

Discrimination in the Name of Religious Freedom: The Rights of Women and Non-Muslims after the Comprehensive Peace Agreement in Sudan

Liv Tønnessen
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List of abbreviations

CAMP	Christians and Muslims for Peace
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPA	Comprehensive Peace Agreement
DUP	Democratic Union Party
GOSS	Government of Southern Sudan
ICCPR	International Covenant on Civil and Political Rights (1966)
IMWU	International Muslim Women Union
NCP	National Congress Party
NGO	Non-Governmental Organisation
PNC	Popular National Congress
SCC	Sudan Council of Churches
SCP	Sudanese Communist Party
SONAD	Sudan Organisation for Non-Violence and Development
SPLM	Sudan People's Liberation Movement
UNDP	United Nations Development Programme
UNMIS	United Nations Mission in Sudan
UP	Umma Party

Executive summary

The linkage between religion and armed conflict has been hotly debated over recent years.¹ Much previous research has been concerned with questions about the conditions under which religion may be a cause of violent conflict. At present, much of the literature and the general debate concentrate on religious extremism.² The literature ignores the complex role of religion, particularly in multi-religious countries. Our point of departure in the present study is *Islam's role in peacebuilding*, focusing on the period after the signing of the Comprehensive Peace Agreement (CPA) in January 2005. We regard peacebuilding as strategies to develop trust and build confidence among communities in order to build political institutions for democratic rule and the promotion of human rights.³ An important aspect of religious peacebuilding is the debate and discourse dedicated to clarifying religious attitudes towards human rights. The most intense debates are currently being conducted within the religious traditions as they continuously interact with secular actors, with other religions and with their own diverse and ideologically plural membership. Muslims' internal struggle regarding human rights is probably the most consequential debate unfolding at present. Our focus of analysis is whether the *religiously defined rights of non-Muslims and women are in alignment or in conflict with international human rights*. Whether the religiously defined rights of non-Muslims and women are in alignment or in conflict with international human rights depends on who interprets the religious texts. To interpret religious laws is an elastic and selective exercise which varies from excluding to including historically marginalised groups such as non-Muslims and women as equal citizens in the Sudanese state.

Government policy since independence has by and large disregarded Sudan's multi-religious character through continuous Islamisation and Arabisation processes that have fuelled the civil war. International considerations regarding religious pluralism and the accommodation of different religious communities were at the forefront in the peace negotiations. The study outlines Islamic actors' perception of non-Muslims' rights after the peace agreement, including the rights of apostates. Also, the study elaborates how non-Muslims themselves perceive their rights within the frame of Islam.

¹ See for example Samuel Huntington, "Clash of Civilizations" (New York: Council on Foreign Relations, Foreign Affairs, 1993); E.A. Henderson, "Culture or Contiguity: Ethnic Conflict, the Similarities of States and the Onset of War, 1820-1989" (Journal of Conflict Resolution 41 (5), 1997); L. Reychler, "Religion and Conflict" (The International Journal of Peace Studies 2 (1), 1997); Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (London: The Free Press, 2002); Bruce Russett and John Oneal, *Triangulating Peace: Democracy, Interdependence, and International Organizations* (New York: The Norton Series in World Politics, 2001); M. Reynal-Querol, "Ethnicity, Political Systems and Civil War" (Journal of Conflict Resolution 46 (1), 2002).

² See for example Y. Choueiri, *Islamic Fundamentalism* (London: Pinter Press, 1997); W. Reich, *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (Washington D.C.: Woodrow Wilson Center Press, 1998); M. Kramer, *The Islamism Debate* (Tel Aviv: The Moshe Dayan Center for Middle Eastern and African Studies, 1997); M. Pinto, *Political Islam and the United States: A Study of the U.S. Policy Toward Islamist Movements in the Middle East* (Reading: Ithaca Press, 1999); Gilles Kepel, *Jihad: the Trail of Political Islam* (London: Tauris, 2004); Samuel Huntington, *Clash of Civilizations* (New York: Council on Foreign Relations, Foreign Affairs, 1993); E.A. Henderson, "Culture or Contiguity: Ethnic Conflict, the Similarities of States and the Onset of War, 1820-1989" (Journal of Conflict Resolution 41 (5), 1997); L. Reychler, Religion and Conflict (The International Journal of Peace Studies 2 (1), 1997); Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (London: The Free Press, 2002); Bruce Russett and John Oneal, *Triangulating Peace : Democracy, Interdependence, and International Organizations* (New York: The Norton Series in World Politics, 2001); M. Reynal-Querol, "Ethnicity, Political Systems and Civil War" (Journal of Conflict Resolution 46 (1), 2002).

³ Gunnar Sørbo, *Peacebuilding in Post-War Situations: Lessons for Sudan* (Bergen: Chr. Michelsen Institute, CMI Report R2004: 13).

In their eagerness to include marginalised religious groups, Sudanese and international peacebuilders ignored gender issues during the negotiations. In the name of religious freedom, the CPA and the national interim constitution have left the civil rights of women to the country's religious communities – Islamic, Christian, and traditional African beliefs. Muslim and non-Muslim leaders alike perceive this as an intrinsic religious right. Civil rights such as marriage, divorce, inheritance, maintenance and financial custody of children, and alimony are perhaps the most tangible and important in the daily lives of “ordinary” Sudanese women. Yet, the CPA and the national interim constitution have not defined how the religious and tribal family laws that regulate women's civil rights are being and should be formed and applied in today's Sudan. Sudanese women are granted different civil rights depending on which religious or tribal community they belong to. This study outlines the main discriminatory features in what has become a complicated patchwork of plural legalities for Sudanese women since the peace agreement.

Religiously defined laws in and by themselves are not necessarily discriminatory against women, but this plural legal system does not guarantee *all* Sudanese women *equal* civil rights as enforced in today's Sudan. The study shows that there are ongoing debates within the religious communities towards maintaining or changing the discriminatory features of religious and tribal family laws. Despite the fact that most Sudanese elite women deem their current “rights status” as discriminatory, they do not demand a secular law on women's civil rights. They promote “changing from within” by reinterpreting and transforming the religious and tribal laws in a more gender equal direction.

Major Findings

The Rights of Non-Muslims

In Sudan, most Muslim leaders we spoke to agree that non-Muslims should be granted full citizenship with all political rights, such as the right to run for public office, including the presidency. When they deem the rights granted non-Muslims in the CPA and the interim national constitution as in alignment with the sharia, they refer to the Islamic term *dhimmi*. *Dhimmi* is related to the treatment of non-Muslims under the Ottoman millet system where Christian and Jewish groups who belong to the “People of the Book” were regarded as “protected people”.

Muslim leaders in power and in opposition do not agree on whether adherents to traditional African beliefs and apostates should be included in the category non-Muslims or as *dhimmi*. African traditional beliefs have historically been marginalised and excluded in Sudan. The CPA and the national interim constitution grant non-Muslims, including adherents to traditional African beliefs, full citizenship rights. This contrasts with the Islamist constitution of 1998, which does not regard traditional African beliefs as equivalent with religion, at least not explicitly. In contrast with the restrictive interpretation of *dhimmi* stipulated by the Islamist constitution of 1998, there are now Islamic interpretations of non-Muslims' rights which represent an inclusive interpretation. This shows that whether non-Muslims' rights in Islam are in alignment with international human rights depends on who interprets the sharia.

Although adherents to traditional African beliefs are regarded as *dhimmi* in the CPA and the interim national constitution, the question of the rights of apostates is not explicitly dealt with. The Criminal Act 1991 prohibits apostasy from Islam and the punishment for this offence is execution. The law has still not been revised since the peace agreement.

The view of non-Muslims of their minority rights in Islam is that of exclusion and violence, according to many of those interviewed for this study. This must be understood in light of the long-lasting civil war, in which Islam has been a tool of oppression in Sudan. They do not believe that the rights awarded to them in the CPA and the national interim constitution will be implemented as long as the state mixes Islam and politics. Islam is alien to the Sudanese mentality, say Christian leaders in Khartoum. The regime is a fundamentalist regime which propagates a type of Islam that leaves no room for religious freedom, they claim. Most of the grievances articulated by Christian church leaders concerning religious freedom under an Islamist regime are related to alcohol prohibition, the building of churches, and Christianity in the media and education.

The Rights of Women

In the name of religious freedom, the CPA and the national interim constitution have left the civil rights of women to the country's religious communities – Islamic, Christian, and traditional African beliefs. This practice might also be traced back to the millet system established under the Ottoman Empire. The Ottoman term specifically refers to the separate legal courts pertaining to family law under which minorities were allowed to rule themselves. The civil rights and obligations are perhaps the most tangible and important in the daily lives of “ordinary” Sudanese women. Yet, the CPA and the national interim constitution have not defined how the religious and tribal family laws that regulate women's civil rights are being and should be formed and applied in today's Sudan.

Concerning women's (civil) rights, the focus of Norway and the international community in general is on Islam. Consequently, they overlook discriminatory practices within other religious and tribal communities. This is problematic, because in certain areas Islamic family law in Sudan might actually be considered less discriminatory than in other religious and tribal communities. For example, compared with the sharia it is in general more difficult for Christian women to obtain divorce. Equally, in customary law (based on traditional African beliefs and customs) it is virtually impossible for a woman to obtain a divorce. Whereas women have the right to get half the inheritance of a man in sharia, women do not have any right to inheritance at all in customary law. According to southern activists interviewed in this study, customary law is in conflict with international human rights.

Despite the fact that most Sudanese elite women deem their current “rights status” to be discriminatory, they do not demand a secular law on women's civil rights. They promote changing and expanding their rights from within. However, they actively use international conventions such as CEDAW to advocate for gender equality. Sudan is, together with the US, Iran, Somalia, Qatar, Nauru, Palau and Tonga, one of very few states yet to ratify CEDAW. Southern Sudanese elite women advocate ratifying CEDAW without reservations. In their opinion, the main reason why Sudan has not yet ratified the convention is because of Islam. They are partly correct in that the conservative perception of women's civil rights within Islam as propagated by the regime is not in harmony with CEDAW. But the debate on CEDAW in the opposition shows that religiously defined laws are not in and by themselves discriminatory against women. When the sharia is interpreted in a liberal manner, women have rights. Muslim feminist activists in opposition therefore demand a total reform of the current codified Islamic family law. Muslim actors in opposition are able to draw upon and redefine the religious tradition's ethical warrants for resistance against what they perceive to be the conservative and “un-Islamic” interpretation of women's civil rights that is propagated by the current regime.

The battle to “change from within” is different for Muslim and non-Muslim women. Since customary law is not a written codified law, there is little if any room for a flexible reinterpretation of the legal text that could increase women's rights within the current system. It is thus not possible for southern Sudanese women to change the legal system from within by reinterpreting the sources

of the law itself, as seen in the contemporary reinterpretations of Islamic law. Furthermore, there exists no codification of the customary law, and consequently southern women do not have any state authority with which to negotiate new rights. Many interviewees in the study refer to the late leader of SPLM, John Garang, who in the wake of the peace agreement said that southern women were the most marginalised of all the marginalised groups in Sudan. So for southern women CEDAW becomes even more important, because if it were ratified the state would for the first time be forced to take responsibility for their civil rights. However, southern elite women warn the international community by saying that it takes more than a law reform to deal with discriminatory laws, because women at the grass roots are reluctant to change as they are socialised within the patriarchal habits, attitudes and value systems in place.

1. Introduction: Religion and Peacebuilding

In the book *Religion, Conflict and Reconciliation*, the problematic role of religion in conflict is summarised in the following way: “Many people appeal to the will of God to justify what they do or do not do. As the classical question in the discussion regarding the relation between religion and ethics has it: Is that which is good what the gods will or is the will of the gods that which is good? Must we do what God says because God says it, or does God will it because it is good? What is the highest norm: God or that which is good?”⁴

Religion is in the general literature often regarded as a basis for conflict, especially in the aftermath of “9/11” and of major conflicts such as Afghanistan and Iraq. Research has been preoccupied with the question under what conditions religion can be a cause of armed conflict and violence. Much of the literature, alongside popular perceptions, concentrates on religious extremism, particularly when it comes to Islam and the geographical area of the Middle East and North Africa. Although international attention has generally been paid to the linkage between religion and armed conflict, the linkage has been solidly debated the last years. An increasing number of scholars are devoting their attention to *Religion and Peacebuilding*,⁵ *Faith-Based Diplomacy*,⁶ *Religions in Dialogue*,⁷ *Religion, Conflict and Reconciliation*,⁸ *Religious Faith in the Service of Peacebuilding*⁹ and *Religion, Politics and Peace*.¹⁰ These academic writings describe religion as a key factor in peacebuilding, because religious actors have some distinctive features which make them significant peacebuilders: they possess structures and networks which are essential for mobilising the masses.¹¹ Moreover, the literature emphasises that religious actors can play a positive role in a post-conflict context, particularly in the reconciliation process, due to the power and strength of their spiritual guidance.¹² Religious peacebuilding thus describes the range of activities performed by religious actors and institutions with the goal of building confidence among religious communities and political institutions characterised by an ethos of tolerance, non-violence and human rights. However, the body of literature seems to suggest that religious actors should be considered with some caution. Religious peacebuilding “is far from being a monolithic exercise”.¹³ Appleby emphasises that “too many religious leaders continue to pursue narrow sectarian or ethnic agendas and to think only of the needs and rights of their own people”.¹⁴

In developing strategies for opposing social and political injustice non-violently, religious actors are able to draw upon and redefine their religious traditions’ ethical warrants for resistance against unjust conditions. Religious peacebuilding includes not only conflict resolution on the ground, but also the efforts of people working at a distance from actual sites of violent conflict, such as

⁴ Jerald D. Gort, Henry Jansen, and Hendrik M. Vroom, *Religion, Conflict and Reconciliation* (Amsterdam: Rodopi, 2002), p. 4.

⁵ Harold Coward and Gordon Smith, *Religion and Peacebuilding* (New York: State University of New York Press, 2004).

⁶ D. Johnston, *Faith-Based Diplomacy* (New York: Oxford University Press, 2003).

⁷ Alan Race and Ingrid Shafer, *Religions in Dialogue; From Theocracy to Democracy* (Aldershot: Ashgate, 2002).

⁸ Jerald D. Gort, Henry Jansen, and Hendrik M. Vroom, *Religion, Conflict and Reconciliation* (Amsterdam: Rodopi, 2002).

⁹ S. Appleby, “Retrieving the Missing Dimension of Statecraft: Religious Faith in the Service of Peacebuilding”, in D. Johnston and S. Sampson, *Religion: The Missing Dimension of Statecraft* (New York: Oxford University Press, 2003).

¹⁰ Leroy Rouser, *Religion, Politics and Peace* (Notre Dame: University of Notre Dame Press, 1999).

¹¹ Ulrich Mans and Osman Mohammed Osman Ali, *Stuck in Change; Faith-Based Peacebuilding in Sudan’s Transition* (Netherlands Institute of International Relations ‘Clingendael’ October 2006)

¹² Ibid.

¹³ Ibid.

¹⁴ S. Appleby, “Retrieving the Missing Dimension of Statecraft: Religious Faith in the Service of Peacebuilding”, in D. Johnston and S. Sampson, *Religion: The Missing Dimension of Statecraft* (New York: Oxford University Press, 2003).

advocates of religious human rights, scholars conducting research, inter-religious dialogue projects, and theologians and religious leaders.¹⁵ An important aspect of religious peacebuilding is the debate and discourse dedicated to clarifying religious attitudes toward human rights, in particular the extent and kind of religious human rights deserving protection in pluralist societies. Who participates in the rights-defining process? Whose criteria govern the interpretation and practice of human rights? The most intense, conflictual and perhaps the most consequential debates are currently being conducted within the religious traditions themselves as they continuously interact with secular actors, with other religions and with their own diverse and ideologically plural membership.¹⁶ Muslims' internal struggle regarding human rights is probably the most consequential debate unfolding at present. Many Muslims are increasingly engaged in thinking and activities that contribute to or are relevant to human rights. Human rights discourses within Islamic contexts are gaining attention, to the point that formal declarations have been issued by Muslim bodies. As such, there are constant encounters between Western and Islamic perceptions of rights. International conventions such as CEDAW, engineered by Westerners, individualise legal rights, thereby setting up the individual rights paradigm against the collective rights paradigm. The West's monopoly and secular understanding of the human rights concept are effectively being questioned. This shows inter-legality between Islamic and Western legal thought, thus that they are in fact intertwined with each other, constituting each other dialectically, rather than being the autonomous or semi-autonomous legalities we sometimes see them as being.¹⁷ Islam is a discursive religion undertaking continual change and thus transforms the sharia in encounters with other legal norms. The debate on whether Islam conforms to human rights is therefore important and also challenges our perceptions of human rights.¹⁸

In December 2005 the Oslo Coalition for Freedom of Religion and Belief, together with Norwegian Church Aid, organised an inter-religious workshop in Sudan with participants from both the Christian and Muslim communities. Muslim leaders from grass-roots organisations as well as from political parties participated together with Christian bishops and other prominent church leaders. The political opposition leader, Sadiq al-Mahdi, and his Ansar organisation played an active role in the discussion, whereas the person invited as the Sudanese government's representative, al-Tayyib Zain Abidin, decided not to partake in the workshop.¹⁹ During this workshop the concept "Islam as a comprehensive way of life" was debated and identified as an obstacle to the rights of non-Muslims in the country. However, the workshop interestingly showed us that the perceptions and views of the content and consequences of the concept "Islam as a comprehensive way of life" were both diverse and vague among the Muslim participants. The shifting perceptions of "Islam as a comprehensive system", more specifically the rights of non-Muslims and women, is therefore the focus of this study.

¹⁵ Harold Coward and Gordon S. Smith (eds), *Religion and Peacebuilding* (Albany: State University of New York Press, 2004).

¹⁶ Ibid.

¹⁷ Argument put forward in Liv Tønnessen, "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum", CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007, Bergen. [The article is submitted to the Journal of Middle East Women's Studies for publication].

¹⁸ S. Appleby, *The Ambivalence of the Sacred: Religion, Violence and Reconciliation* (Landham, MD: Rowman & Littlefield, 2000).

¹⁹ In our interview with al-Tayyib Zain Abidin, the General Secretary of SIRC, on 11 February 2007 in Khartoum, he was outspokenly critical of the government, saying explicitly that the government is not *Islamic*, that it is corrupt, and that it does not follow up on the Islamic moral code. *It is a military regime*, he said, *and all ministers are appointed not elected*. We therefore question the claim made by Norwegian Church Aid and the Oslo coalition in their report to the Ministry of Foreign Affairs that Abidin is in fact a governmental representative.

1.1 Religion and Conflict in Sudan

When Sudan achieved independence on 1 January 1956, civil war had already erupted and, apart from a period of ten years from 1973 to 1983, relations were not restored to peace until the CPA between the NCP and the SPLM in 2005. Although the conflict may be presented as social, cultural, economic and political, religious convictions have played a role in justifying conflict as a religious demand or duty.²⁰ The assumption among the Sudanese political Muslim elite was that this pursuit of Islamization and Arabization was “*a natural process, and that it rolls by historical necessity from the “centers” [...] toward the “peripheries”[...] It follows that it is only a matter of time before the whole country is Arabized and Islamized*”.²¹ Sadiq al-Mahdi, who became prime minister in 1966, summarised Sudan’s future by declaring that “*Islam has a holy mission in Southern Sudan*”. In a speech to the National Assembly, he proclaimed that “*the dominant feature of our nation is an Islamic one and its overpowering expression is Arab, and this nation will not have its entity identified and its prestige and pride preserved except under an Islamic revival*”.²² The Islamisation policies have generated antagonism among the southern population. Religion has thus functioned as one important identity “marker”, creating a sense of common history and a sense of belonging to a distinct group. Religion has consequently been a part of the conflict mobilisation process throughout the civil war. Religious symbols and language have been used in order to demonise the other side, or to create a sense of righteousness for their own cause. The civil war in Sudan has at times been portrayed as a jihad whereby “*themes of jihad and martyrdom have become an essential feature of the official discourse, particularly in mass media organs. Images from the “glorious” Islamic past have become regularly invoked to give the civil war, which the government insists has nothing to do with religion, an air of “divinity”*”.²³ This means neither that all religious actors have lent their support to the civil war in Sudan, nor that religion is inherently conflictual and violent. However, religion in Sudan “*has become a symbol of everything that identifies the parties and determines their relative position in the power hierarchy [...]*”.²⁴ The basic political philosophy of “*the northern elites towards the south entail the exclusion of southern Sudan from sharing power*”.²⁵

There is a close link between religious identity and political identity, particularly in the North of Sudan.²⁶ This can be traced back to the colonial period when the British recognised Sudanese involvement in government through the creation of the Advisory Council for the Northern Sudan. The Council was a body of northern Sudanese elites, comprising representatives mainly from the two largest Islamic organisations in Sudan, the Ansar and the Khatmiyya. These still form the basis of the two largest political parties in northern Sudan: the Ummah Party led by Sadiq al-Mahdi and the DUP lead by Sayyid al-Mirghandi. No parliamentary regime in Sudan has been formed without the presence of at least one of the two political parties; “*for the twenty-five first years of the country’s independence, political life in Sudan was dominated by the influence of personalities and organisations, parliamentary as well as military regimes, with the background division between the Khatmiyya and the Ansar*”.²⁷ The political system and “*the mechanisms of participation were*

²⁰ Abdel Salam Sidahmed, *Politics and Islam in Contemporary Sudan* (New York: St Martin’s Press, 1996), p. 233.

²¹ Leif Manger, in Gunnar Sørbo and Siegfried Pausewang (eds), *Prospects for Peace, Security and Human Rights in Africa’s Horn* (Bergen: Fagbokforlaget, 2004), p. 128.

²² Quoted in Girma Kebede, *Sudan’s Predicament: Civil War, Displacement and Ecological Degradation* (Aldershot: Ashgate, 1999), p. 14.

²³ Abdel Salam Sidahmed, *Politics and Islam in Contemporary Sudan* (New York: St Martin’s Press, 1996), p. 223.

²⁴ Francis M. Deng and Abdullah Na’im, “Self-Determination and Unity; the Case of Sudan”, (Law & Policy 18 nr.3/4, 1996), p. 215.

²⁵ *Ibid.*, p. 93.

²⁶ John O. Voll, *Sudan: State and Society in Crisis* (Bloomington and Indianapolis: Indiana University Press, 1991).

²⁷ Nazih N. Ayubi, *Political Islam: Religion and Politics in the Arab World* (London and New York: Routledge, 1991), p. 105-106.

defined in the framework of a basically Muslim society and Islamic themes".²⁸ Although the system was secular on the surface and willingly adopted a secular Western model of democracy, Islam did play a role in politics.²⁹ The content of politics was not entirely secular, as the UP and the DUP knew that they owed their positions of power to the sectarian influences in Ansar and Khatmiyya.³⁰

The political parties' and movements' explicit demands and programmes have therefore been related to religious issues along a secular-religious continuum. The question of whether and how religion should be incorporated into the state has been hotly debated throughout the history of Sudan. Some of the political parties have explicitly raised demands related to the establishment of religious laws and legislation. However, it was under the authoritarian rule of Numayri that the sharia (Islamic law) was implemented in September 1983.³¹ The introduction of the sharia as the sole source of all law in September 1983 involved the full application of the hudud (the canonical penalties of the sharia) and the transformation of all other laws in accordance with the sharia. Although many aspects of family law had been dealt with according to the sharia in most parts of northern Sudan since independence, the sharia, as a comprehensive socio-legal system, had never been enforced in its entirety.³² Since the introduction of the sharia in Sudan, the SPLM has advocated its abolition.³³ A repeal of Islamic law was a prerequisite of the movement for any reconciliation with the Sudanese government.³⁴ The Sudan People's Liberation Movement called for a new and democratic government with federal-style regionalism within a democratic and secular context.³⁵

1.2 Methodology

This qualitative study is primarily based on semi-structured elite interviews, conducted in Khartoum, Sudan from 8 February to 8 March 2007, with Muslim opposition leaders, Christian church leaders, members of non-governmental and governmental organisations and government officials.³⁶ We also had formal and informal conversations and discussions with local and international journalists, imams, AU soldiers, staff and students at the Afhad University for Women, Nileen University, the University of Khartoum, the International University of Africa, the Sudanese Studies Centre, representatives from UNMIS and other international non-governmental organisations in Sudan. Additionally, we visited local sharia courts and local traditional courts for customary law. We also attended informal discussion groups, among others with Turabi's female followers, at which the vice-president of parliament during the reign of Turabi Khadija Karar was also present (see Appendix 2).

In addition to the semi-structured interviews, we monitored the local newspapers, and collected and analysed books, papers, pamphlets and booklets written by the opposition as well as government officials.

²⁸ John L. Esposito and John O. Voll, *Islam and Democracy* (New York and Oxford: Oxford University Press, 1996), p. 81-82.

²⁹ Abdel Salam Sidahmed, *Politics and Islam in Contemporary Sudan* (New York: St Martin's Press, 1996).

³⁰ Ibid.

³¹ Aaron Layish and Gabriel Warburg, *The Reinstatement of Islamic Law in Sudan under Numayri* (Leiden, Boston, Köln: Brill, 2002).

³² Carolyn Fluehr-Lobban, *Islamic Law and Society in the Sudan* (London: Frank Cass, 1987).

³³ John Garang (edited by Mansour Khalid), *The Call for Democracy in Sudan* (London : Kegan Paul International, 1992).

³⁴ David Long and Bernard Reich, *The Government and Politics of the Middle East and North Africa*, (Boulder, San Francisco and Oxford: Westview Press, 1995).

³⁵ John Garang (edited by Mansour Khalid), *The Call for Democracy in Sudan* (London: Kegan Paul International, 1992).

³⁶ We have chosen to set interview citations for the fieldworks in November 2006 and February/March 2007 in the present tense. Prior interview citations are put in the past tense.

The study also builds on research conducted during prior visits to and fieldwork in Sudan. Roald visited Sudan three times in the late 1990s. In 2005 she participated in a Muslim-Christian dialogue workshop organised by the Oslo Coalition for Freedom of Religion and Belief and Norwegian Church Aid. During the three visits in 1990s, she visited various women organisations and conducted interviews with leading Islamists. Roald has published extensively on women and Islam.³⁷

Tønnessen conducted fieldwork in Khartoum, Sudan from 6 to 20 November 2006 during which she carried out 11 formal and a number of informal interviews with parliamentarians, academic researchers and activists within governmental and non-governmental organisations from both northern and southern Sudan. She also participated in a Training for Political Leadership workshop organised by the UNDP at Afhad University for Women for women lawyers (around 15-25 participants) on 8 November, where she was able to listen in and to question the participants. She additionally attended a workshop organised by the Initiative for Inclusive Security during the course of 3 days (around 40 participants) from 9 to 12 November and spoke to and conducted short interviews with the participants. Tønnessen has previously carried out research on Hassan al-Turabi and his conception of democracy and the rights of women and non-Muslims within an Islamic state.³⁸

³⁷ See Anne Sofie Roald, *Women in Islam: The Western Experience*, (Routledge: London, 2001); "The Wise Men: Democratisation and Gender Equalization in the Islamic Message: Yusuf al-Qaradawi and Ahmad al-Kubaisi on the air" in *Encounters 7:1* (Markfield: Islamic Foundation, 2001); *Er muslimske kvinner undertrykt?* (Oslo: PAX, 2005).

³⁸ See Liv Tønnessen, *Islamism and Democracy: An Inquiry into the Political Thought of Hassan al-Turabi* (Cand. Polit. thesis, University of Bergen 2005, 160 pages); "Hassan al-Turabi: maktsyk agitator eller kvinnevennlig demokrat" (article in *Morgenbladet*, September 8th-14th, No. 36, 2006); "Hassan al-Turabi's Search for Islamist Democracy"(CMI Working Paper No.12, 2006); "Mannen bak Darfur-Konflikten" (article in *Ny Tid*, No. 19, 2006); "Islam har skylden?" (article in *Studvest*, April 5th 2006); "Islam på godt og vondt" (article in *Bergens Tidende*, February 8th 2006); "Islamisme og demokrati hånd i hånd" (*Babylon Vol.3, No. 2, 2005*).

2. The Rights of Non-Muslims

A Muslim northern politician now in opposition regards the CPA as “*a good chance for Sudan to end the history of discriminating policies*”. He further states that “*these people [southerners] have every right, because we have tortured them, killed them and enslaved them for centuries. Whatever the CPA gives them it is their right; the right to equal shares, equal rights and equal citizenship*”. He goes on to say that “*the problem of Sudan is discrimination and racism*” and that as such the CPA represents “*the rights of the historically enslaved people. They [the elite] are slave traders*”.³⁹

In Sudan, most Muslim leaders we spoke to agree that non-Muslims should be granted full citizenship rights with all political rights, such as the right to run for public office, including the presidency. When they deem the rights granted non-Muslims in the CPA and the interim national constitution as “sharia”, they often refer to the Islamic term dhimmi. This term is related to the treatment of non-Muslims under the Ottoman millet system, in terms of which Christian and Jewish groups who belonged to the “People of the Book” were regarded as “protected people”. Muslim leaders in power and in opposition do not agree whether adherents to traditional African beliefs and apostates should be included in the category non-Muslims or designated dhimmi. Although adherents to traditional African beliefs are regarded as dhimmi in the CPA and the interim national constitution, the question of the rights of apostates is not explicitly dealt with.

This lack of clarity shows that the group or term non-Muslim is not clearly defined. This impacts on the southerners’ perceptions of Islam as an inclusive religion. Many southerners we spoke to view Islam as an exclusive religion. Because of an institutionalised civil war in which Islam has been a tool of oppression in Sudan, they fear a state which mixes Islam and politics. Consequently, they do not believe that the rights given to them in the CPA and the national interim constitution will be de facto granted to them. Bishop Daniel Kur Adwok describes President Bashir as “*not serious at all*” about the CPA.⁴⁰ Equally, Cardinal Gabriel Zubeir Wako, archbishop of Khartoum, claimed that the CPA “*has been translated into agreements to peacefully continue war and prepare for war*”.⁴¹

2.1 Non-Muslims: Dhimmi or Citizens?

When Muslim leaders⁴² deem the rights granted non-Muslims in the CPA and the interim national constitution as being in agreement with the sharia, they often refer to the Islamic term dhimmi. Dhimmi is related to the treatment of non-Muslims under the Ottoman millet system, where Christian and Jewish groups who belonged to the “People of the Book” (ahl al-kitab) were regarded as “protected people”. Milla (creed, religious community) is a Koranic word used to denote the belief system of Abraham.⁴³ At the time of the Ottoman-Egyptian invasion of Sudan in 1820 the northern part of the country was Arabised and Islamised.⁴⁴ Although the Ottoman-Egyptian rulers

³⁹ Interview with an anonymous northern politician in opposition, on 4 March 2007 in Khartoum.

⁴⁰ Bishop Daniel Kur Adwok in the Khartoum Monitor on 12 February 2007 Vol. 6 No. 1138.

⁴¹ Cardinal Gabriel Zubeir Wako, Archbishop of Khartoum, in the Khartoum Monitor on 12 February 2007 Vol.6 No. 1138.

⁴² The Muslim population in Sudan is almost entirely Sunni, but is divided into many different groups: Sufism, Ansar al-Mahdi, Ansar al-Sunna and Islamism. According to the Encyclopaedia of the Orient there might be a small minority of Shi’a Muslims in Sudan. However, this possible minority is not mentioned in any statistics.

⁴³ See for instance the Koran 2: 130; 2: 135.

⁴⁴ In early Islamic history, Islam was gradually introduced into the north of Sudan by Arab miners and traders searching for gold and emeralds in the area between the Red Sea and Nile. In contrast to previous Egyptian rulers the Mameluke sultans took a missionary stance towards the Nubian Christians. P.M. Holt & M.W. Daly, *A History of the Sudan*, (Edinburgh: Pearson Education, 2000), p. 22-37.

never controlled that part which today is known as southern Sudan, they claimed it belonged to the empire.

The millet system under the Ottoman Empire granted religious minorities the right to deal with their internal affairs according to their own religious laws (see chapter 3, the Rights of Women).⁴⁵ The religious minorities were granted freedom to practise their religion and to set up economic enterprises. The CPA and the interim national constitution must be viewed in light of this Islamic tradition. Ahmed Khalid, the leader of the Islamic council of jurisprudence, clearly states that “*non-Muslims’ rights are present in the sharia and that they have their religion within the sharia*”.⁴⁶

The millet system under the Ottoman Empire did not initially grant the protected minorities political rights. The Muslim millet was regarded as the dominant one to which all other millets were subordinated.⁴⁷ However, Christians did at certain times in history, particularly under the early Muslim empires, enjoy a relatively privileged status as administrative officials, scribes, philosophers and poets.⁴⁸ In other historical periods, however, the situation of Christian communities (sing: ta’ifa, plural: tawa’if) was less secure, such as in the eras of the Fatimid (969-1171) and the Mameluke (1250-1516) in Egypt.⁴⁹ Coptic Christians started to move from Egypt to northern Sudan from the 7th century onwards and during the Ottoman-Egyptian reign (1820-1881). Middle Eastern Catholics also settled in northern Sudan, establishing small Christian minority churches in the overall Muslim area.⁵⁰ In general, religious minorities in the Muslim world who belonged to the “People of the Book” enjoyed a certain tolerance for religious worship. It is our impression that the treatment of the Coptic and Catholic community has been good in Sudan. An anonymous Coptic trader says: “*I came to Sudan from Egypt in 1969. The relationship between Muslims and Christians in Egypt is very tense. Outside the churches there have to be security guards because the Copts are a target for hatred and harassment. In Sudan, however, we, the Christians and the Muslims, live like brothers and sisters. The government even gave me Sudanese citizenship and I am proud to be a Sudanese. Sudan is the best country in the Middle East for Christians to live in*”.⁵¹

⁴⁵ Andrea Pacini (ed), *Christian Communities in the Arab Middle East. The challenge of the future*, (Oxford: Clarendon Press, 1998). See particularly Bernard Botiveau, “National law and Non-Muslim Status” in Pacini, A. (ed) *Christian Communities in the Arab Middle East. The challenge of the future*, (Oxford: Clarendon Press 1998), p. 111-126.

⁴⁶ Interview with Ahmed Khalid, the leader of the Islamic council of jurisprudence, on 25 February 2007 in Khartoum [the authors’ translation from Arabic].

⁴⁷ Andrea Pacini (ed), *Christian Communities in the Arab Middle East. The challenge of the future*, (Oxford: Clarendon Press, 1998), p. 6.

⁴⁸ Joseph Maila, “The Arab Christians: From the Eastern question to the recent political situation of the minorities”, in Pacini, A. (ed) *Christian Communities in the Arab Middle East. The challenge of the future*, (Oxford: Clarendon Press, 1998), p. 32.

⁴⁹ Joseph Maila, “The Arab Christians: From the Eastern question to the recent political situation of the minorities”, in Pacini, A. (ed), *Christian Communities in the Arab Middle East. The challenge of the future*, (Oxford: Clarendon Press, 1998), p. 32.

⁵⁰ The first record of Christianity in Sudan is from the 6th century, telling about preachers sent to the Nubians in the north of today’s Sudan. P.M. Holt & M.W. Daly, *A History of the Sudan* (Edinburgh: Pearson Education, 2000), p. 2-3. Within the Christian minority in today’s northern Sudan, the Roman Catholic Church is the biggest congregation, followed by the Episcopal Church. Various Orthodox churches, such as the Coptic, the Ethiopian and the Greek-Orthodox, and Protestant churches such as the Presbyterian and the Pentecostal churches are also present. There are two main Christian umbrella organisations: the Sudan Council of Churches, founded in Khartoum in 1972, and the New Sudan Council of Churches, founded in Nairobi in 1989. The latter organisation operates mainly in the South of Sudan. With the fall of the Mahdi state, Britain and Egypt proclaimed a Condominium in 1899 and Christians of various denominations started to settle in the area. Although the British-Egyptian administration controlled the whole of today’s Sudan they treated northern and southern Sudan as separate entities. The division was reinforced by allowing Christian missionaries to work in southern Sudan, while simultaneously prohibiting Islamic missionaries in the area.

⁵¹ Conversation with an anonymous Coptic cotton trader on 23 February 2007 in Shendi [the authors’ translation from Arabic].

There were, however, restrictions regarding the building of churches and synagogues, religious processions and the ringing of church bells. Moreover, minorities were restricted from expressing themselves in public. Generally, they were regarded as inferior to the Muslim majority socially and legally. As a result of the Ottoman reform programme (tanzimat) in 1839 and 1856, Christian and Jews acquired equal legal status to Muslims in the whole of the Ottoman Empire, and the above-mentioned restrictions were to a certain extent abolished.⁵²

In Sudan, most Muslim leaders we spoke to agree that non-Muslims should be granted full citizenship rights. It remains unclear, however, whether they include adherents of traditional African beliefs and apostates in the non-Muslim category. African traditional religions are mainly practised in southern Sudan, but there are internally displaced people in the greater Khartoum area who adhere to indigenous beliefs. The various belief systems enjoy authority and have significant influence at the local level.⁵³ This group has historically been marginalised in Sudan.

2.2 The Status of Non-Muslims in the CPA and the National Interim Constitution

The CPA and the national interim constitution grant non-Muslims full citizenship rights, including the provision that “eligibility for office, including the presidency, public service and the enjoyment of all rights and duties shall be based on citizenship and not on religion, beliefs or customs”. The non-Muslim group includes adherents of traditional African beliefs as citizens in the peace agreement and the national interim constitution. There is reference throughout to beliefs alongside religion: “For avoidance of doubt, no one shall be subject to discrimination by the National government, state, institutions, group of persons or person on grounds of religion or **other beliefs**”.

In the CPA and the interim national constitution, then, dhimmi has been widened to include adherents of religions and beliefs other than the “People of the Book”. Ahmed Khalid, the leader of the Islamic council of jurisprudence, clearly states that the CPA and the interim national constitution were approved by the council. This means that these documents are considered in alignment with the sharia.

When we posed the question of rights for non-Muslims in Sudan, some Muslims criticised the interim national constitution of 2005, because in their view it does not provide equal protection of Muslims in southern Sudan as it does for non-Muslims in northern Sudan.⁵⁴ “*The Muslim minority in the south does not have the same rights as the non-Muslims in the north*”, says Attiyah Mustapha, who is a Member of Parliament for the NCP.⁵⁵ Muslims in southern Sudan need protection, according the leader of the Sudan Inter-Religious Council (SIRC), which is an organisation consisting of Muslims and Christians. The Secretary General is at present a Muslim, al-Tayyib Zain Abidin, and the Vice Secretary General is a Christian. Aberdin states: “*There are several cases of violence against Muslims in the South. One example is a decree preventing women from wearing a scarf. This is prejudice. They have so many problems in the South; why care about*

⁵² In the 1876 constitution these reforms were repealed. However, as Bernard Botiveau has observed the reform texts “contained legitimizing principles which subsequently facilitated the task of the Kemalist revolution in the 1920s”. See Botiveau, Bernard, “National Law and Non-Muslim Status”, in Pacini, A. (ed), *Christian Communities in the Arab Middle East. The challenge of the future*, (Oxford: Clarendon Press, 1998), p 6, 112.

⁵³ “Sudan: Religions, Peoples, Languages”. Found at: http://lexicorient.com/e.o/sudan_4.htm; see also Benjamin C. Ray, *African Religions. Symbol, Ritual, and Community* (New Jersey: Prentice-Hall, 1976).

⁵⁴ Interview with Attiyah Mustapha, Member of Parliament for the National Congress Party, on 17 February 2007 in Khartoum.

⁵⁵ Ibid.

young girls wearing scarves? Another example is that the Zakat [charity] institution in the South has been closed down”.⁵⁶

According to Sadiq al-Mahdi, the leader of the UP, “non-Muslims are not dhimmi in Sudan, because this is a historically governed principle for the treatment of conquered people. The non-Muslims in Sudan are not conquered, they are co-citizens”.⁵⁷ Sadiq al-Mahdi also includes adherents to traditional African beliefs when he speaks of non-Muslims in Sudan. He presented this view in the workshop organised by the Oslo Coalition in Khartoum in December 2005. He says: “we can say with Islamic authenticity that Islam, whose beliefs and teachings are well defined and specific, recognizes religious plurality, and even spiritual and moral worthiness in abrahamic religions [...]. This tolerant attitude even extends to those who have sought truth without the benefit of a revelation”.⁵⁸ This shows that whether non-Muslims’ rights within the sharia are in alignment with international human rights depends on who interprets the sharia. Sadiq al-Mahdi’s interpretation (ijtihad) of the sharia concerning the rights of non-Muslims shows that is a selective and elastic exercise that is continually changing in encounters with other legal norms. In his opinion, he does not see any incompatibility between his views and “the Universal Declaration of Human Rights (1948), with the International Covenant on Civil and Political Rights (1966) and with the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981). It will act as the Sudanese Commitment to Religious Coexistence”.⁵⁹

THE COMPREHENSIVE PEACE AGREEMENT

ARTICLE 6 Religious Rights

Recognizing that Sudan is a multi-cultural, multi-racial, multi-ethnic, multi-religious and multi-lingual country and confirming that religion shall not be used as a divisive factor, the Parties hereby agree as follows:

6.1 Religions, customs and beliefs are a source of moral strength and inspiration for the Sudanese people.

6.2 There shall be freedom of belief, worship and conscience for all the followers of all religions, beliefs and customs and no one shall be discriminated against on such grounds.

6.3 Eligibility for office, including the presidency, public service and the enjoyment of all rights and duties shall be based on citizenship and not on religion, beliefs or customs.

6.4 All personal and family matters including marriage, divorce, inheritance, succession and affiliation may be governed by the personal laws (including Sharia or other religious laws, customs and traditions) of those concerned.

6.5 The Parties agree to respect the following Rights:

6.5.1 To worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes;

6.5.2 To establish and maintain appropriate charitable or humanitarian institutions;

6.5.3 To make, acquire, use to an adequate extent the necessary articles and materials related to the rites or custom of a religion or belief;

6.5.4 To write, issue and disseminate relevant publications in these areas;

6.5.5 To teach religion or belief in places suitable for these purposes;

6.5.6 To solicit and receive voluntary financial and other contributions from individuals and institutions;

6.5.7 To train, appoint, elect and designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

6.5.8 To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religious belief;

6.5.9 To establish and maintain communications with individuals and communities in matters of religion and belief and at the national and international levels;

6.5.10 For avoidance of doubt, no one shall be subject to discrimination by the National government, state, institutions, group of persons or person on grounds of religion or other beliefs.

⁵⁶ Interview with al-Tayyib Zain Abidin.

⁵⁷ Interview with Sadiq al-Mahdi, leader of the UP, on 3 March 2007 in Khartoum.

⁵⁸ Sadiq al-Mahdi, “Religious Coexistence in the Sudan” (paper presented at a workshop on Freedom of Religion and Belief organised by the Oslo Coalition on Religion and Belief in collaboration with Norwegian Church Aid, December 2005, in Khartoum), p. 4.

⁵⁹ Ibid., p. 7.

A provision that Islam was the source of law was introduced into the constitutional bill in Sudan in 1968 which was later enacted.⁶⁰ Article 113 of the bill states that “*Islamic sharia is the basic source of law in the state*”.⁶¹ “Sharia as a source of law” is thus not something which the Islamist regime instituted with the coup d’état in 1989. It took nine years for the Islamists to construct a new constitution in 1998. Hassan al-Turabi was the major entrepreneur behind the constitution. In this Islamist constitution there is no requirement for the president to be a Muslim (Article 36), but it is not explicitly stated that non-Muslims can run for the presidency. Article 24 provides for freedom of religion under the heading “*freedom of creed and worship*”, stipulating that “*every human being shall have the right of freedom of conscience and religious creed and he shall have the right to declare his religion or creed, and manifest the same by way of worship, education, practice or performance of rites or ceremonies; and no one shall be coerced to adopt such faith, as he does not believe in, nor to practise rites or services he does not voluntarily consent to; and that is without prejudice to the right of choice of religion, injury to the feelings of others, or to public order, all as may be regulated by law*”.⁶²

In contrast to the CPA and the national interim constitution, the Islamist constitution of 1998 does not regard beliefs as equivalent with religion, at least not explicitly. It states that “*all persons are equal before the law. Sudanese are equal in the rights and duties of public life without discrimination based on race, sex or religion (article 21)*”, with no reference to traditional African beliefs. Turabi claims that that “*equality should be observed without legal religious discrimination in capacity for election rights, qualification for office in public service, access to opportunities in general life and public treatment in personal relations*”.⁶³ Turabi announced in the media and in an interview with us that “*a southerner should become president of Sudan*”. However, Turabi was quick to point out in the interview that he was speaking about a special type of southerner, namely “*a southerner who lives in the north*”.⁶⁴ He advocates that “*laws that govern the personal and private scope of life can relate to the different individuals or parties concerned*”.⁶⁵ Here there is clear reference to the millet system under the Ottoman Empire. He says that “*we borrowed the idea from the constitution of Medina – the only written constitution of those days, some 1400 years ago – under the command of the Prophet. It was a federated state with tolerance of other religions, which also gave them freedom of education and worship. The dialogue between Jews and Muslims was free, although they were a small minority*”.⁶⁶ He goes on to state that “*the family law is subject to the parties' own volition, just like contractual law, referable to sharia, a particular church canon, a customary southern religious norm or any other reference that binds non-Sudanese*”.⁶⁷ It becomes clear that he does not regard southern adherents to traditional African beliefs as dhimmi as he refers to them as “*non-Sudanese*”. He thereby upholds the traditional perception of dhimmi as “the People of the Book”, that is Christians and Jews. This is problematic as the majority of the southerners are adherents of traditional African beliefs and thus not eligible for citizenship rights in the view of Turabi. There is a subtle racism underpinning Turabi’s views on adherents to traditional African beliefs, characterising them in an interview as “*uncivilised*” and saying that “*some of them*

⁶⁰ Independent Sudan’s first constitution, which with small amendments has been in force and suspended back and forth several times in periods of parliamentary rule in 1956-1958, 1964-1969 and 1985-1989, was instituted by the British on the ideal of a secular state.

⁶¹ “An Ideology of Domination and the Domination of an Ideology. Islamism, Politics, and the Constitution in the Sudan”. Found at: www.usip.org/religionpeace/rehr/sudanconf/abdelmoula.html

⁶² Constitution of the Republic of Sudan 1998: Article 24.

⁶³ Hassan al-Turabi, “Religious and Regional Issues” (unpublished paper, Khartoum, 2003), p. 4.

⁶⁴ Interview with Hassan al-Turabi, leader of PNC, on 20 February 2007 in Khartoum; interview with Addam Bashir Rahma, political advisor of Hassan al-Turabi, on 26 February 2007 in Khartoum.

⁶⁵ Hassan al-Turabi, “Religious and Regional Issues” (unpublished paper, Khartoum, 2003), p. 4.

⁶⁶ Turabi, in Hamdi, Mohamed Elhachmi, *The Politicisation of Islam; A Case Study of Tunisia* (Boulder, Colo.: Westview Press, 1998), p. 99.

⁶⁷ Hassan al-Turabi, “Religious and Regional Issues” (unpublished paper, Khartoum, 2003), p. 4.

do not even wear clothes".⁶⁸ Turabi, then, has, in contrast to Sadiq al-Mahdi, a restrictive interpretation (ijtihad) of the sharia concerning the rights of non-Muslims where he excludes adherents of traditional African beliefs from citizenship.

The CPA exempts non-Muslims from Islamic law: "*Sharia is to remain applicable in the North and parts of the constitution are to be rewritten so that sharia does not apply to any non-Muslims throughout the Sudan [...]. Nationally enacted legislation applicable to southern Sudan [...] shall have as its sources of legislation popular consensus, the values and the customs of the people of the Sudan, including their traditions and religious beliefs, having regard to the Sudan's diversity.*".⁶⁹ However, this does not represent something new. In the Islamist constitution non-Muslims are also exempted from the sharia. Non-Muslims have historically been exempted from sharia since the September laws of 1983 when it comes to the letter of the law. For example, during the regimes of both Numayri and the Islamists the punishment for drinking wine was applicable only to Muslims, although wine drinking coupled with offending the sensibility of another person or disturbance of public order was applicable to members of all religions. However, non-Muslims were subjected to the hudud penalties concerning murder and theft according to the Criminal Act of 1991. In the peace agreement and the interim national constitution, however, non-Muslims are exempted from the sharia altogether, including the hudud penalties.⁷⁰

According to the general secretary of the semi-governmental organisation SIRC Abidin, the peace agreement and the interim constitution have secured the protection of minorities. When asked specifically whether non-Muslims since the peace agreement have been subjected to the sharia, he explains: "*Before, sharia applied to Christians in hudud [punishment] issues. But, even then, apostasy, for instance, did not apply to Christians, neither did wine drinking, nor fornication or qasf [bringing false witnesses to fornication]. The only sharia laws which applied to Christians were theft and murder. Murder is murder and actually, the Islamic law is better than the civil law as it is possible to avoid death sentence by providing blood money to the family of the victim. As for theft this was actually a problem for Christians as many Christians are displaced and they live in poor neighbourhoods. They would steal due to their poor condition and they were then convicted. Also, the case of Christian women selling wine was difficult. The selling of wine is not allowed. But now the Christians are not punished for these offences according to sharia.*"⁷¹

2.2.1 Apostasy

Although adherents of traditional African beliefs are regarded as equally non-Muslim as "People of the Book" in the CPA and the interim national constitution, the question of the rights of apostates is not explicitly dealt with.

Article 24 in the Islamist constitution of 1998 might give the impression that it is possible "not to believe" or not to profess belief in a religion as the text expresses the freedom of "conscience". The general understanding of freedom of religion in Western countries, where the freedom of religion or conscience paragraph (Article 18)⁷² in the Declaration of Human Rights indicates freedom of as well as from religion, has no applicability in the Islamist constitution in Sudan. Although Article 18 does not mention the possibility of or a prohibition against converting to another religion or leaving

⁶⁸ Interview with Hassan al-Turabi.

⁶⁹ Interim Constitution of Sudan 2005: Article 5.

⁷⁰ Ahron Layish and Gabriel Warburg, *The Reinstatement of Islamic Law in Sudan under Numayri; An Evaluation of a Legal Experiment in the Light of its Historical Context, Methodology and Repercussions* (Leiden: Brill, 2002).

⁷¹ Interview with al-Tayyib Zain Abidin.

⁷² Article 18 says: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

a religious tradition, the Criminal Act 1991 explicitly prohibits apostasy from Islam and the punishment for this offence is execution.⁷³ In Sudan, converting from Islam is thus forbidden by law. It is important to be aware that this prohibition and its punishment contradict the International Covenant on Civil and Political Rights (ICCPR [1966]), which was ratified by Sudan in 1986 and whose Article 18 explicitly states that “no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or a belief of his choice”.⁷⁴ This contrasts with Turabi’s philosophical interpretation (ijtihad) on the issue of apostasy: “the death sentence on the apostate was not mandatory but conditional on his engaging in a war against the Muslim community”.⁷⁵ He says that “it becomes an obvious religious principle that there should be no compulsion in religion”. According to Turabi, the Prophet’s statement on apostasy is brief and was made in direct connection with the state of war: “Muslims used to have misgivings about killing a former Muslim who joined enemy ranks. The Prophet said to them: you may kill anyone who has changed his faith and broken ranks with the Muslims. This statement was culled out of context and used to override the basic religious principle of freedom of religion and faith. How can a sensible person believe that God does not compel anyone to believe but allows us to force people to do so? [...] This makes me reject totally the conventional view regarding the rule of apostasy”.⁷⁶

On the issue of apostasy, the general secretary of the semi-governmental organisation SIRC Abidin states: “in the constitution [1998 and 2005] there is nothing about apostasy as it states religious freedom, and today apostasy is not an issue. If we raise the issue, a new problem will be created, as theoretically speaking there is a problem [due to the apostasy law in the Criminal Act]. Practically, however, apostasy is not a problem. No one has been punished according to this law. If it were to happen we would work against it”.⁷⁷

According to Abidin, the execution of the politician and scholar Mahmoud Muhammad Taha in 1985 for blasphemy was not a religious act, but a political decision. Abidin explains: “Taha criticised Numayri’s religious laws and Numayri looked for a junior judge to take the case and get him executed. It was not at first about apostasy. Taha refused to appeal, so the court itself decided to appeal. This procedure in itself is rather uncommon. The appeal was brought to the special court created by Numayri for Islamic laws and they changed the charge to apostasy. But, in my view, it was not about apostasy, it was a political issue”.⁷⁸

When asked about atheists and their rights in Sudanese society, Abidin claims that there are no atheists in Sudan. “At least”, he says, “if there are any, they do not declare themselves to be atheists”.⁷⁹ Atheists would be afraid to declare to be atheists as this will create a bad image for them”. The general religious character of the Sudanese people, he believes, will make people shun atheists. “But”, he states, “there are no atheists in Sudan. Even the communists believe in God, as in the last election in Sudan the communist party’s political meetings would start with recitation of the Koran”. He refers to a letter he received from a leading communist in which the works of Ibn Arabi, the famous Medieval Sufi sheikh, are quoted. This stance was confirmed by Nugud, the leader of the SCP: “the Sudan People’s Liberation Movement wants a secular state in the Western sense whereas the communist party wants a secular state in a Sudanese sense. This means that

⁷³ Sudan Department of Justice; Criminal Act Chapter 13: 126.

⁷⁴ International Covenant on Civil and Political Rights (ICCPR): Article 18.

⁷⁵ Turabi, in Sidahmed Abdel Salam, *Politics and Islam in Contemporary Sudan* (New York: St Martin’s Press, 1996), p. 189.

⁷⁶ Turabi, in Hamdi, Mohamed Elhachmi, *The Politicisation of Islam; A Case Study of Tunisia* (Boulder, Colo.: Westview Press, 1998), p. 88.

⁷⁷ Interview with al-Tayyib Zain Abidin

⁷⁸ Ibid.

⁷⁹ Ibid.

Islam cannot be ignored when it comes to, for instance, education and the family law. As such, Islam cannot completely be taken out of the constitution. Sudanese society is an Islamic society".⁸⁰

2.3 Non-Muslims' View of their Rights in Islam

The above discussion shows that there are various perceptions of the rights of non-Muslims among Muslim leaders in Sudan. And more importantly, it shows that the group or term non-Muslim is not clearly defined. This impacts on southerners' perception of Islam as an inclusive religion. Southerners we spoke to ascribed Turabi's perceptions to that of Islam, consequently saying that Islam is an exclusive religion.

This is illustrated in Nihal Bol's statement in the daily newspaper the Citizen: "*Dr. Turabi, the party is over; domestic colonialism is nearing its end in Sudan. If you want to save your soul, stand up and confess your evils [...]*".⁸¹ The General Secretary for the Catholic Secretariat in Khartoum, Peter Loro, regards the present understanding of Islam in Sudan as alien to the "*Sudanese mentality*". He claims that the problem between the two groups are caused by what he calls "*the fundamentalist regime*", which according to him has adopted "*a type of Islam from outside Sudan and uses Islam to indoctrinate people that non-Muslims are kafirs [non-believers]*".⁸² The notion that Islamism is an understanding of Islam alien to the Sudanese mentality was also referred to by other Christian leaders and even Muslim representatives with whom we discussed the question. Many referred to the incident in December 2005 when police attacked the All Saints Cathedral in Khartoum: "*The assault might be blamed on the unprofessionalism of the police, but it is at least an indication of the religious fanaticism, if not outright hostility towards southerners*".

At a meeting, members of the Sudan organisation for non-violence and development (SONAD), an inter-religious dialogue group, presented their view of the situation. In their opinion the political elites in power and in opposition alike misuse religion and mobilise for political gains. The problem of Sudan is in their opinion "*not a religious problem, but a political one*".⁸³ When you mix religion in politics you end up with a situation of non-acceptance of alternative views, even within the same religion, the group stated. Their views indicate a lack of legitimacy on the part of the political elite at the grass roots. The political elite, with their discourse on Islam's role in political affairs, is quite oblivious to whom they are representing. The participants in this meeting – Muslim and Christians, northerners and southerners – were quite clear in their belief that the elites were merely representing themselves. "*Turabi is an evil man*", a member of SONAD said, because he continues to misuse religion.⁸⁴ This confirms Appleby's concern about religion and peacebuilding that too many religious leaders continue to pursue narrow sectarian or ethnic agendas, thinking only of the needs and rights of their own people (see chapter 1, Introduction: Religion and Peacebuilding).⁸⁵ However, we also met a southern Christian woman who said about Turabi that "*I like Turabi as a thinker, but not as a politician*", thereby recognising the difference between theory and practice when it comes to Islam and politics in Sudan.⁸⁶

⁸⁰ Interview with Mohammed Ibrahim Nugud, the leader of the SCP, on 5 March 2007 in Khartoum.

⁸¹ Nihal Bol in the Citizen on 12 February 2007 Vol 2 No 52.

⁸² Interview with Peter Loro, General Secretary for the Catholic Secretariat in Khartoum, on 13 February 2007 in Khartoum.

⁸³ Conversation with Muslim and Christian participants at a meeting of the Sudan Organisation for Non-Violence and Development, SONAD, lead by Ilham Khayri on 16 February 2007 in Khartoum [the authors' translation from Arabic].

⁸⁴ Ibid. [the authors' translation from Arabic].

⁸⁵ S. Appleby, "Retrieving the Missing Dimension of Statecraft: Religious Faith in the Service of Peacebuilding", in D. Johnston and S. Sampson, *Religion: The Missing Dimension of Statecraft* (New York: Oxford University Press, 2003).

⁸⁶ Interview with an anonymous southern woman (Shilluk) on 17 February 2007 in Khartoum.

There are Christian members of the northern political parties, including the NCP. Helen Louise Olear, a MP for NCP representing Eastern Equatorial State, said that *“there is no segregation in the party. They do not force me to change my religion. There is no problem”*. She states further that there are common values between Islam and Christianity like *“Karama [generosity] and respect for family values”*.⁸⁷

During our fieldwork the government established a Commission for the Protection of Non-Muslims in the National Capital. According to Abidin, who is also a member of the commission, it has been established in order to ensure that the rights of non-Muslims are protected and respected in accordance with the CPA and the national interim constitution, and particularly that non-Muslims are in fact exempted from the sharia law in Khartoum.⁸⁸ Alfred Taban, the editor of the southern newspaper Khartoum Monitor, believes that although it is true in practice that non-Muslims are no longer subjected to the hudud law, theoretically it is still a problem. *“The laws abide”*, he claims, *“and the only reason for the Sudanese authorities to delay the hudud punishments was the international reactions against them. The punishments might, though, be reapplied at any moment”*.

Taban initially welcomed the Commission, but after the names of the members of the Commission were announced he criticised the composition of the committee. He sees the Commission as *“a great disservice to non-Muslims”* and he calls for its dissolution.⁸⁹ His main argument is that there are more Muslims than non-Muslims on the committee – 15 Muslims and 13 non-Muslims. He discusses the Muslim members and claims that they are *“predominantly fundamentalists who would like to see Sudan become an Islamic state. Thus, he says, the so-called rights of non-Muslims which the Commission is supposed to protect are actually what the sharia law [already] permits”*.⁹⁰ Taban further sees the appointment of the commission as *“a political ploy meant to reassure non-Muslims that they, in theory are most welcome in their own capital city. In practice, however, the non-Muslims, who by definition do not believe in Islamic laws, must abide by the Islamic sharia law”*.⁹¹ Taban reinforced his statement that many of the Muslim members are staunch Islamists. *“What is the point”*, he exclaimed, *“the committee is just a show-off”*.⁹² Again, non-Muslims’ view of their rights in Islam is that of exclusion. Because of an institutionalised civil war in which Islam has been a tool of oppression, they fear a state which mixes Islam and politics. Consequently, they do not believe that the rights given to them in the CPA and the national interim constitution will be de facto granted to them. According to an anonymous Christian southern woman there is *“not much difference after the CPA, still discrimination”*.⁹³ According to Helen Olear, on the other hand, *“the CPA takes care of everything, also the political rights of religious minorities and women”*.⁹⁴

Most of the grievances uttered by the Christian church leaders we interviewed in Khartoum were related to alcohol prohibition, the building of churches, and Christianity in the media and education.⁹⁵ There are mutual accusations from Christian and Muslim leaders on what rights they are actually granted. This indicates tension between the two groups at the elite level.

⁸⁷ Interview with Helen Louise Olear, MP for the National Congress Party (NCP) for the southern Eastern Equatoria state on 14 February 2007 in Khartoum.

⁸⁸ Interview with al-Tayyib Zain Abidin

⁸⁹ The Khartoum Monitor on 17 February 2007, Vol 6 No. 1143, p. 2.

⁹⁰ Interview with Alfred Taban, the editor of the Khartoum Monitor, on 24 February 2007 in Khartoum.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Interview with an anonymous southern woman (Shilluk).

⁹⁴ Interview with Helen Louise Olear.

⁹⁵ Friday is a public holiday in Khartoum. Some Christians might have the day off on Sundays, but civil servants, teachers and students are obliged to work and study on Sundays. Some of the Christian informants complained that it is difficult for students (and pupils) to get time off to attend the sermon. Additionally, they claimed that exams would often fall on Sundays, making it impossible for students to go to church. This is, however, not specific for Sudan, as in most of the

Alcohol Prohibition

A Christian southern Member of Parliament for the NCP, Helen Louise Olear, says that Christians are allowed to drink alcohol at private gatherings: *“before the gathering the Christians have to inform the police and the drinking of alcohol will be accepted as it is the trading of alcohol which is forbidden”*.⁹⁶ Christians in opposition claim that although the alcohol prohibition concerns brewing, trade and transport only, the government still does not accept the use of alcohol for private purposes. The church leaders even state that they are not allowed to use wine for Holy Communion. So in order to perform Holy Communion, church leaders are forced to get hold of the wine illegally, according to the leader of the Sudan Council of Churches.⁹⁷ As such, it seems as though Christians have to break the law in order to fulfil their ritual obligations towards their congregation. This was also a concern stated by various church leaders at the Muslim-Christian dialogue workshop in Khartoum in November 2005.

Building of Churches

One of the primary grievances uttered by Christians in Khartoum concerns permits to build new churches. In this area there have been improvements since the CPA. Due to the effort of SIRC, the Guidance and Endowment Ministry has decided to raise three new churches in Khartoum.⁹⁸ Abidin is critical of the fact that Christians are not given free lots of land to build their churches, whereas Muslims get land for mosques. According to him, the government’s rationale for restricting the building of new churches in Khartoum is the “hope” that the southern Christian population, many whom are internally displaced, will in time return to southern Sudan: *“The authorities therefore see no need to offer possibilities for authorised churches in Khartoum as most Christians will return to the South”*. In contrast to many Christians we spoke to,⁹⁹ he claims that the government does not impede the establishment of unauthorised prayer locals. *“However”, he says, “many of the unauthorised prayer locals are situated in the areas of the displaced camps and these camps are often in unplanned areas. Khartoum is expanding and whenever the governmental urban planning office arrives at such an unplanned place in order to start building new houses, they will destroy all unauthorised buildings in the area”*.

But according to Alfred Taban, *“there are many “unplanned” houses in Khartoum, but only the southerners’ neighbourhoods are demolished”*. So in his opinion, there is no doubt that the southerners face discrimination. There is *“no change after the peace agreement”*. He says further that *“Christians are suffering in general”*.¹⁰⁰

Christianity in the Media and in Education

In our discussion with Christians, they grieved about the lack of media access for Christians. Sister Margareth, a Sudanese Catholic nun with Syrian ancestors, is the vice chairperson of Christians and Muslims for Peace (CAMP), an organisation which came into being through a governmental intervention. She told us that on the national radio and television Christian issues would be aired merely one hour a week. *“On Sundays”, she said, “there is a Christian sermon on the radio,*

Middle Eastern countries Friday would be the public holiday. Similarly in Norway, Muslims do not get Fridays off and in some workplaces there are even obstacles to Muslims taking a couple of hours off on Fridays to attend the Friday prayer.

⁹⁶ Interview with Helen Louise Olear.

⁹⁷ Interview with Reverend Marc Akec, leader of the Sudan Council of Churches, on 26 February 2007 in Khartoum. This point was also confirmed by other church leaders, although they were all quite reluctant to discuss the matter of how they get hold of alcohol for ritual purposes.

⁹⁸ Interview with al-Tayyib Zain Abidin.

⁹⁹ Almost all church leaders we spoke to confirmed the difficulties in establishing new churches and prayer locals.

¹⁰⁰ Interview with Alfred Taban.

whereas the Islamic call for prayer (adhan) is aired both on radio and television five times daily". Moreover, recitation of the Koran and religious Islamic programmes are very common in the media, she claimed. One of the Muslim members of the peace group SONAD states that this discrimination in media representation started as far back as 1983. In his opinion, it creates a feeling of superiority for the Muslims and conversely a feeling of oppression for the Christians.

Sister Margareth further identifies the national Islamic educational curriculum as a problem for non-Muslims, because it is compulsory for all pupils in order to pass a Sudanese exam: *"the government wants to force upon us [the Christians] an Islamic education. In the curriculum everything deals with Islam: Islamic history, Islamic geography, and even Islamic maths. They want our children to learn the Koran by heart. What do the Muslims want? Do they give out their holy texts to dogs? We the Christians do not care about the Koran so we do not venerate this text"*.¹⁰¹ She further states that *"I never teach Muslim children in our school about Christianity. Do we want Sudan to be a Communist society? If we teach the children various religious traditions they will end up not believing in anything and become communists"*.¹⁰²

In our discussion with Abdul Rahman Ali, head of the shura council of the NCP, he acknowledges the fact that non-Muslims do not have access to the media and clearly sympathises with their cause. However, with regard to education he claims that the Christian schools do teach Christianity to Muslim children. He states: *"There are accusations from Christians that Islam is forced upon them in the educational curriculum. It is, however, the same in Christian schools. There they would teach Christianity. I have several friends who have had children in Christian schools and their children got Christian religious instruction"*.¹⁰³

¹⁰¹ Interview with Sister Margareth, vice chairman of the non-governmental organisation Christians and Muslims for Peace (CAMP), active in the main Catholic Church in Khartoum, on 26 February 2007 in Khartoum.

¹⁰² Ibid.

¹⁰³ Interview with Abd al-Rahman Ali, head of the shura council of the NCP, a member of the Islamic Jurisprudence Council and working at Khartoum International Academy, on 28 February 2007 in Khartoum..

3. The Rights of Women

During the peace process in Sudan women were merely “*guests at the table. The role permitted to women during negotiations was based on a perception of them as passive victims of war, not active players in politics and society*”, says Anne Itto, one of few female ministers in the government. She calls the CPA signed on 9 January 2005 “*a gender-blind agreement*”.¹⁰⁴ There is an implicit notion that references to human rights and justice encompass all citizens.

Because the CPA is written in terms of an abstract gender-blind citizen, it appears equitable. But the Sudanese conception of citizenship differs from the Western understanding of it. In Sudan and the Middle East generally, there is a sharp distinction between a person’s “public” rights regulating, for example, political rights and the “private” rights regulating civil rights such as marriage, divorce, inheritance, maintenance and financial custody of children, and alimony.¹⁰⁵

In the name of religious freedom, the CPA and the national interim constitution have left the “private” civil rights of women to the country’s religious communities – Islamic, Christian, and traditional African beliefs. What are the consequences of this “religious freedom” for the civil rights of Sudanese women? Civil rights are perhaps most tangible and important in the daily lives of ordinary Sudanese women. Yet, there are no official recommendations or guidelines as to how the religious and tribal laws should be applied and interpreted. It is up to the religious communities themselves to form and apply the family laws regulating women’s civil rights.

This creates plural legalities for Sudanese women since they are granted different civil rights depending on which religious community they belong to. Our findings suggest that the family laws as applied today discriminate against women. There are segments within the religious and tribal laws in today’s Sudan which disadvantage women and prevent them from participating in society on an equal footing with men.

Despite the fact that most Sudanese elite women deem their current “rights status” as discriminatory, they do not demand a secular law on women’s civil rights. They are aware of “*constraints placed upon women because of their gender and attempts to remove these constraints and to evolve a more equitable gender system involving new roles of women and new relations between men and women*” through “change from within”. They promote changing and expanding their rights from within the religious and tribal legal regime. However, they actively use international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

3.1 The National Interim Constitution: Steps in the Right Direction?

In contrast to the CPA, the national interim constitution is “gender sensitive”. The bill of rights in the constitution (articles 15 and 32) explicitly ensures women and men equal rights. Sudanese women view the interim national constitution as a step in the right direction. Now, they feel that they have a “voice” as citizens.

¹⁰⁴ Anne Itto, in *Peace by piece: addressing Sudan's conflicts*. Found at <http://www.c-r.org/our-work/accord/sudan/index.php>

¹⁰⁵ “Gendered Citizenship in Sudan: Competing Perceptions of Women’s Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum”, CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen. [The article is submitted to the Journal of Middle East Women’s Studies for publication].

Article 15 on family, women and marriage, maintains that the state should “*emancipate women from injustice and promote gender equality*”. Article 32 on equal rights for men and women advocates that “*the equal rights of men and women to the enjoyment of all civil and political rights and all social, cultural and economic rights, including the right of equal pay for equal work, shall be ensured*”. As such, it represents an improvement in terms of women’s rights in Sudan. In contrast to former Sudanese constitutions, which according to Sondra Hale historically have “*carved an image of Sudanese women as entitled to rights but vulnerable and in need of protection*”, the interim national constitution addresses women as citizens.¹⁰⁶

The nationality issue represents a milestone and a new right for Sudanese women. In the first Nationality Law of 1957, nationality was to be granted to an individual based on the nationality of the father. Only a child with an unknown father could claim the nationality of the mother. The 1993 Nationality Act made few changes. Again, the only way a woman could pass on her nationality to her child is when the child is born out of wedlock. If a woman was married to a foreign national, she could not pass on her nationality to her child – even if her spouse consented. The child remained a foreigner until adulthood. A husband could pass on his nationality to his wife, but not the reverse. For the first time in Sudan’s history, the CPA and the national interim constitution ensures that “every person born to a Sudanese mother or father shall have a non-alienable right to enjoy Sudanese nationality and citizenship”.

However, the government “*gives with one hand and takes with the other hand*”, says Balghis al-Badri, the head of the Institute of Women, Gender and Development Studies at Afhad University for Women.¹⁰⁷ In reality, there is no equality before the law either between men and women or between Sudanese women across religious and tribal affiliation. Anne Itto says that there is an internal contradiction in the national interim constitution: “*There are articles [...] that recognise customs, traditions and religion as sources of moral strength for the Sudanese people [...] Yet some customs and traditions have contributed to the marginalisation of women*”.¹⁰⁸ So, this discriminatory system of legal pluralism contradicts the bill of rights in both the interim national constitution (articles 15 and 32) and the constitution of southern Sudan (article 20).¹⁰⁹

¹⁰⁶ Hale, Sondra. “The Islamic State and Gendered Citizenship in Sudan”, in S. Joseph (ed) *Gender and Citizenship in the Middle East* (Syracuse University Press, 2000).

¹⁰⁷ Interview with Balghis al-Badri, member of the UP and the head of the Institute of Women, Gender and Development Studies at Afhad University for Women, on 18 November 2007 in Omdurman (Tønnessen).

¹⁰⁸ Anne Itto, in *Peace by piece: addressing Sudan's conflicts*. Found at <http://www.c-r.org/our-work/accord/sudan/index.php>

¹⁰⁹ “The Constitution of Southern Sudan”, (2005); “The Sudan Interim National Constitution”, (2005).

THE NATIONAL CONSTITUTION

ARTICLE 1 Nature of the State

The Republic of the Sudan is a sovereign, democratic, decentralized, multi-cultural, multi racial, multi-ethnic, multi-religious, and multi-lingual State; committed to the respect and promotion of human dignity and founded on justice, equality and the advancement of human rights and freedoms. It is an all embracing homeland wherein races and cultures coalesce and religions co-exist in harmony;

ARTICLE 6 Religious Rights

The State shall respect the following religious rights:

- (a) To worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes,
- (b) To establish and maintain appropriate charitable or humanitarian institutions,
- (c) To make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief,
- (d) To write, issue and disseminate religious publications,
- (e) To teach religion or belief in places suitable for these purposes,
- (f) To solicit and receive voluntary financial and other contributions from individuals and private and public institutions,
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief,
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of religious beliefs,
- (i) To communicate with individuals and communities in matters of religion and belief at national and international levels.

ARTICLE 7 Nationality and Citizenship

- (1) Citizenship shall be the basis for equal rights and duties for all Sudanese;
- (2) Every person born to a Sudanese mother or father shall have a non-alienable right to enjoy Sudanese nationality and citizenship;
- (3) The law shall regulate citizenship and naturalization; no naturalized Sudanese shall be deprived of his /her acquired citizenship except in accordance with the law;
- (4) A Sudanese national may acquire a nationality of another country as shall be regulated by law.

ARTICLE 15 Family, Women and Marriage

- (1) The family is the natural and fundamental group unit of society and is entitled to the protection of law; the right of men and women of marriageable age to marry and to found a family shall be recognized, according to their respective family laws, and no marriage shall be entered into without the free and full consent of the intending spouses;
- (2) The State shall emancipate women from injustice, promote gender equality and encourage the role of women in family and public life.

ARTICLE 32 Equal Rights of Men and Women

The equal rights of men and women to the enjoyment of all civil and political rights and all social, cultural and economic rights, including the right of equal pay for equal work, shall be ensured.

Another important improvement emphasised by Sudanese women is the fact that the dress code has been far less strict since the peace agreement than before.¹¹⁰ In 1992 an effort was made to legislate codes of dress and conduct for women, but the Public Order Code 1992 failed to pass the state legislature. However, ministerial regulations were issued providing that female employees should be *properly* dressed. Furthermore, the Criminal Act 1991 includes a provision in Section 152 (1) stipulating that “*whoever commits an indecent act or an act that breaches public morality or wears clothes that are indecent or would breach public morality which causes annoyance to public feelings is liable to forty lashes or fine or both punishments*”.¹¹¹ In October 1996, a Public Order Code was adopted for the state of Khartoum. Its provisions include the forced separation of men and women in public places and on public transportation, as well as in private gatherings. Muslim

¹¹⁰ For example, interview with Rose L. Paulino, southern activist in the Network for Southern Organisation for Peace and Development, on 28 February 2007 in Khartoum.

¹¹¹ Al-qanun al-jana'i 1991 (Criminal Act 1991), p. 58 [the authors' translation from Arabic].

women we interviewed claimed that since the peace agreement, the authorities have been less prone to demand the strict Islamic dress code. A Muslim woman working in the government stated that a couple of years ago she would always put a tight headscarf under her thawb (the long material Sudanese Muslim women wrap around their bodies and loosely over the head). In the last year she has, however, often taken off her headscarf; instead, her head is loosely covered by part of her thawb only.¹¹² Nonetheless, there are still reports about incidents at the Afhad University for Women, where the police have harassed students who have not dressed “properly”.¹¹³ According to Mariam al-Mahdi, “*in Sudan, you judge people by looks. She says women’s perception of religion varies according to age; older women underline relations between people whereas younger people underline dress code. This has happened because religion has been politicised in Sudan*”. So now a situation has been created where “*each man feels responsible for each woman to see to that she behaves well*”.¹¹⁴ Although there has been an improvement in this area, it should be noted that the law itself still has legal force in today’s Sudan.

3.2 The State, Religion and Legal Pluralism

Legal pluralism in the Middle East and Northern Africa reflects the existence of multiple sources of legislative and judicial authority that regulate and implement family laws applied to citizens according to their religious affiliation. A person’s civil status (ahwal madaniyya) denotes an individual’s rights and obligations in the public sphere that are regulated within civil law (qawanin al-ahwal al-madaniyya); a person’s relationship within the family or the private sphere is regulated by laws that govern his or her personal status (ahwal shakhsiyya). This contrasts with classic Western legal thought in which there is no conceptual separation between public and private rights. The standardisation of the legal domain in the Middle East and Northern Africa has therefore historically been divided between a decentralised peripheral judicial system which is responsible for family law and a centralised state judicial system which manages all other legal areas. The state has abdicated from forming and applying family laws and thus there has been no state authority over the personal affairs of citizens.¹¹⁵ This practice might be traced back to the millet system established under the Ottoman Empire. The millet system has a long history in the Middle East, and is closely linked to Islamic rules on the treatment of non-Muslim minorities (dhimmi). The Ottoman term specifically refers to the separate legal courts pertaining to family law through which minorities were allowed to rule themselves. The legal pluralities in Sudan are naturally shaped by historical, social and political factors both in terms of substance and application, including colonial legacy, a historically Arab- and Muslim-dominated central government and the long-lasting civil wars (1955-1972 and 1983-2005).

In Sudan, religious courts have existed in parallel with civil courts since independence in 1956 (and before).¹¹⁶ The legal practice was basically ignored during the Anglo-Egyptian condominium, as it is by peacebuilders today. After the British gained control of Sudan in 1899, two sets of courts functioned: family law was dealt with in religious courts whereas other aspects were handled by what the British chose to call civil law.¹¹⁷ At that time the sharia courts were subordinate to the civil courts, but after independence an Islamisation of the legal system was initiated and in 1967 the sharia Courts Act was passed. In 1972 the Judicial Authority Act was passed, effectively merging

¹¹² Interview with a governmental official who prefers to be anonymous.

¹¹³ Conversation with an Afhad student on 1 March 2007 in Omdurman.

¹¹⁴ Interview with Mariam al-Mahdi on 18 February 2007 in Omdurman.

¹¹⁵ Liv Tønnessen “Gendered Citizenship in Sudan: Competing Perceptions of Women’s Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum”, CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen. [The article is submitted to the Journal of Middle East Women’s Studies for publication].

¹¹⁶ Carolyn Fluehr-Lobban, *Islamic Law and Society in the Sudan* (London: Frank Cass, 1987).

¹¹⁷ Carolyn Fluehr-Lobban, *Islamic Law and Society in the Sudan* (London: Frank Cass, 1987).

the civil and sharia courts.¹¹⁸ The history of the sharia in the Sudan is inseparable from the successive governments which have ruled the country. In Islamic family law, judicial circulars (manshurat) issued by Qadi al-Quda (first issued in 1916) had served to instruct the application of the sharia since before independence in 1956. The Maliki school (madhab) prevailed until Sudan was consolidated into the Ottoman empire, during which time the Hanafi school became dominant school. Under the authoritarian rule of Numayri the sharia was implemented in September 1983 as the sole source of all law. This involved the full application of the hudud (the canonical penalties of the sharia). However, it was not until the Islamist coup d'état in 1989 and the subsequent Muslim Personal Act passed in 1991 that Islamic family law was in fact codified and that Muslim women's civil rights were regarded as the responsibility of the Islamic state. For non-Muslims, there only exists a law from 1926 regulating marriage, whereas the other areas of family law are not codified. This might partly be explained by the above-mentioned millet system during the Ottoman Empire. More importantly for Sudan was the prolonged civil war. The policies of successive governments have been a pursuit of Islamisation and Arabisation. By codifying or even recognising traditional law in the peripheries, the centre would simultaneously give up its project of creating an Islamic nation.

Family matters in the greater Khartoum area today are dealt with by three types of religious court: the sharia courts, the Christian/civil courts and the traditional courts. The judges in these courts are registered and paid by the state. Many of the traditional courts are, however, unofficial.

3.3 Sharia

With the coup d'état by the Islamists in 1989, Islam became the sole voice in the state. For the first time in Sudan's history, Islamic family law was codified in 1991. The Islamic family law is perhaps the most applied and tangible element of the sharia in Sudan. This has made women's civil rights the political battleground between different groups within the Islamic community and the Islamic state. Virtually all opposition politicians deem the codified sharia to be discriminatory against women. They thereby try to "*react against a state that attempted to usurp some of their rights in law and constitution in the name of Islam*". The concept "oppositional consciousness" might be used to describe how they are able to "*read the current situation of power*" and to choose and adapt the ideological form best suited to push against its configurations.¹¹⁹ As such, for devising strategies for opposing social and political injustice non-violently religious actors are able to draw upon and redefine the religious tradition's ethical warrants for resistance against what they perceive as unjust conditions (see chapter 1, Religion and Peacebuilding).

The relationship between the Islamic state and the Muslim majority is complex and politically inflamed. But because of the codification of Islamic family law in 1991, Muslim women have a state with which to negotiate new rights. However, the Islamic state does not function as a gatekeeper of the rights of women, but merely defends its own position. Women's rights are a battleground, reflecting the different positions of the power holders at any given time.

Nonetheless, there seems to be room for reinterpretations of Islamic family law itself that expand the rights of women and simultaneously show that the Islamically defined family law is not in and by itself discriminatory against women. There is thus a plurality of perceptions of women's civil rights within Islamic family law in Sudan. However, there are few female interpreters of Islam in Sudan¹²⁰ and so far reinterpreting women's civil rights within the framework of Islam has been

¹¹⁸ Sondra Hale, *Gender Politics in Sudan: Islamism, Socialism and the State* (Boulder, Colo.: Westview Press, 1996).

¹¹⁹ Balghis Al-Badri, "Moslem Feminism in Sudan: A Critical Review," in *Islamic feminism* (Barcelona: 2006), p. 10.

¹²⁰ Aisha Ghabshawi and Souad al-Fatih are mujtahids (female interpreters of Islam). Both belong to the NCP and do not challenge the regime's stance on women's rights.

limited to men who, according to Sondra Hale (2001), lack vision and coherency for a gender egalitarian Sudan.

3.3.1 The Personal Status Law for Muslims of 1991

The Personal Status Law for Muslims of 1991 (qanun al-ahwal al-shakhsiyya lil-muslimin lil-sana 1991) represents the ruling NCP's interpretation of women's civil rights in the Islamic family law.

The Law is built on the notion of the core family as the basic unit. The guiding principle in family disputes is reconciliation, particularly in families with children. The Supreme Court judge and member of the Islamic jurisprudence council Rabab Abu Ghazayza confirms: "*we do everything to keep the family together*".¹²¹ There are two important elements in the law which explain the inequality before the law between men and women. The first is patriarchy, in terms of which the man is the head of the family,¹²² and the second is patrilineality, under which the children belong to the father in name and in responsibility.¹²³

Marriage

The age of consent for marriage is puberty. According to the law, both parties have to consent to marriage. However, the woman needs a guardian (wali) to validate the marriage. The bridegroom is obliged to give the bride a dowry. The Law explicitly states that the dowry is considered the property of the wife.¹²⁴

The man is the breadwinner of the family.¹²⁵ A man can deny his wife the right to work outside the home, even in cases where he himself fails in his financial obligation.¹²⁶

A man is also allowed to marry up to four wives, although he has to treat all his wives justly.¹²⁷ Moreover, a man can marry four wives without providing evidence that he is financially capable of supporting more than one wife.¹²⁸

Divorce

A husband can divorce (talaq) his wife outside the court for no reason whatsoever. The divorce will come into force when he utters the divorce sentence "I divorce you". The husband has the right to take the wife back if he revokes the divorce sentence within the idda. Idda is a waiting period of three months after the divorce.

The wife can only obtain a divorce in court (tatliq: a divorce granted by a judge) on certain conditions stipulated by the law. They are: (1) if the husband fails to fulfil his financial obligation to support her; (2) if her husband has more than one wife and she can prove that her husband does not treat all his wives justly; (3) if the husband has a defect she did not know about before marriage; (4)

¹²¹ Interview with Rabab Abu Ghazayza, Supreme Court judge and member of the Islamic jurisprudence council, on 22 February 2007 in Khartoum [the authors' translation from Arabic].

¹²² Article 52 of the Personal Status Law for Muslims (1991) states that the wife is obliged to obey her husband

¹²³ It is interesting to note in the Personal Status Law how the husband's obligations towards the wife are described in practical terms: he is the breadwinner and he should allow his wife to visit her relatives. It is also specifically mentioned that neither should the husband interfere with the wife's personal money nor should he harm her. As for the wife's obligations towards her husband, the caring aspect is emphasised. The wife should care for her husband, obey him, and preserve his secrets and his money. See articles 51 and 52 of the Personal Status Law for Muslims (1991).

¹²⁴ Articles 27-28 of the Personal Status Law for Muslims (1991).

¹²⁵ Article 51 of the Personal Status Law for Muslims (1991).

¹²⁶ According to a female judge, who prefers to be anonymous, a husband can deny his wife the right to work or to go out of the house based on Articles 91 to Article 95 of the Personal Status Law for Muslims (1991).

¹²⁷ Article 51(d) of the Personal Status Law for Muslims (1991).

¹²⁸ Discussions with judges, males and females at the sharia court in Khartoum [the authors' translation from Arabic].

if the husband suffers from an incurable mental illness; (5) if the husband is impotent; (6) if he behaves cruelly; (7) if he is abroad for more than one year; and (8) if the husband is sentenced to prison for more than two years.

The wife can also obtain a divorce if a judge declares her to be disobedient (*nushuz*) to her husband.¹²⁹

Alimony

The wife is entitled to financial maintenance up to six months after the divorce. The husband is the financial provider for the children even when they are under the custody of the mother. The father is financially responsible for his daughters until marriage and for his sons until they provide for themselves.

Custody

The mother has custody (*hadana*) of her daughters until they are 9 years old and of her sons until they are 7 years old. After this, the principle “the best interests of the child” (*maslaha al-tifl*) applies in some cases. But if the woman remarries, the father will automatically get custody of the children.

Inheritance

The inheritance laws are in accordance with the classical sharia. A woman inherits half of the property of her brother(s). The reasoning behind the inheritance law is that the husband is the breadwinner of the family. So a woman’s inheritance is then considered her own property, while a man’s inheritance will be used to fulfil his financial obligations within the family.

Judge Abu Gazayza¹³⁰ sees two major improvements for Muslim women after the codification of the Islamic Family law compared to previous sharia rulings in Sudan. Firstly, a wife can obtain a divorce if the husband has a defect (*ayb*) if she did not know about it before marriage. Secondly, before 1991 the principle “house of obedience” (*bayt al-ta’a*) prevailed. This principle meant that if the wife left the house of her husband and he wanted her back, she would have to return against her will. In fact, the police would bring her back by force if she did not come voluntarily. “*Today*”, Abu Ghazayza says, “*the principle of obedience is still in the law, but the wife does not have to go back if she does not want to*”. In other words, the police do not compel the wife to return to her husband’s house by force. The codified law shows that Muslim women and men do not have equal citizenship rights in Sudan. The Islamic family law does not provide equality before the law between Muslim men and women. This does not mean, however, that the Islamic family law is in and by itself discriminatory against women. The opposition demands a total reform of the current codified Islamic family law through reinterpretation (*ijtihad*) of Islam. When the sharia is interpreted in a liberal manner, women have rights.

3.3.2 Contemporary Views on the Islamic Family Law

In general, our impression is that most opposition politicians and academicians want to keep the plural legal system in respect of Islamic family law, but they object to the regime’s interpretation of the law. Even Nugud, the leader of the SCP, states that “*Islam cannot be ignored when it comes to the family law*” and simultaneously he says that he wants to “*modernise the sharia*”.¹³¹ There is a general perception that “*sharia is good for women*”.¹³² Aziza Hassanein, an expert on sharia law, poses the rhetorical question “*why take the bad interpretation when there is a good one?*”¹³³

¹²⁹ Articles 151-203 of the Personal Status Law for Muslims (1991).

¹³⁰ Interview with Rabab Abu Ghazayza [the authors’ translation from Arabic].

¹³¹ Interview with Mohammed Ibrahim Nugud.

¹³² Interview with Aziza Hassanein, a lawyer and member of the Women Initiative Group, on 5 March 2007 in Khartoum.

¹³³ *Ibid.*

Equally, Sonia Malik from Afhad University for Women does not find a problem with the sharia as such, but with the fact that *“they [men] take the hardest interpretations and apply it”*. Sadiq al-Mahdi, the leader of the UP, describes the codified Personal Status Law for Muslims as *“backward and unacceptable. It treats women as second class citizens and it is based on the old concept of exclusive male control”*. He calls for reform of the family law like in Morocco.¹³⁴

In today’s Sudan all the northern-based political parties advocate their interpretation of the sharia, more specifically Islamic family law. So what the sharia says concerning women’s rights depends on who interprets the sharia. Islam in Sudan is thus very much multivocal. There exist multiple and competing visions of Islam in Sudan.

Ali al-Sayed, a Member of Parliament for the DUP and a sharia judge, interprets the sharia in a way that enhances women’s rights when compared to the codified law. For example, he stated that in his opinion *“a woman should have an equal right to divorce. She does not need a reason to divorce. Both the man and the woman need to go to court to get a divorce”*. He further believes that when it comes to custody, the man should not automatically get custody after the boy is 7 years old and the girl is 9 years old as the present law stipulates, but *“the person best capable of taking care of the children should get custody”*. Moreover, he claims that the DUP *“is against polygamy, because this is not sharia”*. He goes on to say that in contrast to the current law, he believes that a woman should be considered equal to a man as a witness in court. Sudan is in fact one of the first and few countries to have female judges in sharia courts.¹³⁵ He asked us: *“isn’t it ironic that a woman can be a judge in Sudan, but she cannot be a witness by herself”*.¹³⁶ Although the current codified law does not guarantee Muslim women equal rights with men, al-Sayid illustrates that religiously defined laws are not discriminatory against women in and by themselves.¹³⁷

Generally, the Islamists in power from the NCP and in opposition from the PNC seem to accept the codified sharia family law.¹³⁸ However, Addam Bashir Rahma from the PNC told us in an interview that *“[We have to] revise the family law; the interpretation is loose and set by men”*. As the political advisor to Hassan al-Turabi, this critique is somewhat of a paradox in that the Personal Status Law for Muslims (1991) was engineered during Turabi’s period in office (1989-1999). The female followers of Turabi also voiced a critique of the law concerning the absolute male right to children after divorce.¹³⁹

¹³⁴ Interview with Sadiq al-Mahdi. In Morocco a new family law was introduced in 2004. Among the reforms are: “Husband and wife share joint responsibility for the family; The wife is no longer legally obliged to obey her husband; The minimum age of marriage is 18 for both men and women; Women of 18 and over are free to marry without the permission of a male family member; The right to divorce is a prerogative of both men and women,” “Morocco’s new family law: the main reforms”. Found at: <http://mondediplo.com/2004/04/02morocco>

¹³⁵ We interviewed Badria Sulayman Abbas, the chairperson of the National Legislation and Justice Committee, who campaigned for female judges already under Numayri. She regards herself as a mujtahid (an Islamic scholar who makes ijtihads). According to Abbas, she was the one who convinced the Islamists that women can be muftis (Islamic scholars issuing fatwas) according to the Islamic texts. *“I wrote a paper”, she said, “where I showed that women used to make fatwas in Islamic history, and from being a mufti to becoming a judge (qadi) is not very far.”* At the present time there are approximately 70 female judges in Sudan. Interview with Badria Sulayman Abbas, the chairperson of the National Legislation and Justice Committee on 21 February 2007 in Khartoum.

¹³⁶ Interview with Ali al-Sayid, a Member of Parliament for the DUP and a sharia judge, on 25 February 2007 in Khartoum [the authors’ translation from Arabic].

¹³⁷ Liv Tønnessen “Gendered Citizenship in Sudan: Competing Perceptions of Women’s Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum”, CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen. [The article is submitted to the Journal of Middle East Women’s Studies for publication].

¹³⁸ Discussions with women activists in the International Muslim Women Union (IMWU) at various occasions in February 2007 in Khartoum, Sudan [the authors’ translation from Arabic].

¹³⁹ Their criticism was vague, indicating a lack of profound knowledge or experience of the Personal Status Law for Muslims (1991). Discussion with a group of female followers of Turabi on 27 February in Khartoum [the authors’ translation from Arabic].

In the law, there is little indication of Turabi's "progressive" views on women's issues, despite the fact that he had the option to implement these reforms when he was in power between 1989 and 1999. Turabi is known to be ahead of the Islamist discourse on women's issues. In 1973, Turabi wrote a booklet in which he discussed the role of women in Muslim society. It is interesting to note that other Islamic scholars at that time declared him an apostate because of his views on women.¹⁴⁰ In the booklet, Turabi recommends granting women full equality with men with regard to rights, including the right to be admitted to any public position, including the judiciary. During the time of the Prophet, women took an active role in public life, occasionally as warriors in battle but more frequently by participation in political affairs, Turabi maintains. Women should therefore be admitted to the army to fulfil administrative and even combat functions. Turabi argues that "*a believer will not be treated unfairly merely for his gender. God treats all human beings on an equal basis*". This implies that women and men have the same obligations and rights according to the sharia and they are counterparts as "*the underlying presumption in the sharia is that gender is immaterial*".¹⁴¹ He thus demonstrates that the lack of women's fundamental rights throughout the Muslim world should not necessarily be ascribed to Islam, but instead it depends on who interprets the sharia and how this interpretation in turn is used. According to Turabi, many juridical rules have been adopted to qualify the sharia to suit cherished customs and traditions. Another tricky approach is to read liberally and broaden the scope of rules granting authority to men, while reading literally and strictly those imposing limitations on women, he says. This discriminatory interpretation is widespread and its adopters tendentiously opt for an understanding that suits their prejudice and subsequently the basic rights of women have been forsaken, Turabi maintains. The lack of women's rights does thus not lie with the religion itself, according to Turabi, but comes from the deviation from the Islamic ideal in the actual history of Muslim societies. In the autumn of 2006 Turabi again went public with a new controversial idea. He claimed that Muslim women have the Islamic right to marry Christian and Jewish believing men. Turabi exclaimed that he had discovered this by scrutinising the Koran and the hadiths, saying "*I cannot find anything in the Koran indicating a prohibition against Muslim women marrying believing men*".¹⁴² Similarly, as for previous statements on women's issues, the Islamic scholars in Sudan and outside Sudan, including some of the members of his women's group claim that the fatwa is "un-Islamic". Interestingly enough, even Muslims in Norway objected to this fatwa.¹⁴³ However, in interviews with Turabi it becomes clear that although he advocates for "*freedom of women*", as he puts it, he also states quite firmly that men "*have to make sure that they [women] use their freedom in a right way*".¹⁴⁴

3.3.3 Female Circumcision

Female circumcision or female genital mutilation (FGM) has been and continues to be a widespread practice in northern Sudan.¹⁴⁵ The staff at Ahfad University for Women in Omdurman has engaged themselves against female circumcision for a long time.¹⁴⁶ Now, the Muslim elites are stating more frequently that this practice is against the sharia. In our opinion, this represents a new and positive step in the discourse on Muslim women's rights in Sudan. We have observed an obvious change in

¹⁴⁰ See Anne Sofie Roald, *Women in Islam. The Western Experience* (London: Routledge, 2001).

¹⁴¹ Hassan al-Turabi, "*Al-Mar'a bayna Ta'alim al-Din wa Taqalid al-Mujtama'*" (Khartoum, 1973), p. 6, 11 [the authors' translation from Arabic].

¹⁴² Interview with Hassan al-Turabi.

¹⁴³ "To norske muslimer om Turabi", *Morgenbladet*, 2006. Found at:

<http://www.morgenbladet.no/apps/pbcs.dll/article?AID=/20060630/OAKTUEL/106300020&SearchID=73275049631442>

¹⁴⁴ Interview with Hassan al-Turabi, the leader of the PNC, on 13 November 2006 in Khartoum (Tønnessen).

¹⁴⁵ Ahfad University for Women. Found at <http://www.ahfad.org/>

¹⁴⁶ Ahmed Magied and Ayat al-Fatih Makki, "Knowledge and Attitudes of Sudanese Youth toward Female Genital Mutilation/Female Circumcision (FGM/FC)", *Afhad Journal* Vol 21 No 1 June 2004.

attitude towards female circumcision. Female circumcision had a strong position in the 1990s. Today, there is an Islamically based opposition against it.

Infibulations have been a common and widespread practice in Sudan. It involves the removal of the clitoris, the Labia Minor and the Labia Major and the stitching together of the sides of the abdomen, leaving only a small hole for the urine to pass. This type of practice is in Sudan called “pharaonic circumcision”, indicating a non-Islamic origin. Even in the 1990s the Islamists characterised infibulation as a cultural and not an Islamic phenomenon. They regarded the clitoridectomy, or the cutting of the prepuce of the clitoris, as the correct Islamic circumcision. They named it the “sunna circumcision” or khafad [e.g. reduce or diminish]. In the 1990s we (Roald) discovered that female Islamists were generally in favour of either “pharaonic circumcision” or the “sunna circumcision”.

There were, however, exceptions: Wisal al-Mahdi, supported by her husband Turabi and her brother Sadiq al-Mahdi, opposed female circumcision fiercely.¹⁴⁷ She claimed that her great-grandfather al-Mahdi in the 19th century was a strong opponent of female circumcision and legitimised his position within the frame of Islam.¹⁴⁸ Her main argument against female circumcision was that Koran prohibits human beings from changing the creation of God (khalqulla). “*In Sudan*”, she claimed, “*we have fought against this practice for years, but education and illumination and Islamic knowledge are the only means to put an end to it*”. But “*definitely it will take years and years to change this practice in Sudan*”, she said.

Many of the same Islamist women who promoted female circumcision to whom Roald spoke in the late 1990s have in 2007 taken a stand against the practice. One of the main reasons for this was a lecture in Sudan by a British-Egyptian lawyer who claimed that female circumcision was against Islam. “*And he was convincing*”, Ihsan al-Ghabshawi, the head of the International Muslim Women Union (IMWU), said.¹⁴⁹ The NGO organisation Civil Society headed by the Islamic feminist, Amnah Rahman, is working for the abolition of female circumcision. Rahman is campaigning against the practice with Islamic arguments. She claims that the hadiths (Prophetic traditions) used by proponents for the practice are not reliable and that “*the Islamic message*” has been interpreted in “*a wrong way*”. According to Rahman, illiterate Sudanese and adherents of the Ansar al-Sunna movement are still practising infibulation, whereas others have abandoned the practice or are practising the sunna circumcision. “*There were famous Islamic scholars in the 18th and 19th centuries who wrote against female circumcision*”, she claims, “*and we use their argumentation in our campaign against the practice*”.¹⁵⁰

During our visit to Khartoum in 2007, the presidential advisor for sharia affairs, Ahmad Ali al-Imam started to speak, unsolicited, about female circumcision. We interpret this as an indication on how the international and the recent Sudanese opposition to FGM have had an impact on the regime and thereby made them sensitive towards international actors. Al-Imam stated that in Sudan infibulation is prohibited by law, but that khafad was an option; “*it is up to every parent to decide*

¹⁴⁷ Interview with Wisal al-Mahdi, the wife of Hassan al-Turabi and the sister of Sadiq al-Mahdi, in December 1997 in Sana’a, Yemen. See also Anne Sofie Roald, *Women in Islam. The Western Experience* (London: Routledge, 2001), p. 238.

¹⁴⁸ With the establishment of the Mahdist state (1881-98), al-Mahdi introduced sharia as territorial law in the centre of today’s Sudan. His followers adopted the name “Ansar”, a group which even today has a great influence on Sudanese politics through its association with the biggest political party, namely the UP. Al-Mahdi abolished Sufi Islam, to which historically speaking the majority of Sudanese Muslims adhere. One of the major Sufi groups, the Khatmiyya, has been linked to the second largest political party in Sudan, namely the DUP, since its establishment. The Mahdists made a great effort to Islamise southern Sudan, a legacy which successive governments after independence in 1956 continued to uphold.

¹⁴⁹ Interview with Ihsan al-Ghabshawi, head of the International Muslim Women Union (IMWU) and a former Minister of Health under the Islamist regime, on 20 February 2007 in Khartoum [the authors’ translation from Arabic].

¹⁵⁰ Interview with Amna Rahman, the General Secretary of the NGO Civil Society, on 17 February 2007 in Khartoum.

for themselves”, he said.¹⁵¹ According to Samira al-Mahdi, a member of the executive body of the DUP, the current regime is “*un-Islamic*” because it mixes culture with religion concerning women’s rights. She refers here to the fact that they allow the sunna circumcision or khafad. In her opinion all forms of female circumcision are “*un-Islamic*”.¹⁵²

3.3.3 CEDAW and “Changing Islamic Family Law from Within”

Southern Sudanese elite women advocate ratifying CEDAW without reservations. In their opinion, the main reason why Sudan has not yet ratified the convention is because of Islam. They are partly correct in that the conservative perception of women’s civil rights within Islam propagated by the regime is not in harmony with CEDAW.

But the debate over the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has become a bargaining area between the northern political parties on what the sharia says concerning women’s rights within the Islamic family law. This shows inter-legality between Islamic and Western legal thought, thus that they are in fact intertwined with each other, constituting each other dialectically, rather than being the autonomous or semi-autonomous legalities we sometimes see them as being. Islam is a discursive religion undertaking continuing change and thus transforms the sharia in encounters with, for instance, Western legal norms.¹⁵³

Article 16 of CEDAW asserts that states should “*take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations*”. In other words, the conventions impose on the sphere of Sudanese women’s “private” civil rights within Islamic family law.

ARTICLE 16 of CEDAW

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

¹⁵¹ Interview with Ahmad Ali al-Imam, presidential advisor for sharia affairs, on 21 February 2007 in Khartoum [the authors’ translation from Arabic]. It is interesting to note that al-Imam is a member of the Dublin-based sharia council, the European Council for Fatwa and Research, headed by Yusuf al-Qaradawi.

¹⁵² Interview with Samira al-Mahdi from the DUP in Khartoum on 16 November 2006.

¹⁵³ Argument presented in Liv Tønnessen “Gendered Citizenship in Sudan: Competing Perceptions of Women’s Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum”, CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen.

There are Islamic forces in the country stating that there is nothing in CEDAW which is against sharia. It is our impression that although Sudan has not ratified CEDAW, the debate has impacted on the discourse on women's rights. After the peace agreement, the leaders of the political parties admitted that they have considerably more "space". Part of this space is being used to advocate for CEDAW, which is now a political battlefield. Whereas the SCP,¹⁵⁴ the UP¹⁵⁵ and the DUP¹⁵⁶ advocate for the ratification of CEDAW without reservations, the NCP¹⁵⁷ and the PNC¹⁵⁸ campaign for the ratification of CEDAW with reservations. For example, the DUP,¹⁵⁹ the UP¹⁶⁰ and the SCP¹⁶¹ advocate that a woman should get the equal inheritance of a man as stipulated in CEDAW. This contradicts the traditional interpretation, and Ali al-Sayed admits that this is a debated issue within the DUP in particular and in Sudan generally; "if you speak about this [inheritance], you will go to hell". Al-Sayed's personal view is that "a woman should get equal inheritance to her brother, because the reality in Sudan is that women are working and contributing to the household, so this should be reflected in the inheritance. The "old" rules are stuck in an ideal world where the man is responsible for maintaining his wife", he states.¹⁶²

The PNC¹⁶³ and the ruling NCP¹⁶⁴ uphold the traditional interpretation that a woman should get half the inheritance of a man and consequently argue that CEDAW thus "is against sharia",¹⁶⁵ but nonetheless maintain that "women have freedom in Islam".¹⁶⁶ Some of the women within the NCP illustrate this stance when they state that a woman and a man cannot be equal.¹⁶⁷ They therefore advocate for "equity, not equality".¹⁶⁸ They maintain that "human rights are part of our religion", but their perception of what are human rights is qualitatively different from our conception.¹⁶⁹ In their view CEDAW is thus insufficient when it comes to women's rights and they believe that the Islamic way is the better way. Islamists stated that "we do not need CEDAW; we have sharia, which gives women more rights than CEDAW".¹⁷⁰

However, it is our impression (and that of other participants in the discourse)¹⁷¹ that the debate seems to be influenced by the fact that many participants in the discussion have not actually read the convention. For example, in an article on International Women's Day, 8 March 2006, Farida Ibrahim, a presidential legal adviser, characterised CEDAW as "against sharia law and it does not

¹⁵⁴ Interview with Mohammed Ibrahim Nugud.

¹⁵⁵ Interview with Sadiq al-Mahdi.

¹⁵⁶ Interview with Ali al-Sayid [the authors' translation from Arabic].

¹⁵⁷ Interview with Dr Ahmed Ali al-Imam [the authors' translation from Arabic]; Interview with Farida Ibrahim, legal advisor to the president, on 21 February 2007 in Khartoum [the authors' translation from Arabic].

¹⁵⁸ Interview with Hassan al-Turabi.

¹⁵⁹ Interview with Ali al-Sayid, [the authors' translation from Arabic].

¹⁶⁰ Interview with Sadiq al-Mahdi; Sadiq Al-Mahdi, *Huquuq Al-Islaamiyah Wa Al-Insaaniyah Lilmarra'ah (Islamic Rights and Human Rights for the Women)* (Khartoum: Maktabah al-sharuuk al-dawliyah 2007) [the authors' translation from Arabic].

¹⁶¹ Interview with Mohammed Ibrahim Nugud.

¹⁶² Interview with Ali al-Sayid. Sadiq Al-Mahdi, *Huquuq Al-Islaamiyah Wa Al-Insaaniyah Lilmarra'ah (Islamic Rights and Human Rights for the Women)* (Khartoum: Maktabah al-sharuuk al-dawliyah 2007).

¹⁶³ Interview with Hassan al-Turabi and interview with Addam Bashir Rahma.

¹⁶⁴ Interview with Dr Ahmed Ali al-Imam [the authors' translation from Arabic].

¹⁶⁵ Discussion about inheritance at "women's tea" meeting with Hassan al-Turabi's female followers at Addam Bashir Rahma's house on 26 February 2007 in Khartoum [the authors' translation from Arabic].

¹⁶⁶ Interview with Dr Ahmed Ali al-Imam [the authors' translation from Arabic].

¹⁶⁷ Interview with Attiyah Mustapha.

¹⁶⁸ Conversation with an anonymous Islamist activist from the International Muslim Women Union (IMWU) on 18 February 2007 in Khartoum. This concept was adapted by Islamists in general as the book by the Canadian-Egyptian Islamist Jamal Badawi, *Gender Equity in Islam* (American Trust Publication) was published in 1996.

¹⁶⁹ Interview with Attiyah Mustapha.

¹⁷⁰ This was a general notion among Islamist women in Khartoum. Also, interview with Badria Sulayman Abbas, the chairperson of the National Legislation and Justice Committee Khartoum, on 21 February 2007 in Khartoum.

¹⁷¹ Interview with Mariam al-Mahdi and Interview with Rose Paulino.

*represent the government's stance on women's rights. It destroys family values, legalizes abortion and prostitution under the umbrella of family values, gives equality to prostitutes and married women and legalizes lesbianism. It is a disaster for human beings".*¹⁷²

In an interview, Farida Ibrahim confirmed this stance.¹⁷³ It is her belief that “*an American lesbian made the convention*” and consequently that Sudan cannot possibly ratify it. In our opinion, the convention does not say anything about gay rights or prostitution specifically; rather, it states (article 6) that “*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women*”. It was also the opinion of several of the women within the NCP¹⁷⁴ and the PNC¹⁷⁵ that it is in fact impossible to ratify the convention with reservations, because as times pass the UN will have the reservations removed. In our view this is an incorrect supposition. Most of the states in the Middle East and Northern Africa have in fact ratified the convention with reservations, mainly to article 16.

The forces which are advocating for CEDAW are doing so because they consider it to be in agreement with their interpretation (ijtihad) or understanding of the sharia.¹⁷⁶ In their view there is no contradiction between women's rights and religion, it is a matter of interpreting the laws in a more feminist perspective. However, although certain political forces assert that they want to ratify the convention without reservations, they are prompt to say that they believe that the convention is insufficient in that it does not speak about “*women's right to religious belief*”.¹⁷⁷ Others legitimise their position on ratification purely on pragmatic grounds, because it “*sends out the wrong signal politically*” and because “*the law does not matter in Sudan*”. Afaf Ahmed Abdel Rahman states that although CEDAW will give her the equal inheritance of her brother, she will not accept it because of her religious belief.¹⁷⁸ Mariam al-Mahdi thinks it is “*embarrassing that Sudan has not ratified CEDAW when even Saudi Arabia has ratified it*”.¹⁷⁹ In some respects, the opposition's eagerness to ratify the convention might be seen as “lip service”, according to Limiya al-Badri: “*Very few Sudanese men are full hearted for women's emancipation. We have learnt that we have to make alliances [...] it is about politics. For example, when Sadiq al-Mahdi was in power he was never for CEDAW. Now that he is out of office he uses CEDAW to come back to power. So it is all about politics. I am quite sure that Sadiq al-Mahdi will upset the fundamentalists if he wins the elections; he will never go for CEDAW although he now says that CEDAW is not against Islam. Still I have to use him*”.¹⁸⁰

¹⁷² Farida Ibrahim, in *Osrati (My Family)*, a monthly magazine published in Khartoum), March 2006. Quoted in International Crisis Group, “Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda”.

¹⁷³ Interview with Farida Ibrahim [the authors' translation from Arabic].

¹⁷⁴ Interview with Attiyah Mustapha; conversation with an anonymous Islamist activist from the International Muslim Women Union (IMWU) on 18 February 2007 in Khartoum.

¹⁷⁵ Discussion about CEDAW at “women's tea” meeting with Hassan al-Turabi's female followers [the authors' translation from Arabic].

¹⁷⁶ Interview with Ali al-Sayid [the authors' translation from Arabic]; interview with Sadiq al-Mahdi; interview with Mariam al-Mahdi; interview with Samira al-Mahdi; interview with Mohammed Ibrahim Nugud.

¹⁷⁷ Interview with Mariam al-Mahdi; Mariam Al-Mahdi, “*Al-marrah wa al-din (Women and Religion)*”, (Afhad University of Women, 2003) [the author's translation from Arabic].

¹⁷⁸ Interview with Afaf Ahmed Abdel Rahman, general manager of the Women Center for Peace and Development, on 14 February 2007 in Khartoum.

¹⁷⁹ Interview with Mariam al-Mahdi; Mariam Al-Mahdi, “*Al-marrah wa al-din (Women and Religion)*”, (Afhad University of Women, 2003) [the author's translation from Arabic].

¹⁸⁰ Interview with Limiya Badri, woman activist working for the UNDP, on 16 November 2006 in Khartoum (Tønnessen).

3.4 Christian Family Law

Many family issues are discussed and dealt with within the family before they become cases for the church or the civil court. Legislation in the civil court is mainly based on a law from 1926 which deals with when and how marriages for non-Muslims are legally acceptable and when and how marriages become void.¹⁸¹ The judges in the civil courts are Muslim and they often refer back to the community when cases are presented before them. The Christian editor Alfred Taban told us about the incident when he appeared before the civil court to seek a divorce from his wife. The judge urged the parties to contact the Christian community. The state seemingly takes no responsibility for the civil rights of non-Muslims. There is no codification of the civil rights of Christian women, so their rights vary across denomination. In Sudan, there are three main denominations: the Coptic Church, the Catholic Church and the Protestant Churches.

The Coptic Church is the only Christian community in Sudan which has a written Christian family law. This law is contained within a small booklet dealing with family issues such as inheritance, divorce, separation between spouses, and custody of the children in cases of divorce or separation. The booklet is “*based on the Bible as we do exactly as the Bible prescribes for us in family matters*”.¹⁸² The other Christian churches have no written law, but claim to follow the Bible in family law issues.¹⁸³

Marriage

All the Christian churches prohibit polygyny. Compared to the codified Islamic family law, Christian women do not have to accept their husband taking an additional wife. It is interesting to note that the Coptic priest Father Antonius continually used Islamic terms when he spoke of the relationship between husband and wife: “*the husband has to deal with his wife in a loving manner (mahabba), and the wife has to obey (ta’a) her husband. There has to be respect (ihtiram) between the two spouses*”.¹⁸⁴ It thus seems as though the Coptic Church’s long history in Sudan has had an impact on the community’s discourse.

Divorce

Compared with sharia, it is in general more difficult to obtain a divorce for Christian women. The Coptic Church does not accept divorce except in case of adultery, “*as is the Biblical rule for divorce*”, Father Antonius states.¹⁸⁵ A couple can separate only if it is impossible for the two parties to live together, but they cannot remarry except if one of the parties dies. In the Sudanese Catholic Church, regular abuse and mistreatment are also considered legitimate grounds for divorce. In the Protestant churches the only acceptable justification for divorce, as in the Coptic Church, is infidelity.

Custody of Children

The Coptic Church has similar rulings for the custody of children as the sharia: the daughters stay with the mother until the age of 9 and the sons until to the age of 7, after which the father gets custody of the children.

¹⁸¹ Marriage laws for non-Muslims from the year 1926 [15/5 1926] (qanun zawaj ghayr al-muslimin lisana 1926).

¹⁸² Interview with Father Antonius, deputy bishop in the Coptic Orthodox Church in Omdurman, on 25 February 2007 in Omdurman [the authors’ translation from Arabic].

¹⁸³ Interview with Bishop Deng from the Episcopal Church on 28 February 2007 in Khartoum; interview with Peter Loro from the Catholic Church on 28 February 2007 in Khartoum.

¹⁸⁴ Interview with Father Antonius [the authors’ translation from Arabic].

¹⁸⁵ Ibid.

Inheritance

The Coptic Church grants women more rights compared to the sharia concerning inheritance. A woman is entitled to equal inheritance.

In contrast to Khartoum legal authorities' belief that all Muslims follow the Islamic family law and all Christians follow the Christian family laws, we discovered through interviews that most southerners, Muslims, Christians and adherents of the various tribal religious traditions alike, prefer to deal with family issues within the system of customary law. Most Christian southerners belong to the Catholic or Protestant churches and it was thus difficult for us to obtain information on civil rights within the Catholic and Protestant family laws, because they were not in use. Southern Christian leaders in Khartoum seem to accept that southern Christians turn to the traditional court in cases of divorce, and even in cases of polygynous marriage.¹⁸⁶ An interview with the leader of Sudan Council of Churches confirmed this impression.¹⁸⁷ Our impression is that when it comes to family law, most Muslim and Christian southern Sudanese, according to those we interviewed in the greater Khartoum area, turn to the traditional courts and not to the civil or sharia courts.

3.5 Customary Family Law

Traditional courts are staffed by *salatins* (sing: *sultan*) who are respected elders and chiefs within the community. They enforce customary law, which is “*a body of traditions, mores, social conventions and rules that through long usage and widespread acceptance govern traditional African society*”.¹⁸⁸ At least the *salatins* in the traditional courts in the greater Khartoum area are paid by the state, but we did not discover whether this is also the case with the *sultans* in southern Sudan. According to Akechak Jok and Leitch, customary law is the principal source of social order and it remains the dominant source of law in contemporary southern Sudan as “*over 90% of day-to-day criminal and civil cases are executed under customary law*”.¹⁸⁹ The *salatins* from the Nuer tribe we interviewed claimed that there are many traditional courts in Khartoum dealing with customary law, most of which are informal.

According to Rose Paulino there are more than 50 different traditional laws among the southern Sudanese population, but they share the basic discriminatory and patriarchal structure. We have interviewed representatives across tribes such as the Dinka, Nuer, Equitoria, Shilluk and the Bari.¹⁹⁰

In an interview with two local court chiefs in Khartoum, the Muslim Sultan Hassan Wijel Shatil and the Christian Sultan Paul, the discriminatory content of Nuer law was revealed: “*The dowry starts at 40 cows and is given from the husband's extended family to the wife's extended family. If the man or the woman wants a divorce, the dowry is paid back. It is difficult to get a divorce. There are no automatic grounds for divorce like beating and impotence [...] The man gets custody of the children no matter what age they are and who initiates the divorce [...] The widow decides if she wants to stay in the family; if not, she will have to give back the dowry. Usually the widow marries her late husband's brother. If a woman's father dies, she will not inherit from him*”.¹⁹¹

¹⁸⁶ Interview with Bishop Deng; interview with Peter Loro; interview with Ishmael Kanane, Presbyterian, Head of Theological College, on 16 February 2007 in Khartoum.

¹⁸⁷ Interview with Mark Abecchien.

¹⁸⁸ See D. Kur, “Access to Traditional Justice System & the Rights of Women and Children in South Sudan”, (paper presented at a workshop on Legal Protection of Children at South Sudan Law Society, Rumbek, Sudan, 2000)

¹⁸⁹ Aleu Akechak Jok and Robert Leitch, “A Study of Customary Law in Contemporary Southern Sudan”, (the South Sudan Secretariat of Legal and Constitutional Affairs, 2004), p. 6. Found at: http://www.gurtong.org/ResourceCenter/laws/Customary%20Law%20Overview%20in%20South%20Sudan%20March%202004_compressed.doc

¹⁹⁰ Anne Itto, “Women in the New Sudan: Factors Affecting Women's Participation, Access to, Control and Ownership of Social, Economic and Political Resources,” (Women in the New Sudan, Nairobi Kenya, 2001), p. 10.

¹⁹¹ Interview with Hassan Wijel Shatil and Sultan Paul on 19 February 2007 in Khartoum.

Sultan Hassan Wijel Shatil and Sultan Paul told us that a typical case in the traditional court revolves around rape: “if an unmarried girl is raped, the court sees to it that the boy marries the girl”.¹⁹² Violence is socially accepted, a southern Sudanese woman asserted.¹⁹³ And rape is a typical way to get married, says Rose Paulino.¹⁹⁴ According to Suzanne Samson Jambo, a southern Sudanese: “Sudanese women have traditionally suffered from discriminatory customs and traditions, which relegate them to the status of lesser beings. Such negative customs and traditions... include forced and arranged marriages, forced wife inheritance, bride prices and relegation of the girl-child to a mere object which must be sold to the highest bidder, preferably at a tender age [...]”.¹⁹⁵ Agnes Nyoka Peter, a southern parliamentarian, claims that “women are the most marginalised of the marginalised in southern Sudan”.¹⁹⁶

The main features of family matters in customary law are thus as follows. The man pays a dowry (cattle; cows, horses or goats) to the wife.¹⁹⁷ For southerners living in the greater Khartoum area, the cattle are handed over to members of the extended family living in southern Sudan. If a divorce occurs, independent of which party instigated the divorce, the dowry has to be paid back to the man. The dowry includes the original cattle and their offspring. If the husband dies, the wife is not entitled to inheritance and she would have to marry a younger brother or relative of the husband to keep the dowry in her (original) extended family. If she prefers to leave her deceased husband’s family, she would have to hand back the dowry. How much has to be handed back in this latter case depends on how long time the couple has been married and how old the children are. If the wife dies at an early stage of the marriage, her family has to give back the dowry.

3.5.1 Comparing Customary Law with the Sharia

Clearly, women have different obligations and rights both under the sharia and traditional laws. The delegation of women’s civil rights to Islamic and traditional family law has thus led to the absence of equality before the law not only between men and women in general but also between Sudanese women across religious and tribal affiliations. When dealing with women’s (civil) rights, Norway along with the international community focuses on Islam. Consequently they overlook discriminatory practices within other religious and tribal communities. This is problematic, because in certain areas Islamic family law in Sudan might actually be considered less discriminatory than in other religious and tribal communities.

In contrast to the codified sharia in Sudan, which is founded on the principle of reconciliation within the core family, customary law is founded on the principle of reconciliation within the extended family. Marriage is an act involving a vast group of people. This impression is confirmed by Akechak Jok and Leitch: “Within Southern Sudanese society the role and status of women is seen as a reflection of a culture that places a premium on the cohesion and strength of the family as a basis of society. The male is the undisputed head of the family and marriage the means to

¹⁹² Ibid.

¹⁹³ Interview with an anonymous southern woman (Shilluk).

¹⁹⁴ Interview with Rose Paulino

¹⁹⁵ Suzanne Samson Jambo, “Overcoming Gender Conflict and Bias: The Case of New Sudan Women and Girls”, (the Netherlands Organisation for International Development (NOVIB), 2001), p. 13.

¹⁹⁶ Presentation by Agnes Nyoka Peter, SPLM parliamentarian, on 4 June 2007 at the Norwegian Ministry of Foreign Affairs in Oslo.

¹⁹⁷ Interview with chief sultan Hasan Wijel Shatil and Sultan Paul.

*strengthening the bonds between families and clans within tribes. The role of women in this social pattern is that of cementing family ties through “bride-wealth” and of producing children”.*¹⁹⁸

According to customary law, a “*man is allowed to take as many wives as he pleases*”, whereas the sharia allows only four wives.¹⁹⁹ The dowry is considered a woman’s own property in the codified sharia, whereas under customary law the dowry is the property of the extended family. The dowry rules in customary law make it difficult for a woman to obtain a divorce.²⁰⁰ Although it might be considered difficult for a woman to get a divorce in the sharia courts, it is far easier than in the traditional courts. Under the sharia, it is possible for a woman to initiate a divorce, if she has legal grounds,²⁰¹ without paying back the dowry. Under customary law, on the other hand, a woman’s decision to initiate divorce will affect the extended family’s financial situation as they are forced to pay back the dowry whatever the cause of the divorce. Additionally, “*there is no ‘idda period after the divorce*” in customary law as women are entitled to under the sharia.²⁰² According to the Nuer salatins, “*the man gets custody of the children no matter what age they are and who initiates the divorce*”,²⁰³ whereas women under the sharia have custody (hadana) of daughters until they are 9 years old and of her sons until they 7 years old.²⁰⁴ Finally, the woman is entitled to half the inheritance of her brother(s) according to the sharia, whereas in customary law a woman has no right to inheritance whatsoever.²⁰⁵ In fact, “*a woman is property*”, according to the leader of the Sudan Council of Churches. “*If the husband dies, she has to marry someone within the family*”, he says.²⁰⁶ In other words, the family inherits her. Lucie Luguga, UNIFEM programme manager for Southern Sudan, says that these traditions and customs turn “*a human being into a commodity*”.²⁰⁷

However, there are basic similarities between customary and sharia law. The patriarchal and collective pattern whereby the woman is subservient to the male head of the family is a main principle in both legal systems. Customary law has adopted the Islamic dia (ransom) concept, making it possible to buy oneself free from punishment in case of murder. This also goes for rape and fornication. If a girl is raped, the families sit together with the sultan to negotiate a marriage between the two. If the marriage is not accepted the rapist has to pay a ransom (dia). Moreover, if a woman is unfaithful towards her husband, the man she fornicated with has to pay the husband a ransom (usually 7 cows) if the husband chooses not to divorce his wife.

Similar to sharia law, the husband in customary law has the right to deny the wife the right to work outside the home. This has been particularly problematic for displaced women in the greater

¹⁹⁸ Aleu Akechak Jok and Robert Leitch, “A Study of Customary Law in Contemporary Southern Sudan”, (the South Sudan Secretariat of Legal and Constitutional Affairs, 2004), p. 7.

¹⁹⁹ Interview with an anonymous southern woman (Shilluk).

²⁰⁰ Interview with Anne Itto.

²⁰¹ Under the Personal Status Law for Muslims (1991) a woman can obtain a divorce (taliq: a divorce granted by the judge) against her husband’s will if she can prove that the husband (1) fails to fulfil his obligations to support her; (2) does not treat all his wives justly; (c) has a defect she did not know about before the marriage; (d) is suffering from an incurable mental or psychical illness; (e) is impotent; (f) behaves in a cruel manner; (f) is abroad for more than one year; or (g) is sentenced to prison for more than two years. The wife can also obtain a divorce if a judge declares her to be disobedient (nushuz) to her husband.

²⁰² Interview with Hassan Wijel Shatil and Sultan Paul.

²⁰³ Ibid.

²⁰⁴ Anne Itto told me about a case where one of her friends obtained a divorce from her husband, but “her husband got the custody of all the six children, the smallest one she was still breastfeeding”. Interview with Anne Itto.

²⁰⁵ According to Alfred Taban, the question of inheritance is not a problem “*because southerners are poor and do not have anything to pass on anyway*”. During our conversation, however, he revealed that he himself owns three houses in the greater Khartoum area. Interview with Alfred Taban..

²⁰⁶ Interview with Mark Abecchien.

²⁰⁷ Presentation of Lucie Luguga, UNIFEM programme manager for Southern Sudan at the Norwegian Ministry of Foreign Affairs on 4 June 2007 in Oslo.

Khartoum area. The journalist Sabah Muhammad has made several reports about traditional court cases. She claims that in both sharia and customary law women have few rights. In the displaced areas many women's pleas for divorce are denied by the *salatins*, she says. She claims that the most frequent reasons for a woman to ask for divorce in the customary court are money and power. She states: *"Most often, the men in displaced areas are unemployed and the woman would work, for instance, with making tea and selling it in the street. She makes money so she can feed the children. Her husband tries to take or cheat the money from her and she goes to the Sultan suing for a divorce. The man would tell the Sultan that his wife has become proud because she earns money. The Sultan always sides with the man and he will rebuke the woman for being proud. Sometimes the husband will even deny her the chance to work and the Sultan accepts his words and he refuses to grant her a divorce. The woman has to stay with her husband; he neither supports her or the children, nor gives her permission to work to feed her children"*.²⁰⁸ She goes on: *"Another frequent case is if a woman rebukes her husband for not working or not being able to feed his family and the husband then complains to the Sultan. The husband would tell him that his wife has become proud because she earns money. The Sultan then often refuses to give his permission for the wife to work"*.

3.5.2 CEDAW and "Changing from Within"

According to Rose Paulino, the majority of Sudanese customary law systems have the same basic discriminatory features, which are in conflict with international human rights. Essentially, *"the status of women [...] is that of property"*.²⁰⁹ Nonetheless, southern elite women advocate reforming customary law from within and not abolishing the plural legal system altogether.²¹⁰ The battle to "change from within" seems more difficult for southern Sudanese women.

Customary law is not written law but is transmitted orally from generation to generation. Since the law is not written law, there is less room for a flexible reinterpretation of the text of the law so as to increase women's rights within the current system. It is thus not possible for southern Sudanese women to change the legal system from within by reinterpreting the sources of the law itself, as seen in the contemporary reinterpretations of Islamic law.²¹¹ Our fieldwork deals with the legal framework for Sudanese women and does not map litigation processes in sharia courts and "traditional" courts from a gender perspective in order to reveal how Sudanese women bargain within the existing gendered family laws to claim their rights. The customary laws surely have a certain degree of flexibility, but the practice or tool of reinterpretation as historically institutionalised in Islam does not exist. Rose Paulina says that the *salatins* are now in fact resisting a process of mapping and writing down the different customary laws, thus indicating that they are mobilising against "change from within".²¹²

Furthermore, because there is no state codification of women's civil rights within customary law in Sudan, due process in traditional courts is not clearly defined, rendering women vulnerable to arbitrary application of the law. They thus do not have any legal protection from the state. One

²⁰⁸ Interview with Sabah Muhammad, journalist at the newspaper *al-ayam*, on 26 February 2007 in Khartoum. See also articles in the newspaper *al-ayam*: 1 March 2006; 17 May 2006; 31 October 2006; 22 November 2006.

²⁰⁹ Paulino, "Against Women in the Theme of Customary Law", p. 7.

²¹⁰ Interview with Rose Paulino, southern activist in the Network for Southern Organisation for Peace and Development, on 28 February 2007 in Khartoum.

²¹¹ Argument put forward in Liv Tønnessen "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum", CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen. [The article is submitted to the Journal of Middle East Women's Studies for publication].

²¹² Argument put forward in Liv Tønnessen "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum", CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen. [The article is submitted to the Journal of Middle East Women's Studies for publication].

could argue that such a system, where the state has abdicated from the responsibility to implement customary family law, is too dependent on the responsiveness of the specific courts and the individual judge's capability and gender sensitive approach.²¹³ *"The elders and the chiefs have a set mindset and many women give up on serious cases such as rape and abusive husbands as they expect no justice to be delivered to her"*, claims Anne Itto.²¹⁴ Furthermore, there is no justice in these courts, because it is *"not socially accepted for women to go to the traditional courts and the woman often ends up being wrongly imprisoned"*, says Lucie Luguga.²¹⁵

Because there is no codification of the customary law there is neither state control over the discriminatory content of traditional laws nor a state authority for southern women to negotiate new rights with. So for southern women CEDAW becomes even more important, because if it were ratified the state would for the first time be forced to take responsibility for their civil rights.²¹⁶ By the rhetoric of "change from within", southern elite women signal that there are "positive" customs and traditions which they want to preserve. Anne Itto explains that *"the customs in southern Sudan are what has kept the region together throughout the war in spite of religious and ethnic diversity. Family is important and this is a good value. The core values are peacebuilding values; songs and dances bring people together"*.²¹⁷ Simultaneously they acknowledge that some of the customs and traditions are discriminatory against women. Hon Mary Kiden, Minister of Gender, Government of Southern Sudan, says *"tradition and custom prevents women from change"*.²¹⁸ But they emphasise that ratifying CEDAW is not sufficient to reverse the marginalisation of southern Sudanese women. Anne Itto explains that *"customary law represents habit, attitude, value system, worldview and it takes more than a law to deal with it. Even the women at the grass roots are reluctant to change, because they are socialised to protect their family. Education and awareness raising among men, older women and younger is the key to change, but this is a long and slow process"*.²¹⁹

²¹³ Argument put forward in Liv Tønnessen "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum", CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen. [The article is submitted to the Journal of Middle East Women's Studies for publication].

²¹⁴ Interview with Anne Itto.

²¹⁵ Presentation of Lucie Luguga.

²¹⁶ Argument put forward in Liv Tønnessen "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum", CMI working paper (2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen. [The article is submitted to the Journal of Middle East Women's Studies for publication].

²¹⁷ Interview with Anne Itto.

²¹⁸ Presentation by Hon Mary Kiden, Minister of Gender, Government of Southern Sudan, who says that "tradition and custom prevents women from change", on 4 June 2007 at the Norwegian Ministry of Foreign Affairs in Oslo.

²¹⁹ Interview with Anne Itto.

4. Lessons for the International Community

Learning how to take religious pluralism seriously has become one of the most important aspects of international policy today. In the eagerness to include marginalised religious groups, Sudanese and international peacebuilders ignored gender issues during the negotiations. As religion has been perceived as a critical element in Sudan's civil wars, this is understandable. The lessons to be learnt for the international community are, in our opinion, primarily in terms of discrimination against women in the name of religious freedom. It is vital to acknowledge the diverse and plural debates about human rights within the various religious communities. Religiously anchored laws are not in and by themselves discriminatory against women. However, the way in which the laws are interpreted and applied in today's Sudan is discriminatory against women. Therefore it is important for Sudanese women to transform the discourse by moderate religious and tribal forces into de facto rights for women.

4.1 A Comprehensive Peace for Sudanese Women?

Gender was not on the agenda despite the international awareness about including women in peacebuilding. Sudanese women were merely guests at the table. In part because women were not involved in any substantive way, issues with a particular gender impact were not elaborated in the document signed on 9 January 2005. The result was a gender-blind peace agreement which at first glance appeared equitable because it was written in terms of an abstract gender-neutral citizen. The Sudanese conception of citizenship and rights differs from the Western understanding of it. In Sudan and the Middle East generally, there is a sharp distinction between a person's "public" rights regulating, for example, political rights and the "private" rights regulating civil rights. In Sudan, private civil rights are the legal domain of the religious and tribal communities. In the name of religious freedom, the CPA and the constitution have left the private civil rights of women to the religious and tribal communities. This study shows that there are segments within the religious and tribal laws of today's Sudan which discriminate against women and prevent them from participating in society on an equal footing with men. The international peacebuilders and mediators thus failed to provide women with fundamental human rights in their attempt to secure religious minorities fundamental human rights in the CPA. Civil rights are perhaps the most tangible and important rights in the daily lives of ordinary Sudanese women. Yet, there are no official recommendations or guidelines as to how the religious and tribal laws should be applied and interpreted. This leaves women vulnerable in a complicated patchwork of plural legalities without explicit civil rights. Although it is incorrect to state that religiously defined laws in and by themselves discriminatory against women, they do not guarantee *all* Sudanese women *equal* civil rights as they are enforced in today's Sudan. It is thus important that the international community now puts women's rights at the forefront.

4.2 Change from within or from outside?

The historically institutionalised legal system in which the different religious communities are responsible for the execution of family law will be difficult if not impossible to abolish completely, particularly considering that this is deemed an intrinsic religious freedom by Sudanese themselves. It is crucial not to force a secular legal reform upon Sudanese society from the outside. There needs to be a gender sensitive approach to the Sudanese context. The international community cannot view a "right" situation for women through Western glasses and blindly regard international conventions such as CEDAW as "the solution" to discrimination against women in today's Sudan. This type of international equality policy is detached from the female life-world in countries like

Sudan.²²⁰ Nonetheless, Sudanese women actively use CEDAW to advocate for gender equality. But those who call for the ratification of CEDAW do so because in their view there is no contradiction between women's rights and religion. This shows an inter-legality between religious and Western legal thought, thus that they are in fact intertwined with each other, constituting each other dialectically, rather than being the autonomous, or semi-autonomous legalities we sometimes see them as being.

However, the international community must recognise the fact that Sudanese elite women do not want a secular law on women's civil rights. They advocate "change from within".²²¹ The feminist struggle is grounded in Sudanese culture and religion, just as feminists from any society or any particular cultural tradition hold and internalise premises and assumptions stemming from their culture that shape their orientation to women issues. Any feminist model, paradigm or framework is largely informed by the framer's culture.²²² The international discourse on women's rights falsely assumes a universality of womanhood and demonstrates a Western bias in a secular perception of secular rights as superior to religiously defined rights.²²³

The report shows that there is a plurality of perceptions of "gender equality" and "women's rights" in Sudan. The feminist struggle in multi-religious and multi-ethnic Sudan has many varieties. "There is not a single organization with the agenda of which a majority of women would agree [...] Relishing in diversity, basking in fragmentation, enjoying the play of differences, and celebrating opacity, fracturing, and heteronomy".²²⁴ Women belong to numerous overlapping groups and hold multiple intersecting identities.²²⁵ In contrast to much of the literature on women and peacebuilding, which claims that "on the basis of their women's interests, they are able to form coalitions bridging deep political, ethnic and religious divides",²²⁶ this study shows that religion is one of the overlapping identities among Sudanese women, effectively creating a plurality of perception of women's rights.

Our impression is that foreign donors erroneously regard Sudanese women as united and actively encourage them to present themselves as united.²²⁷ Religiously and tribally anchored rights within the private sphere of family law forms the backdrop against which the feminists conceive their rights, because it structures the life opportunities of Sudanese women. This study has showed the complexity of the processes defining religious rights in Sudan, not only emphasising the differences between the religious communities but also within the diverse and plural ideological membership of each religious group. "Change from within" and transformations of the tribal and religious laws on women's civil status in a more gender-equal direction must be viewed in light of this. There are ongoing debates within the religious communities about maintaining or changing the discriminatory features of the religious and tribal family laws. The current debate on women's rights, particularly

²²⁰ Anne Hellum, *Women's Human Rights and Legal Pluralism in Africa: Mixed Norms and Identities in Infertility Management in Zimbabwe* (Oslo: Tano Aschehoug, 1999), p. 417.

²²¹ Margot Badran, *Feminists, Islam, and Nation: Gender and the Making of Modern Egypt* (Princeton, N.J.: Princeton University Press, 1995), p. 19-20.

²²² Fadwa Al-Guindi, "Gendered Resistance, Feminist Veiling, Islamic Feminism", *The Afhad Journal* 22, no. 1 (2005).

²²³ Henrietta Moore, *Feminism and Anthropology* (Minneapolis: University of Minnesota Press, 1988).

²²⁴ Seyla Benhabib, *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996), p. 29 [not referring to Sudan as such].

²²⁵ Ernesto Laclau and Chantal Mouffe, in D. Trend, *Radical Democracy: Identity, Citizenship and the State* (New York: Routledge, 1996), p. 11.

²²⁶ Tsjard Bouta and Gerorg Frerks, "Women's Roles in Conflict Prevention, Conflict Resolution, and Post-Conflict Reconstruction", (Amsterdam: Netherlands Institute of International Relations, 2002), p. 8.

²²⁷ The American organisers from the Initiative for Inclusive Security repeatedly stated at a workshop on political participation in November 2006 in Khartoum that Sudanese women should present themselves as united, because that is what would get them funding from the donors.

within the Islamic communities in Sudan, shows that gender equality might be accomplished from within through reinterpretation (ijtihad) of religious laws.

Nonetheless, there need to be mechanisms put in place to ensure that the liberal reinterpretations are converted into de facto rights for women, particularly since the issue of women's rights is a highly politicised battlefield in Sudan. There is a discrepancy between theory and practice when it comes to women's issues. In the words of a northern feminist: "*They are cheating us. They talk the talk, but they do not practise what they preach*".²²⁸ It is thus important to encourage and support the work of Sudanese women to reform the laws that discriminate against women. The bill of rights in the interim national constitution (articles 15 and 32) asserts that "*the State shall emancipate women from injustice, promote gender equality [...] and promoting the equal rights of men and women to the enjoyment of all civil and political rights and all social, cultural and economic rights [...]*". Legal tools to combat discriminatory practices are therefore already in place and are actively being used by Sudanese women. Human rights lawyers actively challenge the discriminatory laws concerning women on a daily basis.

4.3 Change from above or from below?

A legal reform from the top down will have little effect on the general rights situation of ordinary women, because "*Sudanese society is not a law society*".²²⁹ For example, female circumcision is prohibited by law, but it is nonetheless a widespread practice. A northern activist says that Sudan should ratify CEDAW, simply because "*the law does not matter anyway*".²³⁰ It is important to remember that the discourse on CEDAW is most likely falling short of meeting the everyday needs of a large number of ordinary Sudanese women. Nonetheless, the family laws are at the very heart of everyday life of Sudanese women. The debate over CEDAW thus becomes important because it promotes a law reform which guarantees all Sudanese women equal civil rights. However, it takes more than a law reform to change the patriarchal structure of society. Transformation cannot merely be imposed from the top down, but must come from within the society itself.

We suspect that most women at the grass roots are not even aware of the de facto legal rights they have within the current legal system. Moreover, they might not view their current rights situation as discriminatory. What might seem like a "quick fix" to eliminate discrimination against women through a law reform might turn out to be a vain law which has no real effect on the lives of ordinary women. At present, an abundance of capacity building workshops and seminars are being organised by foreign NGOs targeting mainly elite women, in which the mantras presented by the NGOs are "political participation" and "law reform". But what Sudanese women identify as main challenges are education and awareness raising among men and women at the grass roots.

The international community can potentially play an important role by supporting women's organisations and institutions with a local outreach. Otherwise, one might end up with a situation where, in the words of a Sudanese activist, "*the only thing we do is go to workshops and seminars, and talk*".²³¹ Without genuine grass-roots work, the law reforms at the national level will remain abstract concepts of women's rights. Examples of local outreach might be micro-finance projects targeting women, legal aid for women and awareness-raising about the negative health risks of female circumcision, and human rights training of judges in the local sharia and traditional courts.

²²⁸ Interview with Samira al-Mahdi (Tønnessen).

²²⁹ Interview with Afaf Ahmed Abdel Rahman

²³⁰ Ibid.

²³¹ Conversation with Amal Muhammad Al-Mauri, a northern activist and lawyer, at a workshop on training for political leadership on 9 November 2006 in Omdurman (Tønnessen).

Appendix 1: Glossary of Islamic Legal Terms

Ahl al-kitab: Literally: People of the Book. This is a classical Islamic legal term, referring to Christians, Jews and Sabians, and later even to Hindus.

Ayb: Defect.

Bayt al-ta'a: Marital obligation of the wife to remain in the husband's house.

Dhimmi: A dhimmi is a person of the dhimma, a term which in Islamic law refers to a pact contracted between non-Muslims and authorities from their Muslim government. This status was originally only made available to non-Muslims who were People of the Book, granting them a protected status in Muslim society in return for payment of the tax, *jizya*.

Dia: Blood money, indemnity for bodily injury.

Fatwa: A formal legal opinion on a subject issued by an Islamic scholar.

Fiqh is Islamic jurisprudence. Before the 19th century, legal theory was considered the domain of the traditional legal schools of thought. Most Sunni Muslims follow the Hanafi, Hanbali, Maliki or Shafi'i schools, and most Shi'a Muslims follow the Ja'fari school of law.

Hadana: The care and custody of children, stemming from the Arabic root al-hidn, meaning breast, for the first right of custody lies with the mother until the children reach the prescribed ages, when custody passes to the father and his kin. Hadin, male custodian. Hadina, female custodian.

Hadiths [sing: hadith; plural: ahadith] are the Prophet Muhammad's sayings, actions and preferences. Hadiths are regarded as the second most important source, after the Koran, of the legislation of the sharia.

Idda: The period after divorce or the death of the husband, in which a woman must pass three monthly courses in order to ensure that she is not pregnant. During the idda period the wife is entitled to maintenance, which is referred to as nafaqat al-'idda.

Ihtiram: Respect.

Ijma' is an Arabic legal term referring ideally to the consensus of the ummah (the community of Muslims, or followers of Islam). Traditionally, ijma' referred only to the consensus of traditional Islamic scholars (ulema') on particular points of Islamic law.

Ijtihad is a technical term of Islamic law that describes the process of making a legal decision by independent interpretation of the legal sources, the Koran and the Sunnah. A person who applies ijihad is called a mujtahid, and traditionally had to be a scholar of Islamic law. However, most of today's Islamists are not religious scholars, but Western educated scholars.

Kafir: Unbeliever. (pluralis: kuffar).

Khafad: Clitoridectomy, or the cutting of the prepuce of the clitoris. From the word found in hadiths, khafad, meaning "reduce" or "diminish".

Khalifa is the head of state in a Caliphate, and means “successor” or “representative”. The early leaders of the Muslim nation following Muhammad's (570–632) death were called “Khalifat ar-rasul Allah”, meaning the political successor to the Prophet of God. The first four caliphs were Abu Bakr, Umar ibn al-Khattab, Uthman ibn Affan, and Ali ibn Abi Talib.

Khalqulla: The creation of God.

Mahabba: Love, affection and attachment.

Mahr: Dowry, a bridal gift made by the husband to the wife without which the marriage is not lawful or valid according to Islam.

Manshurat: Judicial circulars.

Maslaha: Beneficial or “the best interest”.

Millet is an Ottoman Turkish term for a confessional community in the Ottoman Empire. In the 19th century, with the tanzimat reforms, the term started to refer to legally protected religious minority groups. The millet system has a long history in the Middle East, and is closely linked to Islamic rules on the treatment of non-Muslim minorities (dhimmi). The Ottoman term specifically refers to the separate legal courts pertaining to family law under which minorities were allowed to rule themselves. People were bound to their millets by their religious affiliations.

Mufti: An Islamic scholar issuing fatwas.

Mujtahid: An Islamic scholar making ijtihads.

Nafaqa: Maintenance, including food, clothing and lodging, primarily the husband's obligation arising from marriage to maintain the wife and dependent children.

Nushuz: Disobedience or recalcitrance, a Koranic term denoting the recalcitrance of the woman towards her husband.

Qadi: Judge.

Qiyas: In Sunni Islamic jurisprudence, qiyas is the process of analogical reasoning from a known injunction to a new injunction. According to this method, the ruling of the Koran and Sunnah may be extended to a new problem provided that the precedent (asl) and the new problem (far') share the same operative or effective cause (illah). The illah is the specific set of circumstances that trigger a certain law into action.

Ribh: Interest.

Sharia is the body of Islamic law. There is not a strictly codified uniform set of laws pertaining to sharia. There is an unclear distinction between the sharia as the divine will of God and *fiqh* (jurisprudence) as the human endeavour to realise it. God expressed his will in the Revelation (the Koran and the Sunnah). When man formulates systematic legal precepts out of the Revelation, he uses his own intellect in the process. With the human intellect and the ensuing interpretation of the Revelation, the process becomes subject to error. In other words, a Muslim can only follow what is considered to be the best human interpretation of the sharia; he can never be certain that it is the correct interpretation intended by God in the Revelation. The sharia is thus best understood as a

shared opinion of the community based on a literature that is extensive but not necessarily coherent or authorised by any single body.

Shura is the Arabic word for “consultation”. Sunni Muslims believe that shura is recommended in the Koran and by numerous hadiths. They say that the three last of the first four caliphs, or successors to Muhammad, whom they call the Four Rightly-guided Caliphs, were chosen by shura. Today, some Muslims claim that all decisions made by and for Muslim societies have to involve the process of shura. Some regard the process of shura as being “Islamic democracy”.

Sunnah is mainly used to denote the body of hadiths and the historical material of the companions of the Prophet Muhammad.

Sunni schools of law. The four major Sunni schools of law (sing: madhhab, plur: madhahib) are named after their respective founders: (1) Hanafi School, founded by Abu Hanifa (d. 767); (2) Maliki School, founded by Malik ibn Abbas (d. 795); (3) Shafi'i School, founded by Muhammad ibn Idris ash-Shafi'i (d. 820); (4) Hanbali School, founded by Ahmad bin Hanbal (d. 855).

Ta'a: Obedience.

Tajdid is the Arabic word for renewal. In an Islamic context, tajdid refers to the renewal of Islam through reinterpretation of the sacred texts (ijtihad).

Talaq: Divorce, repudiation, which is the unilateral right of the Muslim husband.

Tatliq: Divorce, whereby a judge can dissolve the marriage at the wife's request. There are certain requirements for such a divorce, such as the husband's sexual impotence, the husband's physical abuse of his wife, or the husband's absence for a certain number of years.

Thawb: The long material Sudanese Muslim women wrap around their bodies and loosely over the head.

Ulema': The educated class of Muslim scholars engaged in the several fields of Islamic studies. They are best known as the arbiters of sharia law. The ulema' are well versed in jurisprudence.

Ummah is an Arabic word meaning Community or Nation. It is commonly used to mean the collective nation of Muslim states or the nation of all Muslims in the world.

Urf: Custom that is recognised by the sharia provided that the customary practice does not conflict with any basic tenet of Islam.

Wali: The legal guardian of a woman in marriage, usually her father.

Appendix 2: List of Interviewees

Muslim opposition leaders:

Hassan al-Turabi, leader of the PNC

Wisal al-Mahdi, responsible for women's affairs in the PNC

Sadiq al-Mahdi, leader of the UP

Mohammed Ibrahim Nugud, leader of the SCP

Ali al-Sayed, leader of the National Democratic Alliance and a Member of Parliament

Bashir Adam Rahma, political secretary of the PNC

Samira al-Mahdi, member of the executive bureau of the DUP

Miriam al-Mahdi, general secretary for communication for the UP

Yousif Takana, leader of the Umma Federal Party and the former minister of international cooperation

Christian church leaders:

Mark Abeccien, leader of the Sudan Council of Churches

*Fr Antonius Fakiou*s, deputy bishop, Coptic Orthodox Church

Ismaeil Kanani, dean at the Nile Theological College, Presbyterian

Sister Margareth, vice chairman of the non-governmental organisation Christians and Muslims for Peace (CAMP), active in the main Catholic Church in Khartoum

Bishop Deng, the Episcopal Church in the South

Fr. Peter Loro Bambu, secretary general of the Sudan Catholic Bishops' Conference

Government officials:

Farida Ibrahim, presidential advisor for women's affairs

Haroun Ron Lual, presidential advisor

Anne Itto, minister (state) of agriculture, Sudan People's Liberation Movement

Ahmed Ali al-Imam, advisor to the president on *sharia*

Ahmed Khalid BaBakir, leader of the Islamic jurisprudence council

Abdul Rahim Ali, leader of the shura council of the NCP

Helen Louise Olear, Christian Member of Parliament for the NCP representing the Southern state Eastern Equatoria. Active in various women organisations

Abdurrahman Ali, head of the shura council of the NCP, Member of the Islamic Jurisprudence Council, head of Khartoum International Academy

Badria Suliman Abbas, chairperson of the Legislation and Justice Committee of the National Assembly

Attiyah Mustapha, Member of Parliament for the NCP

Judges:

Rababa Abu Ghazayza, judge of the Supreme Court and member of the Islamic jurisprudence council (head of the legal group)

Chief Sultan Hasan Wijel Shatil, Muslim judge in a local traditional court for customary law in Khartoum

Chief Sultan Paul, Christian judge in a local traditional court for customary law in Khartoum

Journalists:

Alfred Taban, editor of the opposition and southern-based newspaper Khartoum Monitor

Sabah Muhammad, journalist at the daily newspaper *al-ayyam*.

Researchers:

Haydar Ibrahim Ali, expert on the Sudanese Islamist movement

Governmental organisations:

Al-Tayyib Zain Abidin, secretary general of the Sudan Inter-religious Council

Ihsan Ghabshawi, secretary general of the International Muslim Women's Union

Non-governmental organisations:

Rose L. Paulino, chairperson of the Network for Southern Organisation for Peace

Elham Khayri, member of the Sudan Organisation for Non-Violence and Development

Afaf Ahmed Abdel Rahman, general manager of Women Center for Peace and Development

Mudawi Ibrahim Adam, chairperson of the Sudan Social Development Organisation

Aziza Hassani, member of the Women Initiative Group

Amna Abdel Rahman Hassan, executive secretary for the Sudan National Committee on Harmful Traditional Practices

Bibliography

- Abdelwahab Al-Affendi. *Turabi's Revolution: Islam and Power in Sudan* (London: Grey Seal, 1991).
- Abu Shouk, Ahmed Ibrahim. "Native Courts at Work: A Case Study from Dar Bidayriyya in the Sudan", in Christina Jones-Pauly and Stefanie Elbern (eds), *Access to Justice; the Role of Court Administrators and Lay Adjudicators in the African and Islamic Contexts* (The Hague, London and New York: Kluwer Law International, 2002).
- Ali, Haydar Ibrahim. "Civil Society and Democratization in Arab Countries with Special Reference to the Sudan" (Islamic Areas Studies Project, Working Paper No. 12, 1999).
- Appleby, S. *The Ambivalence of the Sacred: Religion, Violence and Reconciliation* (Landham, MD: Rowman & Littlefield, 2000).
- Appleby, S. "Retrieving the Missing Dimension of Statecraft: Religious Faith in the Service of Peacebuilding", in D. Johnston and S. Sampson, *Religion: The Missing Dimension of Statecraft* (New York: Oxford University Press, 2003).
- Ayubi, Nazih N. *Political Islam: Religion and Politics in the Arab World* (London and New York: Routledge, 1991).
- Badawi Jamal. *Gender Equity in Islam* (American Trust Publication, 1996).
- Badran, Margot. *Feminists, Islam, and Nation: Gender and the Making of Modern Egypt* (Princeton, N.J.: Princeton University Press, 1995).
- Al-Badri, Balghis. "Moslem Feminism in Sudan: A Critical Review" (unpublished paper presented at the conference on Islamic feminism in Barcelona, November 2006).
- Benhabib, Seyla. *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996).
- Botiveau, Bernard. "National law and Non-Muslim Status", in Pacini, A. (ed), *Christian Communities in the Arab Middle East. The challenge of the future*, (Oxford: Clarendon Press, 1998).
- Bouta, Tsjeard and Gerorg Frerks. "Women's Roles in Conflict Prevention, Conflict Resolution, and Post-Conflict Reconstruction", (Amsterdam: Netherlands Institute of International Relations, 2002).
- Bouta, Kadayifci-Orellana and Abu-Nimer (eds). *Faith-Based Peacebuilding: Mapping and Analysis of Christian, Muslim and Multi-Faith Actors* (Netherlands Institute of International Relations, 2005).
- Caplan, Arthur. "The brain revolution and ethics", in *The Scientist* October 28: 16 (21). 2002.
- Choueiri, Yousuf, *Islamic Fundamentalism* (London: Pinter Press, 1997).

- Coward, Harold and Smith, Gordon S. (eds). *Religion and Peacebuilding* (Albany: State University of New York Press, 2004).
- Deng, Francis M. and Na'im, Abdullah. "Self-Determination and Unity; The Case of Sudan" (*Law & Policy* 18 nr.3/4, 1996).
- Deng, Francis. *The Search for Peace and Unity in the Sudan* (Washington, D.C.: The Wilson Center Press, 1987).
- Dupret, Baudouin, Berger Maurits, and Al-Zwaini, Laila. *Legal Pluralism in the Arab World* (The Hague, London, Boston: Kluwer Law International, 1999).
- Esposito, John and DeLong-Bas, Natana J. *Women in Muslim Family Law*, (Syracuse: Syracuse University Press, 2001).
- Esposito, John and Voll, John. *Makers of Contemporary Islam* (Oxford: Oxford University Press, 2001).
- Esposito, John and Voll, John. *Islam and Democracy* (New York and Oxford: Oxford University Press, 1996).
- Fluehr-Lobban, Carolyn. *Islamic Law and Society in the Sudan*, (Frank Cass: London, 1987).
- Fluehr-Lobban, Carolyn. "Islamization in Sudan. A critical assessment", in Voll, J.O. (ed). *State and Society in Crisis. Sudan*, (Bloomington and Indianapolis: Indiana University Press 1991).
- Garang, John (edited by Mansour Khalid). *The Call for Democracy in Sudan* (London: Kegan Paul International, 1992).
- Al-Guindi, Fadwa. "Gendered Resistance, Feminist Veiling, Islamic Feminism", *The Afhad Journal* 22, no. 1 (2005).
- Hale, Sondra. *Gender Politics in Sudan: Islamism, Socialism and the State* (Boulder, Colo.: Westview Press, 1996).
- Hale, Sondra. "The Islamic State and Gendered Citizenship in Sudan", in S. Joseph (ed). *Gender and Citizenship in the Middle East* (Syracuse University press 2000).
- Hale, Sondra. "Alienation and Belonging – Women's Citizenship and Emancipation: Visions of Sudan's Post-Islamic Future" (*New Political Science* 23 (1):25-43 2001).
- Hamdi, Mohamed Elhachmi. *The Politicisation of Islam; A Case Study of Tunisia* (Boulder, Colo.: Westview Press, 1998)
- Hellum, Anne. *Women's Human Rights and Legal Pluralism in Africa: Mixed Norms and Identities in Infertility Management in Zimbabwe* (Oslo: Tano Aschehoug, 1999).
- Henderson, E.A. "Culture or Contiguity: Ethnic Conflict, the Similarities of States and the Onset of War, 1820-1989" (*Journal of Conflict Resolution* 41 (5), 1997).
- Holt, P.M. & Daly, M.W. *A History of the Sudan* (Edinburgh: Pearson Education, 2000).

Huntington, Samuel. "Clash of Civilizations" (New York: Council on Foreign Relations, *Foreign Affairs*, 1993).

Huntington, Samuel. *The Clash of Civilizations and the Remaking of World Order* (London: The Free Press, 2002).

International Crisis Group. "Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda" (Africa report no. 122, International Crisis Group, 2006)

Gort, Jerald D., Jansen, Henry, and Vroom, Hendrik M. *Religion, Conflict and Reconciliation* (Amsterdam: Rodopi, 2002).

Joseph, Suad and Slyomovics, Susan. *Women and Power in the Middle East* (Philadelphia, Pa.: University of Pennsylvania Press, 2001).

Joseph, Suad. *Gender and citizenship in the Middle East; Contemporary issues in the Middle East* (Syracuse, N.Y.: Syracuse University Press, 2000).

Johnston, D. *Faith-Based Diplomacy* (New York: Oxford University Press, 2003).

Kebbede, Girma. *Sudan's Predicament: Civil War, Displacement and Ecological Degradation* (Aldershot: Ashgate, 1999).

Kepel, Gilles. *Jihad: the Trail of Political Islam* (London: Tauris, 2004).

Kramer, M. *The Islamism Debate* (Tel Aviv: The Moshe Dayan Center for Middle Eastern and African Studies, 1997).

Kur, D. "Access to Traditional Justice System and the Rights of Women and Children in South Sudan" (Paper presented at a workshop on Legal Protection of Children at South Sudan Law Society. Rumbek, Sudan 2000).

Layish, Aaron and Warburg, Gabriel. *The Reinstatement of Islamic Law in Sudan under Numayri* (Leiden, Boston, Köln: Brill, 2002).

Long, David and Reich, Bernard. *The Government and Politics of the Middle East and North Africa*, (Boulder, San Francisco and Oxford: Westview Press, 1995).

Al-Mahdi, Mariam. "Al-marrah wa al-din (Women and Religion)", (Afhad University of Women, 2003).

Al-Mahdi, Sadiq. *Huquuq Al-Islaamiyah Wa Al-Insaaniyah Lilmarra'ah (Islamic Rights and Human Rights for the Women)* (Khartoum: Maktabah al-sharuuk al-dawliyah 2007).

Al-Mahdi, Sadiq. "Religious Coexistence in the Sudan" (paper presented at a workshop on Freedom of Religion and Belief organised by the Oslo Coalition on Religion and Belief in collaboration with Norwegian Church Aid, December 2005, in Khartoum).

Maila, Joseph. "The Arab Christians: From the Eastern question to the recent political situation of the minorities", in Pacini, A. (ed). *Christian Communities in the Arab Middle East. The challenge of the future* (Oxford: Clarendon Press, 1998).

- Makee, John Wuol. *The Customary Law of the Dinka people of Sudan* (Afterworld Publishing Co. (At 31) 1988).
- Mans, Ulrich and Osman, Mohammed Osman Ali. *Stuck in Change; Faith-Based Peacebuilding in Sudan's Transition* (Netherlands Institute of International Relations 'Clingendael' October 2006).
- McCarty, Justin. *The Ottoman Turks* (London and New York: Longman, 1997).
- Meriwether, Margareth and Tucker, Judith. *Women and Gender in the Modern Middle East* (Boulder: Westview Press, 1999).
- Mir-Hosseini, Ziba. *Marriage on Trial: A Study on Islamic Family Law* (Virginia: Vhps Distribution, 2001).
- Moore, Henrietta. *Feminism and Anthropology* (Minneapolis: University of Minnesota Press, 1988).
- Nyang, Sulayman and Johnston, Douglas. "Conflict Resolution as a Normative Value in Islamic law: Application to the Republic of Sudan", in Douglas Johnston (ed) *Faith-Based Diplomacy. Trumping Realpolitik* (Oxford: Oxford University Press, 2003).
- Pacini, Andrea (ed). *Christian Communities in the Arab Middle East. The challenge of the future* (Oxford: Clarendon Press, 1998).
- Pinto, M. *Political Islam and the United States: A Study of the U.S. Policy Toward Islamist Movements in the Middle East* (Reading: Ithaca Press, 1999).
- Race, Alan and Shafer, Ingrid. *Religions in Dialogue; From Theocracy to Democracy* (Aldershot: Ashgate, 2002).
- Ray, Benjamin C. *African religions. Symbol, Ritual, and Community* (New Jersey: Prentice-Hall, 1976).
- Reich, W. *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (Washington D.C.: Woodrow Wilson Centre Press, 1998).
- Reychler, L. "Religion and Conflict", (The International Journal of Peace Studies 2 (1), 1997).
- Reynal-Querol, M. "Ethnicity, Political Systems and Civil War", (Journal of Conflict Resolution 46 (1), 2002).
- Roald, Anne Sofie. *Women in Islam: The Western Experience* (Routledge: London, 2001).
- Roald, Anne Sofie. "The Wise Men: Democratisation and Gender Equalisation in the Islamic Message: Yusuf al-Qaradawi and Ahmad al-Kubaisi on the Air", in *Encounters 7:1*. (Markfield: Islamic Foundation, 2001).
- Roald, Anne Sofie. *Er muslimske kvinner undertrykt?* (Oslo: PAX, 2005).
- Rolandsen, Øystein H. *Guerrilla government: Political changes in the Southern Sudan during the 1990s* (Uppsala: Nordiska Afrikainstitutet, 2005).

- Rouner, Leroy. *Religion, Politics and Peace* (Notre Dame: University of Notre Dame Press, 1999).
- Russett, Bruce and Oneal, John. *Triangulating Peace: Democracy, Interdependence, and International Organizations* (New York: The Norton Series in World Politics, 2001).
- Sharpe, Eric. *Comparative Religion. A History* (London: Duckworth, 1994).
- Sidahmed, Abdel Salam. *Politics and Islam in Contemporary Sudan* (New York: St Martin's Press, 1996).
- Sivennoinen and Suksi. *Human Rights and Religion; The Case of Sudan*, (Åbo Akademi University: Institute for Human Rights, 1997).
- Stedman, Stephen John, Rothchild, Donald and Cousens, Elizabeth M. (eds), *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder, Colo: Lynne Rienner, 2002).
- Sørnbø, Gunnar. *Peacebuilding in Post-War Situations: Lessons for Sudan* (Bergen: Chr. Michelsen Institute, CMI Report R 13, 2004).
- Sørnbø, Gunnar and Pausewang, Siegfried (eds). *Prospects for Peace, Security and Human Rights in Africa's Horn* (Bergen: Fagbokforlaget, 2004).
- Tier, Akolda M. *Legal framework for religious freedom in Sudan* (Paper presented at a workshop on Christian-Muslim relations in Khartoum in November 2005).
- Trend, D. *Radical Democracy: Identity, Citizenship and the State* (New York: Routledge, 1996).
- Tønnessen, Liv. "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Laws among Northern and Southern Elites in Khartoum", CMI working paper(2007:4) presented at the workshop Plural Legalities in June 2007 in Bergen, Norway. [The article is submitted to the Journal of Middle East Women's Studies for publication]
- Tønnessen, Liv. *Islamism and Democracy: An Inquiry into the Political Thought of Hassan al-Turabi* (Cand. Polit. thesis, University of Bergen, 2005).
- Tønnessen, Liv. "Islamisme og demokrati hånd i hånd", (*Babylon* Vol.3, Nr.2, 2005).
- Tønnessen, Liv. "Hassan al-Turabi's Search for Islamist Democracy" (Bergen: Chr. Michelsen Institute, CMI Working Paper WP: 12, 2006).
- Tønnessen, Liv. "Hassan al-Turabi: maktsyk agitator eller kvinnevennlig demokrat" (*Morgenbladet*, 8-14 September, No. 36, 2006).
- Tønnessen, Liv. "Mannen bak Darfur-Konflikten" (*Ny Tid*, No. 19, 2006).
- Tønnessen, Liv. "Islam har skylden?" (*Studvest*, 5 April 2006).
- Tønnessen, Liv. "Islam på godt og vondt" (*Bergens Tidende*, 8 February 2006).
- Al-Turabi Hassan. "*Al- Mar`a bayna Ta'alim al-Din wa Taqalid al-Mujtama`*" (Khartoum, 1973).

Vendley, William and Little, David, *Religion: The Missing Art of Statecraft* (New York: Oxford University Press, 1994).

Vikør, Knut. "The Sharia and the Nation State: Who Can Codify the Divine Law?", in Bjørn Olav Utvik and Knut Vikør (eds), *The Middle East in a Globalized World* (Bergen: Nordic Society For Middle Eastern Studies, 2000).

Vikør, Knut. *Mellom Gud og stat: ei historie om islamsk lov og rettsvesen* (Oslo: Spartacus, 2003).

Voll, John O. *Sudan: State and Society in Crisis* (Bloomington and Indianapolis: Indiana University Press, 1991).

Official Acts:

Comprehensive Peace Agreement, 2005.

Constitution of the Republic of Sudan 1998.

Interim Constitution of the Republic of Sudan 2005.

Interim Constitution of Southern Sudan 2005.

Personal Status Law for Muslims from the year 1991 (*qanun al-ahwal al-shakhsiyya lil-muslimin li-sana 1991*). Sudan Department of Justice.

Criminal Act 1991 (*al-qanun al-jana'i*). Sudan Department of Justice.

International Conventions:

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

International Covenant on Civil and Political Rights (ICCPR).

Newspapers:

The Citizen, on 12 February 2007 Vol. 2 No. 52.

The Citizen, on 24 February 2007 Vol. 2 No. 64

The Khartoum Monitor, on 12 February 2007 Vol 6 No. 1138.

The Khartoum Monitor, on 14 February 2007 Vol. 6 No. 1140.

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The Khartoum Monitor, on 19 February 2007 Vol. 6 No. 1144.

The Khartoum Monitor, on 24 February 2007 Vol. 6 No. 1148.

Al-ayam, on 1 March 2006.

Al-ayam, on 17 May 2006.

Al-ayam, on 31 October 2006.

Al-ayam, on 22 November 2006.

Internet pages:

Abdelmoula, Adam M. "An Ideology of Domination and the Domination of an Ideology. Islamism, Politics, and the Constitution in the Sudan" (Conference paper presented at the conference "Religion, Nationalism, and Peace in Sudan" at the US Institute of Peace Conference. 16-17 September 1997). Found at:

www.usip.org/religionpeace/rehr/sudanconf/abdelmoula.html, accessed on 12 February 2007.

Akechak Jok, Aleu and Leitch, Robert. "A study of Customary Law in Contemporary Southern Sudan" (The South Sudan Secretariat of legal and Constitutional Affairs, 2004)

Found at:

www.gurtong.org/ResourceCenter/laws/Customary%20Law%20Overview%20in%20South%20Sudan%20March%202004, accessed on 8 May 2007.

“An Ideology of Domination and the Domination of an Ideology. Islamism, Politics, and the Constitution in the Sudan”. Found at:
www.usip.org/religionpeace/rehr/sudanconf/abdelmoula.html, accessed on 13 February 2007.

Peace by piece: addressing Sudan's conflicts. Found at:
<http://www.c-r.org/our-work/accord/sudan/index.php>, accessed on 9 March 2007.

“Sudan: Religions, Peoples, Languages”. Found at:
http://lexicorient.com/e.o/sudan_4.htm, accessed on 10 February 2007.

“Afhad University for Women.” Found at:
<http://www.ahfad.org/>, accessed on 15 February 2007.

“Christian-Muslim Relation in Sudan”. Found at:
www.anglicannifcon.org/SudanPF.htm, accessed on 17 February 2007.

“The Interim Constitution of Southern Sudan”. Found at:
www.cushcommunity.org/constitution.pdf, accessed on 10 February 2007.

“Morocco’s new family law: the main reforms” in *Le Monde Diplomatique*. Found at:
<http://mondediplo.com/2004/04/02morocco>, accessed on 8 May 2007.

“To norske muslimer om Turabi”. Found at:
www.morgenbladet.no/apps/pbcs.dll/article?AID=/20060630/OAKTUEL/106300020&SearchID=73275049631442, accessed on 15 February 2007

“The Interim National Constitution of the Republic of Sudan 2005”. Found at:
www.mpil.de/shared/data/pdf/inc_official_electronic_version.pdf, accessed on 10 February 2007.

“Sudan. International Religious Freedom Report 2005”. Found at:
www.state.gov/g/drl/rls/irf/2005/51497.htm, accessed on 12 February 2007.

“What is the New Sudan Vision?” Found at:
www.sudantribune.com/spip.php?article16130, accessed on 11 February 2007.

“The Comprehensive Peace Agreement”. Found at:
www.unmis.org/english/documents/cpa-en.pdf, accessed on 12 February 2007.

“An Ideology of Domination and the Domination of an Ideology. Islamism, Politics, and the Constitution in the Sudan”. Found at:
www.usip.org/religionpeace/rehr/sudanconf/abdelmoula.html, accessed on 10 February 2007.

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SUMMARY

Government policy since independence has by and large disregarded Sudan's multi-religious character through continuous Islamisation and Arabisation processes that have fuelled the civil war. International considerations regarding religious pluralism and the accommodation of different religious communities were at the forefront in the peace negotiations. The study outlines Islamic actors' perception of non-Muslims' rights after the comprehensive peace agreement (2005), including the rights of apostates. Also, the study elaborates how non-Muslims themselves perceive their rights within the frame of Islam.

In their eagerness to include marginalised religious groups, Sudanese and international peacebuilders ignored gender issues during the negotiations. In the name of religious freedom, the CPA and the national interim constitution have left the civil rights of women to the country's religious communities – Islamic, Christian, and traditional African beliefs. Muslim and non-Muslim leaders alike perceive this as an intrinsic religious right. Civil rights such as marriage, divorce, inheritance, maintenance and financial custody of children, and alimony are perhaps the most tangible and important in the daily lives of "ordinary" Sudanese women. Yet, the CPA and the national interim constitution have not defined how the religious and tribal family laws that regulate women's civil rights are being and should be formed and applied in today's Sudan. Sudanese women are granted different civil rights depending on which religious or tribal community they belong to. This study outlines the main discriminatory features in what has become a complicated patchwork of plural legalities for Sudanese women since the peace agreement.

Religiously defined laws in and by themselves are not necessarily discriminatory against women, but this plural legal system does not guarantee all Sudanese women equal civil rights as enforced in today's Sudan. The study shows that there are ongoing debates within the religious communities towards maintaining or changing the discriminatory features of religious and tribal family laws. Despite the fact that most Sudanese elite women deem their current "rights status" as discriminatory, they do not demand a secular law on women's civil rights. They promote "changing from within" by reinterpreting and transforming the religious and tribal laws in a more gender equal direction.

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