre-sessional working group)
in relation to the second periodic report submitted by:

Sudan

October 2014

Statement of Interest

1. The Equal Rights Trust submits the following suggestions for questions to be adopted by the Committee on Economic, Social and Cultural Rights (the Committee) based upon the second periodic report submitted to the Committee by Sudan at the Committee's 54th session (pre-sessional working group).
2. The Equal Rights Trust is an international non-governmental organisation whose purpose is 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. The Equal Rights Trust has been actively involved in the promotion of improved protection from discrimination in Sudan since 2010, including in respect of economic, social and cultural rights. Over this time, we have 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 combat discrimination and related human rights abuses.

3. In the course of our work in Sudan, we have 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 which was published on 1 October 2014, entitled *In Search of Confluence: Addressing Discrimination and Inequality in Sudan*.¹ In 2011, we coordinated field research interviewing 260 persons across five different states. In 2011, 2012 and 2013, we undertook further interviews and consultations with Sudanese human rights defenders and conducted independent secondary desk-based research on patterns of discrimination and inequality in Sudan. In early 2014, an Equal Rights Trust delegation 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 visit. In addition, we have conducted a detailed analysis of Sudan's laws and policies on equality and non-discrimination, in order to assess the extent to which 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 our report was exposed to a validation process.
4. The report which we published on 1 October 2014 sheds new light on well-publicised human rights abuses in Sudan and exposes little-known patterns of discrimination.

Introduction

5. The findings and conclusions of our report inform this submission to the Committee. The 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 Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (the Covenant). In assessing Sudan's adherence to its obligations under Article 2(2), the submission relies on the interpretation of this Article which has been provided by the Committee in its *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*.² Thus, the submission reflects the importance which the Committee has placed on the need for effective protection from discrimination for the realisation of all other Covenant rights:

Discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population. Economic growth has not, in itself, led to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.

*Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.*³

¹ Equal Rights Trust, *In Search of Confluence: Addressing Discrimination and Inequality in Sudan*, 2014.

² Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009.

³ *Ibid.*, Paras 1-2.

6. The submission also relies upon the Declaration of Principles on Equality,⁴ a document of international best practice on equality. 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”.⁵ It has also been endorsed by the Parliamentary Assembly of the Council of Europe.⁶
7. Given the comprehensive nature of our report, this submission does not provide an exhaustive account of its findings. Instead, it focuses on providing the Committee with new information on the impact which discrimination on different grounds has on the enjoyment of economic, social and cultural rights in Sudan. It identifies issues of concern and proposes questions which the Committee might put to the state party as part of its review of Sudan’s implementation of the Covenant.

Article 2(2): Enjoyment of Covenant Rights without Discrimination

8. Under Article 2(2) of the Covenant, States Parties undertake:

[T]o guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

9. The report *In Search of Confluence: Addressing Discrimination and Inequality in Sudan* presents evidence of discrimination and inequality on grounds of, *inter alia*, religion or belief, race and ethnicity, political opinion, gender, disability, sexual orientation and health status. It finds that discrimination is a major factor in limiting the enjoyment of other human rights in Sudan – including economic, social and cultural rights.

Religion

10. Article 2(2) explicitly requires states to ensure the exercise of Covenant rights without discrimination on the basis of religion.
11. Section 2.1 of our report presents extensive evidence of discrimination on the basis of religion, including in the enjoyment of economic and social rights. The Sudanese state maintains a number of discriminatory legal provisions which present significant problems, both for members of religious minorities and for all those whose understanding of Islam is different from the conservative version promoted by the government. The Criminal Law Act explicitly prohibits apostasy,⁷ and contains a provision which has been used to prohibit blasphemy, thus suppressing free expression.⁸ Section 152 of the same Act prohibits “indecent and immoral acts”.⁹ This section indirectly discriminates against

⁴ *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

⁵ *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para 93.

⁶ Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.

⁷ Criminal Law Act 1991, section 126.

⁸ *Ibid.*, section 125.

⁹ *Ibid.*, section 152.

all those who practice Islam in a way not complying with the state-sanctioned interpretation; and against Muslims generally, as it imposes more strict conduct or dress requirements than those that apply to Christians or other minority faith groups in Sudan. Section 152 has been used to prosecute women who do not conform to strict dress codes.¹⁰

12. The Equal Rights Trust is concerned that these provisions, in addition to restricting religious freedom and constituting discrimination on the basis of religion or belief, may restrict the ability of religious minority groups to participate in education and employment and to access healthcare and other services, thus limiting the enjoyment of Covenant rights.
13. In addition to these provisions, our report presents evidence that religious minorities face direct and indirect discrimination in access to employment and education. While employers are required to give Christian employees time off on Sundays, in practice many employers do not.¹¹ According to a 2007 report by the International Labour Organisation, “Christian job applicants are required to deny their faith or to convert to Islam if they want to be employed.”¹² Our report cites research from the International Humanist and Ethical Union which found that some public schools failed to meet their obligations to accommodate the educational needs of non-Muslims related to religious instruction.¹³
14. The Equal Rights Trust urges the Committee to seek guarantees from the state party that its legal and policy framework, and the actions of state actors, do not limit the enjoyment of Covenant rights on the basis of religion.

Suggested Questions

- What steps, if any, has the state party taken to ensure that members of religious minorities and those practicing interpretations of Islam which do not conform to that endorsed by the state are able to enjoy Covenant rights without discrimination on the basis of religion?
- What measures has the state party established to ensure that existence and enforcement of sections 125, 126 and 152 of the Criminal Law Act do not limit or restrict the enjoyment of Covenant rights?
- What measures, if any, has the state taken to accommodate the needs of non-Muslims in employment and education?

¹⁰ The Equal Rights Trust, *In Search of Confluence: Addressing Discrimination and Inequality in Sudan*, 2014, pp. 117-121.

¹¹ United States Department of State, *International Religious Freedom Report: Sudan*, 2013, p. 8.

¹² International Labour Organisation, *Equality at work: Tackling the challenges: Report of the Director-General*, 2007, Para 120.

¹³ International Humanist and Ethical Union, *Freedom of Thought 2013: A Global Report on the Rights, Legal Status, and Discrimination against Humanists, Atheists, and the Non-religious*, December 2013, p. 61.

Race and Ethnicity

15. Article 2(2) explicitly requires states to ensure the exercise of Covenant rights without discrimination on the basis of race, colour and language. The Committee has recognised that race and colour, in the context of the Covenant, include “an individual’s ethnic origin”.¹⁴
16. Section 2.2 of the report *In Search of Confluence: Addressing Discrimination and Inequality in Sudan* presents extensive evidence of discrimination on the basis of race, ethnicity and language. The section presents evidence of discrimination and violence in the context of the country’s multiple ethno-regional conflicts, including extrajudicial killings, arbitrary detentions and torture and other forms of ill-treatment.¹⁵ It states that “the root cause of the conflicts in Sudan’s periphery is inequality, in particular the systemic discriminatory practices of the regime based on multiple grounds, among which ethnicity is the pivotal one”.¹⁶
17. The report presents evidence of the origins of these conflicts in the social and economic deprivation of areas on the “periphery”, such as Darfur, South Kordofan, Blue Nile and the Eastern States. It finds that these patterns of deprivation are not incidental, but the result of resource allocation policies pursued by the government which limit investment and access to services in certain regions. Experts interviewed for the report told the Equal Rights Trust that the regime diverted investment and services away from areas dominated by those perceived to be hostile to it, directly discriminating against non-“Arab” ethnic groups.¹⁷ The result is that services which are essential to the enjoyment of rights such as the right to an adequate standard of living, the right to education and the right to the highest attainable standard of physical and mental health are limited for particular ethnic groups.
18. In addition to these patterns of ethno-regional discrimination and deprivation, the Equal Rights Trust found evidence of direct discrimination on the basis of language, which frequently equates to indirect ethnic discrimination in Sudan. Arabic is the only language used by government departments and agencies, resulting in lack of access to education, services and employment for non-Arabic speakers, which is also indirect ethnic discrimination against groups from the “periphery”.¹⁸ Finally, the report presents evidence of direct ethnic discrimination in respect to the right to work. It presents first hand testimony from individuals in Eastern Sudan and South Darfur who have experienced direct discrimination when applying for jobs.¹⁹

¹⁴ See above, note 1, Para 19.

¹⁵ See above, note 10, pp. 53-67.

¹⁶ *Ibid.*, p. 67.

¹⁷ *Ibid.*, pp. 53-55; see also: Medani, A. M., “The Constitutional Bill of Rights in the Sudan: Towards Substantive Guarantees and Effective Realisation of Rights”, *The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives*, REDRESS, Faculty of Law, University of Khartoum and the Sudan Human Rights Monitor, 2014.

¹⁸ See above, note 10, pp. 82-83.

¹⁹ *Ibid.*, pp. 84-85.

19. The Equal Rights Trust urges the Committee to question Sudan on the extent to which documented patterns of discrimination on the basis of race, ethnicity and language restrict or limit the enjoyment of Covenant rights.

Suggested Questions

- What steps, if any, has the state party taken to ensure that its resource allocation policies do not discriminate, directly or indirectly, against those racial and ethnic groups occupying conflict-affected or other marginalised areas?
- What steps has the state party taken to ensure that members of racial and ethnic minorities are able to enjoy Covenant rights without discrimination?
- What measures has the state party established to ensure that the exclusive use of Arabic by government department and agencies does not disadvantage members of language groups whose native tongue is not Arabic?
- What measures, if any, has the state established to prohibit discrimination by private actors, including employers, on the basis of race or ethnicity?

Political Opinion

20. The Covenant requires that states guarantee the enjoyment of all rights therein without discrimination on the basis of *inter alia* political opinion. Section 2.3 of the Equal Rights Trust's report presents substantial evidence of discrimination on the basis of political opinion, including in respect to economic, social and cultural rights.
21. The report presents first-hand testimony from persons, such as S. from Kassala state, who have experienced discrimination in employment in both the public and private sectors:

I have graduated from Khartoum University, Faculty of Economics, with a very good rating. I worked as a collaborate registration assistant at Kassala University for one year and when a job offer opened for the same job I was excluded. The interview had nothing to do with the job itself, instead I was asked questions about football, politics and the Qur'an which I answered. (...) I don't think that there were any reasons for not offering me the job except that I don't belong to the ruling party. (...) Everyone in the state knows that getting a job is not based on knowledge. (...) It is very frustrating.²⁰

22. The Equal Rights Trust urges the Committee to question Sudan on the extent to which it is able to guarantee the enjoyment of Covenant rights without discrimination on the basis of political opinion.

²⁰ Equal Rights Trust interview with S., October 2011, Kassala.

Suggested Questions

- What guarantees is the state able to provide that measures taken to control and limit political protest, and to regulate the activities of the media and civil society, do not have the effect of limiting the enjoyment of Covenant rights?
- What steps, if any, has the state party taken to ensure that persons expressing views opposed to those of the regime, those associated with such views and those perceived to have such views are protected from discrimination in the enjoyment of Covenant rights?

Sex

23. Under Article 2(2) of the Covenant, states are required to guarantee the exercise of Covenant rights without discrimination on the basis of sex. This obligation is reinforced by Article 3, under which states “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”.
24. The report *In Search of Confluence: Addressing Discrimination and Inequality in Sudan* finds that women in the country experience severe discrimination in a range of areas of life. The report identified two principal factors which shape women’s experience of discrimination – discriminatory laws and conservative cultural attitudes. These two factors create an environment in which women are subject to severe gender-based violence and which limits women’s ability to participate in life on an equal basis with men, restricting their enjoyment of economic and social rights.
25. Discriminatory laws – particularly in the areas of family and criminal law – severely limit women’s freedoms and choices, in ways which restrict their enjoyment of *inter alia* the rights to work, to education and to the highest attainable standard of healthcare. 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. Section 51 sets out a limited number of “rights” for wives, reflecting an assumption that husbands have a right to control their wife’s movements, body and property; section 52 requires a wife to care for and obey her husband, be faithful and safeguard his property. Similarly, section 91 imposes a general obligation on a woman to obey her husband in all matters that do not contravene the law, where three conditions – the payment of a dowry, proof of her security with him, and the provision of a suitable dwelling – are met.
26. The Criminal Law Act contains a number of provisions which discriminate against women or are open to discriminatory enforcement. Section 152 prohibits “indecent and immoral acts”,²¹ and has been used to prosecute women who dress in ways which do not conform to local conservative Islamic dress codes. The report highlights the fact that well-known cases, such as those of Lubna Hussein and Amiera Osman, are only the most highly-publicised examples of a widespread practice of restricting women’s freedom.²² As with

²¹ 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 [sic] lashes, or with fine, or with both, (2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.”

²² Government figures for 2008 showed that 43,000 women were arrested for clothing-related offenses in Khartoum alone (Ghitis, F., “Don’t tell Muslim women what to wear”, *CNN*, 4 November 2013).

the discriminatory provisions of the Muslim Personal Status Act, section 152 of the Criminal Law Act presents a barrier to women's ability to enjoy economic, social and cultural rights on an equal basis with men, by imposing restrictions on their freedom and choices.

27. In addition to these laws which impose blanket restrictions on women's freedoms, the Equal Rights Trust's research also found evidence of directly discriminatory provisions in employment and social security legislation. 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 and the Social Insurance Act 1990 both define "family" in such a way as to prevent women in employment from receiving benefits which accrue to men.
28. The Trust found substantial evidence of gender disparities and discrimination against women in employment. Women are significantly under-represented in employment: the labour force participation rate for women is 23%, compared with 73% for men.²³ The percentage of women who are classed as "economically inactive" is 74%, compared with 26% for men. The Bureau of Statistics identifies being a "full time homemaker" as one of the two key reasons for economic inactivity.²⁴ Women interviewed by the Trust described a range of barriers to accessing certain jobs such as land surveyors or oil engineers: many companies will not hire women for these roles as they argue that they cannot protect them. In addition, we were informed that women are routinely subjected to less favourable treatment in both pay and benefits and are discriminated against in respect of promotions. Manal Abdelhalim, a women's rights activist and expert, told the Equal Rights Trust:

Pay is often equal in practice, as required by law, but there is widespread discrimination in the allocation of privileges and benefits, such as allocation of plots of land or child allowances. Where a woman is married, it is assumed that her husband will receive these benefits. In practice, a woman can't get promoted because of her marital status, as in most cases female employees resort to a long motherhood leave, usually for one or two years.²⁵

29. Gender disparities also exist in education: in 2009, net enrolment in primary education was 64% for girls, compared with 69% for boys, while there was a significant gap in the proportion of male and female children who had ever attended any school – 72% and 52% respectively.²⁶ Gender stereotypes also affect access to higher education, despite there being an adequate proportion of women in universities and other higher education institutions. A woman whom the Equal Rights Trust talked with said:

I am a student in the police academy in Khartoum, and have experienced some discrimination because of being female. My male colleagues get good flats as one of the benefits, but we women do not. I

²³ Sudan Central Bureau of Statistics, *Sudan National Baseline Household Survey 2009: North Sudan – Tabulation Report*, 2010, p. 19.

²⁴ *Ibid.*, p. 20.

²⁵ Equal Rights Trust interview with Manal Abdelhalim, 22 January 2014, Khartoum.

²⁶ See above, note 23, pp. 16-17.

*have divorced my husband and our children live with me. Despite this, my ex-husband, also a policeman, got a flat even though he is alone, while I am not entitled to a flat.*²⁷

30. On the basis of our research, the Equal Rights Trust is concerned that women in Sudan are subject to widespread discrimination affecting *inter alia* their enjoyment of rights protected by the Covenant. We urge the Committee to question Sudan on the extent to which it is able to guarantee the enjoyment of these rights without discrimination on the basis of sex.

Suggested Questions

- What steps, if any, has the state party taken to ensure that the enforcement of the Muslim Personal Status Act and section 152 of the Criminal Law Act does not have the effect of limiting the enjoyment of Covenant rights by women in Sudan?
- What plans does the state have to review and if necessary amend its laws to eliminate discrimination against women which *inter alia* would limit or restrict the enjoyment of rights protected by the Covenant?
- What steps has the state taken to eliminate discrimination against women and ensure their equal enjoyment of the right to work, the right to education and other rights provided by the Covenant?

Disability

31. While disability is not included in the list of specified characteristics provided in Article 2(2), the Committee has long recognised that disability is a form of “other status” within the meaning of Article 2(2). In its *General Comment No. 5: Persons with disabilities*, the Committee concluded that:

*[T]he requirement contained in article 2 (2) of the Covenant that the rights “enunciated (...) will be exercised without discrimination of any kind” based on certain specified grounds “or other status” clearly applies to discrimination on the grounds of disability.*²⁸

32. Research undertaken by the Equal Rights Trust for our report on Sudan found that, while disability is the only ground of discrimination for which the government has developed protective legislation, this legislation is inadequate and persons with disabilities face discrimination in many areas of economic and social life. The National Disability Act 2009 is the only piece of legislation in Sudan which specifically regulates the situation of a group exposed to discrimination. However, the Act is deficient in a number of ways. It does not explicitly prohibit discrimination on the grounds of disability; it also omits a general obligation to make reasonable accommodation, though a specific obligation on the competent authorities to enforce the provision of reasonable accommodation in the workplace is provided under section 4(2).²⁹ Thus, the Act falls well short of meeting

²⁷ Equal Rights Trust interview with P.A., 22 January 2014, Khartoum.

²⁸ Committee on Economic, Social and Cultural Rights, *General comment No. 5: Persons with disabilities*, 1994, UN Doc. E/1995/22 at 19, 1995, Para 5.

²⁹ National Disability Act 2009, section 4(2)(H).

Sudan's obligations under the Convention on the Rights of Persons with Disabilities³⁰ and under the Covenant, as interpreted by the Committee.³¹

33. Our report presents evidence that persons with disabilities experience direct discrimination in both employment and education. In respect of employment, the report presents data from the 2008 census which show that, of 1,359,420 persons with disabilities, 600,791 (44.2%) were in employment, 700,042 (51.5%) were "job ready" and 58,587 (4.3%) were economically inactive.³² The report presents testimony from individuals who had a job offer withdrawn or whose employment was terminated once the employer discovered their disability.³³ According to Ebtisam Sanhoury Elrayh, Professor of Law at the University of Khartoum, and a specialist in disability rights in Sudan, who was interviewed for the report, the cases presented in the report "are not isolated incidents – many persons with disabilities have gone through, and still are going through, discrimination of this kind in the workplace due to disability or perceived disability".³⁴
34. In respect of education, the Committee on the Rights of the Child has raised concerns about the "exclusion suffered by children with disabilities in social, educational and other settings and (...) the limited access to basic services".³⁵ The government of Sudan has acknowledged these problems³⁶ and has taken a number of steps to improve laws and policies, including through the enactment of the National Disability Act 2009 and the publication of a National Strategy for the Education of Children with Disabilities for the period 2013-2016.³⁷ However, interviews conducted during our research found cases of overt, direct discrimination against persons with disabilities in education. This included the case of a 14-year old student whose application to study at the British Educational Institute was declined on the basis that the school did not believe it could provide the level of care required, despite the parents' insistence that no such care was required.³⁸ Again, Ebtisam Sanhoury Elrayh informed the Equal Rights Trust that this and another case cited in the report are "two of many similar stories".³⁹

³⁰ Sudan became a party to the Convention on the Rights of Persons with Disabilities in 2009, the same year in which the National Disability Act was adopted.

³¹ See above, note 28.

³² Data presented in: United Nations Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Fourth periodic reports of States parties: Sudan*, UN Doc. CCPR/C/SDN/4, 16 October 2012, Para 142.

³³ See above, note 10, Boxes 9 and 10, pp. 142-144.

³⁴ Email correspondence from Ebtisam Sanhoury Elrayh, received 25 February 2014.

³⁵ United Nations Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Sudan*, UN Doc. CRC/C/SDN/CO/3-4, 22 October 2010, Para 48.

³⁶ *Ibid.*, Para 192.

³⁷ Sudan Tribune, "Sudan unveils national education strategy for children with disabilities", *sudantribune.com*, 22 November 2013.

³⁸ See above, note 10, Box 11, pp. 146-147.

³⁹ See above, note 33.

35. Based on the evidence gathered for our report, the Equal Rights Trust is concerned that Sudan is failing to meet its obligations to ensure the enjoyment of Covenant rights without discrimination on the basis of disability and calls on the Committee to seek information from the state on this subject.

Suggested Questions

- What plans does the state have to amend the National Disability Act to (a) prohibit discrimination on the basis of disability; and (b) provide for a right to reasonable accommodation in areas other than employment?
- What assessment has the state party made of the impact of the National Disability Act 2009 and the National Strategy for the Education of Children with Disabilities for the period 2013-2016 thus far in ensuring that persons with disabilities are able to enjoy all economic, social and cultural rights contained within the Covenant? How has the state party monitored the impact of these, and other relevant pieces of legislation and policies, on persons with disabilities?

Sexual Orientation

36. The Committee has recognised that “[o]ther status’ as recognized in article 2, paragraph 2, includes sexual orientation”.⁴⁰ As such, states are required to guarantee the enjoyment of all Covenant rights without discrimination on the basis of sexual orientation.
37. Research undertaken by the Equal Rights Trust found that lesbian, gay and bisexual (LGB) persons in Sudan are at risk of – and experience – discrimination and a range of other serious human rights abuses because of their sexual orientation. Same-sex sexual activity between men is explicitly criminalised under section 148(1) of the Criminal Law Act 1991, while a number of other provisions criminalise same-sex sexual activities or activities deemed to be contrary to public morality and have been used to arrest, detain and charge LGB persons.⁴¹
38. The severity of the legal regime, coupled with the extreme stigma and risk of violence faced by LGB persons mean that there is effectively no openly LGB population in the country. As a result, it is difficult to meet with members of the community and little independent research has been published by international organisations. The Equal Rights Trust undertook pioneering research to interview LGB persons inside Sudan.
39. While the Trust’s research did not identify specific examples of discriminatory restriction of the economic, social or cultural rights of gay, lesbian or bisexual persons, the legal and social environment in Sudan is so hostile to them and the risks to their personal security are so great that they cannot be open about their sexual orientation. The Committee has stated that “[s]tates parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights”.⁴² However, the level of hostility in Sudan is such that

⁴⁰ See above, note 1, Para 32.

⁴¹ These provisions include: section 151, which creates an offence of gross indecency; section 152, which prohibits “indecent” or “immoral” acts; and section 154, which prohibits prostitution. For a detailed discussion of these provisions, see above, note 10, pp. 148-150.

⁴² See above, note 1, Para 32.

to be openly gay, lesbian or bisexual would be a barrier to most, if not all, Covenant rights, and would risk arrest, detention, imprisonment and harassment.

Suggested Questions

- What guarantees is the state able to provide that the enforcement of sections 148, 151, 152 and 154 of the Criminal Law Act does not have the effect of limiting the enjoyment of Covenant rights for persons of different sexual orientation?
- What steps, if any, has the state party taken to ensure that LGB persons are protected from discrimination in the enjoyment of Covenant rights?

Health Status

40. In its General Comment No. 20, the Committee recognised that “states parties should ensure that a person’s actual or perceived health status is not a barrier to realizing the rights under the Covenant”.⁴³
41. As with persons with disabilities, the government of Sudan has taken steps to address the situation affecting persons living with HIV and AIDS. In 1987, the state launched the Sudan National Aids Programme; in 2004 it adopted a National Policy on HIV/AIDS,⁴⁴ which includes, among its twenty priorities, a focus on “stigma, discrimination and rights of people living with HIV/AIDS”. However, draft legislation to protect the rights of persons living with HIV and AIDS has not yet been enacted.⁴⁵
42. Despite the steps taken by the Sudanese authorities, the Equal Rights Trust’s research in Sudan found that persons living with HIV and AIDS experience discrimination limiting their enjoyment of the right to the highest attainable standard of physical and mental health and other rights protected by the Covenant. In Khartoum state, our researchers conducted interviews with persons living with HIV and representatives of the Sudanese Association for the Care of People Living with HIV/AIDS.⁴⁶ Those interviewed stated that persons living with HIV and AIDS are denied medical treatment, that some have had to file complaints in order to receive treatment and that in at least one case, a doctor completely refused to perform a surgical procedure because the patient had AIDS. A senior medical professional interviewed by the Trust stated that people are pre-tested for HIV prior to any other medical examination, diagnosis or treatment and are refused treatment if found to be HIV positive.
43. The Equal Rights Trust also found evidence that persons living with HIV and AIDS face difficulties in accessing employment and education. Focus group participants in Khartoum told the Trust that they were forced to conceal their condition so that their children are

⁴³ *Ibid.*, Para 33.

⁴⁴ Office of the Minister of Health, *National Policy on HIV/AIDS*, 2004. For a detailed assessment of the policy, see above, note 10, section 3.3, pp. 215-217.

⁴⁵ Human Rights Committee, *Additional Information in Response to the Questions Raised During the Consideration of Sudan’s 4th Periodic Report in the 111th Session of the Human Rights Committee*, 8-9 July 2014, Para III(1).

⁴⁶ Equal Rights Trust focus group with persons living with HIV, October 2011, Khartoum.

allowed to go to schools.⁴⁷ S., a teacher from Kassala state, told our researchers that she was suspended from her job following a diagnosis of HIV. S. stated: “I am not the only one who has suffered from the ignorance of the people (...) All the people I know went through difficulties like this and some have not returned to their work yet.”⁴⁸

Suggested Questions

- What plans does the state have to enact the draft legislation providing protection for the rights of persons with HIV and AIDS?
- What assessment has the state party made of the impact and results of the National Policy on HIV/AIDS since its adoption in 2004?
- How is the implementation of policies designed to tackle HIV/AIDS and protect the rights of persons living with HIV/AIDS monitored by the state party?

Article 2(2): The Legal Framework on Discrimination and Inequality

44. The Committee has noted that under Article 2(2) of the Covenant “[n]on-discrimination is an immediate and cross-cutting obligation in the Covenant” which requires that discrimination “must be eliminated both formally and substantively”.⁴⁹ One pre-condition for delivering this obligation is the comprehensive prohibition of discrimination in law.
45. The Equal Rights Trust’s report finds that Sudan’s legal and policy framework is “manifestly inadequate” to address the patterns of discrimination which it identifies.⁵⁰ The key Constitutional guarantee of equality and non-discrimination – Article 31 of the Interim National Constitution – provides very limited protection from discrimination. 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.

46. Article 31 only guarantees the equal protection of the law without discrimination, thus providing a narrower material protection than that provided by the Covenant, which requires the enjoyment of economic, social and cultural rights without discrimination.⁵¹ Furthermore, in the absence of jurisprudence on the question, it is unclear whether

⁴⁷ *Ibid.*

⁴⁸ Equal Rights Trust interview with S., October 2011, Kassala.

⁴⁹ See above, note 1, Paras 7 and 8.

⁵⁰ See above, note 10, p. 243.

⁵¹ It should also be noted that Article 31 also falls far short of the standard required by Article 26 of the International Covenant on Civil and Political Rights. The Human Rights Committee has concluded that Article 26 “prohibits discrimination in law or in fact in any field regulated and protected by public authorities (...) In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant”. (United Nations Human Rights Committee, *General Comment 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 12).

Article 31 prohibits both direct and indirect discrimination, as required by the Committee.⁵²

47. In addition, the personal scope of the right provided in Article 31 is limited. The list of grounds in the article omits five characteristics explicitly protected by Article 2(2) of the Covenant: national or social origin, other opinion (apart from political), property and birth. It also omits all those grounds which the Committee has recognised as falling under “other status” within the meaning of Article 2(2): civil and family status, nationality, economic status, sexual orientation, gender identity, age, disability and health status.⁵³ Furthermore, the Article neither replicates the Covenant’s use of “any other status”, nor employs an alternative construction which would enable the addition of new grounds, something which the Committee has stressed is particularly important.⁵⁴ Finally, the construction of the Article makes it difficult to claim discrimination by reason of a perception that a person possesses a particular characteristic, an association with someone possessing a particular characteristic, or discrimination on multiple grounds. The Committee has stressed that states should prohibit discrimination on the basis of perception, discrimination by association and multiple discrimination.⁵⁵
48. In addition to Article 31, there are a number of other constitutional provisions relevant to the protection of the rights to equality and non-discrimination. Article 32 reflects the language of Article 3 of the Covenant; Article 32(1) reads:

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.

49. However, in practice, the legal framework in Sudan is inadequate to meet the requirements of Article 32(1) of the Constitution and of Article 3 of the Covenant. As noted above, the state maintains a significant number of laws which directly or indirectly discriminate against women,⁵⁶ while many obstacles continue to limit the equal enjoyment of rights by women in practice. Moreover, as discussed below, Sudan has not adopted legislation which prohibits discrimination against women. Article 32(2) provides that “[t]he State shall promote women’s rights through affirmative action”, though experts have stated that “the impact of the provision on women’s position is negligible due to a lack of effective measures taken in this regard”.⁵⁷ Article 32(3) requires the state to “combat harmful customs and traditions which undermine the dignity and status of women”, and Article 32(4) requires the state to “provide maternity and child care and medical care for pregnant women”.

⁵² See above, note 1, Para 10.

⁵³ *Ibid.*, Paras 28-35.

⁵⁴ *Ibid.*, Para 27.

⁵⁵ *Ibid.*, Paras 16-17.

⁵⁶ See also Sanhoury Elrayh, E., “Women’s Rights in the Constitutional Bill of Rights: Issues of Status, Equality and Non-Discrimination”, *The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives*, REDRESS, Faculty of Law, University of Khartoum and the Sudan Human Rights Monitor, 2014, p. 45, where the author states that: “there are 26 laws not in conformity with the constitution because of their explicit or implicit discrimination against women”.

⁵⁷ *Ibid.*, pp. 60-61.

50. Article 45 of the Constitution provides specific protections for persons with “special needs” and the elderly. Article 45(1) states that:

The State shall guarantee to persons with special needs the enjoyment of all the rights and freedoms set out in this Constitution; especially respect for their human dignity, access to suitable education, employment and full participation in society.

51. Article 45(1) is problematic in two important respects. First, the phrase “special needs” is not defined, creating a serious lack of certainty about the scope of the provision’s application. Second, if an assumption is made that “persons with special needs” includes some or all of those considered to be persons with disabilities, the Article provides no detail on how the “enjoyment of all rights and freedoms” and “full participation in society” is to be achieved. Article 45(2) guarantees to the elderly “the right to the respect of their dignity” and obliges the state to “provide them with the necessary care and medical services as shall be regulated by law”.
52. Finally, Article 47 provides specific rights for members of ethnic and cultural communities, including the right to “freely enjoy and develop their particular cultures” to “practice their beliefs, use their languages [and] observe their religions”. As with Article 32, however, the practice of the state provides numerous examples of flagrant, systematic and consistent violation of Article 47.
53. In its General Comment No. 20, the Committee noted that:

Adoption of legislation to address discrimination is indispensable in complying with article 2, paragraph 2. States parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights.⁵⁸

54. Sudan has made little progress towards discharging its obligations to provide effective protection from discrimination in its legal system. Indeed, beyond the constitutional provisions and the National Disability Act discussed above, there is very limited legal protection from discrimination. Sudan lacks comprehensive anti-discrimination law or specialised equality bodies. It also lacks specific laws prohibiting discrimination on grounds such as race, sex or disability, or legal provisions prohibiting discrimination in particular areas of life, such as employment, education and healthcare.
55. In the view of the Equal Rights Trust, Sudan’s legal and policy framework is clearly inadequate to meet its obligations under Article 2(2) of the Covenant. Therefore, we urge the Committee to seek information from the state on the steps which it is taking, or plans to take, to improve its legal and policy framework.

Suggested Questions

- What plans does the state have to amend or repeal those laws or legal provisions – including, but not limited to, provisions of the Criminal Law Act, the Personal Status Act and the Nationality Act – which conflict with the right to non-discrimination as protected under the Covenant?

⁵⁸ *Ibid.*, Para 37.

- What plans does the state have to amend the Interim National Constitution to ensure that it provides effective protection from discrimination, on all grounds recognised by the Committee, in respect of the economic, social and cultural rights protected by the Covenant?
- What plans, if any, does the state party have to introduce specific and comprehensive anti-discrimination legislation which would prohibit discrimination in the enjoyment of all economic, social and cultural rights protected under the Covenant?
- What assessment has the state party made of the effectiveness of the National Disability Act in ensuring the enjoyment of economic, social and cultural rights without discrimination on the basis of disability?
- What assessment has the state party made of the effectiveness of its constitutional and legislative framework in ensuring the enjoyment of economic, social and cultural rights without discrimination?