



Rights for Peace

Preventing Mass Atrocities with Human Rights

Discrimination and Hate Speech Fuel Violence in Sudan Full Report



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Rights for Peace is a non-profit that seeks to prevent mass atrocity crimes in fragile States by collaborating with local organisations. We undertake training, research and advocacy, addressing the drivers of violence, particularly hate-based ideology.

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Examples of Reported Hate Speech

<i>"Clean the state of any black plastic bags"</i>	This dehumanising and genocidal language was reportedly used prior to a military attack in South Kordofan, referring to ethnic 'black African' people from the Nuba Mountains, Darfur and South Sudan (as opposed to 'Arab elites' from Khartoum).
<i>"Today we cleaned Al-Kurmuk. We don't want alcohol any more here, no star will rise here, only God's flag will rise here."</i>	This was reportedly stated in relation to Blue Nile with reference to attacks against civilians who had been protected by SPLM-N. The 'star' refers to the star in the SPLM flag.
<i>"Where are you Malik?"</i>	This was threatening language used towards Malik Agar, chairman of the SPLM-N and governor of Blue Nile, and also those who sympathise with SPLM-N (which include 'original' citizens) - see Amnesty report. ¹
<i>The Beni Amer are "a cancer that needed to be cut off".</i>	This dehumanising and threatening language was reported as being said in Kassala against the Beni Amer.
<i>"Those people should go back to their country"</i>	This is being said against the Beni Amer by speakers who consider them as 'foreigners' and 'refugees' who were granted Sudanese nationality by the al-Bashir regime.
<i>"Khasa"</i>	An insult used against the Beni Amer.
<i>"Ajanib" "Newcomers / foreigners" (with racial overtones).</i>	Used to define certain people as non-Sudanese (for instance people from Chad), particularly migrants or those who are non-Arab or African. For instance, this language is used against the Zaghawa people in Halfa Al-Jadeeda.
<i>"Liberate the area from the al-Abeed"</i>	"Al-Abeed" is an insulting and demeaning term used to refer to Sudanese people who are dark-skinned, referring to slave history (similar to 'negro').

¹ Amnesty International, "We Had No Time to Bury Them": War Crimes in Sudan's Blue Nile State' (2017), <https://www.amnesty.org/en/documents/AFR54/011/2013/en/>.

Introduction

The current momentum for change in Sudan since the 2019 Revolution provides unique opportunities, evidenced recently by the Cabinet and the Sovereign Council's approval for ratification of the Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in February 2021.

This timely report identifies that prejudice, discrimination and divisions, often exacerbated by incitement to hostility, have impacted communities in Sudan and are continuing to fuel violence. The findings and recommendations aim to contribute to constructive dialogue about measures needed to strengthen social cohesion in Sudan.

If change towards a rights-based and democratic society in Sudan is to be achieved, it is critical to maximise opportunities for dialogue about the root causes of violence, their impacts and reversal.

Our main findings are that:

1. Sudan is seeing an escalation of violence characterised by clashes between ethnic groups, often ignited by instances of hate speech and incitement to violence.
2. Many inter-communal clashes start as individual disputes. Civil society groups consistently identify the need for the government to take responsibility for de-escalating attacks, protecting citizens and holding those responsible to account. Silence and lack of intervention has resulted in chronic insecurity and escalating violence.
3. Local groups repeatedly point to Sudan's weak and discriminatory justice system. The perceived lack of official uptake in resolving cases drives people to take matters into their own hands, often escalating tensions and leading to cyclical patterns of violence.

The Sudanese government must take account of the whole picture, addressing legal, structural and social change. There is a need to break down centre-periphery discrimination by embracing inclusive processes that provide genuine dialogue and decision-making powers to affected groups. Critically, the government must address its weak justice system, as well as the backlog of discriminatory laws that need reforming and new laws that are necessary to give effect to international standards to promote equality and counter hate speech.

There is no universally agreed definition of hate speech. In fact, some hateful speech should be permissible; international standards require that offensive language, even if deeply offensive, be permitted in an open and democratic society. Free speech must only be limited when necessary and

by law.² However, when expression incites violence, discrimination or hostility against a defined group, it must be prohibited. If language incites the destruction of a specific group (“a national, ethnical, racial or religious group” as per the 1948 Genocide Convention), in whole or in part, it becomes an international crime of genocide.

As regards discrimination, numerous human rights treaties define discrimination, which in combination, read as:

“any distinction, exclusion, restriction or preference based on race, colour, descent, national, social or ethnic origin, religion or belief, gender, marital status, disability, age, sexual orientation, language political or other opinion, nationality, property, birth or any other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”³

In **Part I**, the report considers historic and systemic foundations of divisions and violence. Linkages are drawn between colonial ‘divide and rule’ and later ‘Arabisation’ policies that underlie ongoing mistrust and hatred between different groups, making them vulnerable to political manipulation, rumours or other triggers. Hate speech is merely an expression of prejudice, racism and ideologies of superiority, providing an indicator of bias intention in relation to other violations, including widespread human rights abuses, and sometimes spilling over to mass atrocity crimes.

Part II considers a range of recommendations on legal and policy reform, emphasising the importance of ensuring inclusive processes in the reform agenda, be it with regard to the constitution, an anti-discrimination law, engaging in an extensive law reform programme to align national laws with international standards, or to introduce new provisions to counter incitement to violence and genocide.

² International Covenant on Civil and Political Rights (ICCPR), Article 19(3).

³ Combining definitions from Article 2 of ICCPR, Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Article 1 of the Convention on the Elimination of Discrimination against Women (CEDAW), which respectively define discrimination.

Methodology and Disclaimer

This report provides a contextual approach to human rights, that focuses on both social and legal responses. There is a mutually reinforcing need for dialogue as well as legal and institutional reform at this time of transition.

The research is based on a series of workshops and follow up interviews led by Rights for Peace with civil society from Port Sudan, Darfur, Kassala, Al-Gadarif, South Kordofan and Blue Nile states, as well as Khartoum. The workshops were designed to strengthen capacities to identify, monitor and collect reports of incitement to violence.⁴

It has not always been possible to identify counter allegations to reported hate speech and discriminatory violence, though all efforts have been made to seek interviews with a range of groups and communities.

All representations are solely those of Rights for Peace and do not reflect the views of the sources interviewed, or their communities.

⁴ Further interviews were conducted to gather records of hate speech, discrimination and prejudice.

Summary of Recommendations

Historic Division and Marginalisation Must be Addressed

- The government must look at historic and root causes of discrimination and hate speech as an integral part of the transition and seek to establish policies to reverse these.
- There needs to be government recognition that law reform must be accompanied by attitude change in order to address deep-seated prejudice and bias.
- Inclusive consultation and dialogues should go beyond Khartoum to ensure meaningful participation of minority groups in different regions.

The Need for a Law to Counter Hate Speech Amounting to Incitement

Any new law should addressing hate speech should:

- Fully respect freedom of expression and only limit free speech in accordance with the International Covenant on Civil and Political Rights (ICCPR).
- Prohibit advocacy of discriminatory hatred that constitutes ‘incitement to hostility, discrimination or violence’, establishing a high threshold to limit free expression, as set out in the Rabat Plan of Action.
- Prohibit incitement to genocide as a criminal along with other international crimes.
- Include all ‘protected characteristics’ recognised in international human rights law.

The Need for a Comprehensive Anti-Discrimination Law

- Inclusive processes with affected groups are critically important when it comes to addressing discrimination: these should be actioned as a matter of urgency in what is a unique opportunity for law and policy reform.
- The law itself should protect more than racial discrimination. It should include race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, age, disability, health status or discrimination based on “any other status” (in accordance with Article 26 ICCPR).
- Challenging discrimination should be a civil right, to obtain appropriate redress by the victim (e.g. employment, resources or services). If discrimination includes violence (assault, torture), the violent act can become an aggravated criminal offense (e.g. a ‘hate crime’).
- Promote equal treatment, imposing positive obligations to make reasonable adjustments. The rights of people with diverse characteristics must be protected equally.

Institutional and Security Sector Reform

- The government should urgently start the reform program provided in the 2019 Transitional Constitution to reform the National Security Service, Rapid Support Forces (made up of former Janjaweed militias), military intelligence and police.
- All policing, military and intelligence services must cease human rights violations, end arbitrary detention, abuse and mistreatment, and ensure neutral intervention to de-escalate clashes and protect civilians.
- The UN's new mission in Sudan should work on providing human rights training and technical assistance to the National Security Services and provide comprehensive monitoring and observation.

Prevention of Mass Atrocities

- The government must address root causes of violence and seek to build social cohesion as integral to the transition.
- The transitional government should establish a National Mechanism for the Prevention of Mass Atrocities and appoint focal points within relevant ministries, institutions and civil society on this issue.
- The government must pay due attention to, and work to reform, urban planning so as to ensure that ethnic groups are not geographically segregated.

Map of Sudan



PART I - CONTEXT OF DISCRIMINATION IN SUDAN

1. Historic Discrimination and Violence

1.1 Dominance, Exploitation and Slavery

Structural dominance, inequality and racism have been a long-standing feature of Sudanese history.⁵ Turkish Sudan (1820-81) was led by an Arab dominated regime in Khartoum that exploited non-Arab peoples through slavery and exploitation of natural resources. Later, the British-Egyptian Condominium (1899-56) continued to favour northern elites over 'less developed' peoples. As part of its 'divide and rule' policy, it marginalised and dominated⁶ southern Sudanese provinces that were multi-religious, multi-ethnic, and multilingual and favoured the predominantly Muslim and Arabic-speaking North.⁷

Historically, hierarchies were reinforced through 'indirect rule' in southern Sudan, whereby colonial authorities 'gave power' to tribal leaders and ruled through them, divided the South into hundreds of informal chiefdoms and created hierarchies between them.⁸ Through mandated regional and ethnic segregation, social hierarchies were reinforced, cementing distrust, fear, and conflict between the various Sudanese peoples. While divisions and conflict eventually led to the independence of South Sudan, other marginalised groups in Darfur, South Kordofan, Blue Nile and in eastern Sudan continue to suffer from centre-periphery marginalisation as well as racist and ethnic discrimination.⁹

"Arabization" and Racism

Independence in 1955 resulted in two civil wars, with increasing projects of 'Arabization' and institutional Islamization under President Al-Bashir being brutally imposed, reinforcing ethno-

⁵ Lutz Oette, 'Power, Conflict and Human Rights in Sudan' pp.15-40, in Lutz Oette & Mohamed A. Babiker (eds.) *Constitution Making in the Sudans*, Routledge (2018). And, Douglas H. Johnson, 'British policy in Anglo-Egyptian Sudan bears some responsibility for the deep-rooted divisions between North and South', *LSE* (2012), <https://blogs.lse.ac.uk/africaatlse/2012/07/02/british-policy-in-anglo-egyptian-sudan-bears-some-responsibility-for-the-deep-rooted-divisions-between-north-and-south/>.

⁶ Savo Heleta, 'Roots of Sudanese conflict are in the British colonial policies' (2008), *Sudan Tribune*, <https://sudantribune.com/Roots-of-Sudanese-conflict-are-in-25558>.

⁷ EISA, 'Sudan: British colonialism's divide and rule (1896-1939)' (2020), <https://www.eisa.org/wep/sudoverview3.htm>. and, Alison J. Ayers, 'Sudan's uncivil war: the global—historical constitution of political violence', *Review of African Political Economy* 37:124 (2010), p. 157.

⁸ Heleta, 'Roots of Sudanese conflict', *op.cit.*

⁹ Kim Searcy, 'Sudan in Crisis', *Origins* (2019), <https://origins.osu.edu/article/sudan-darfur-al-bashir-colonial-protest>.

linguistic, religious and socio-economic cleavages.¹⁰ In Khartoum, “Islam not only served as a faith, but it became a way of life, and a specific prestigious cultural and ethnic identity associated with Arabism.”¹¹ For non-Arab groups, Islam also symbolised an ethnic and cultural phenomenon that had historically suppressed them as slaves and continued to exclude them as Black Africans and adherents to a different faith.¹²

Since the South’s secession in 2011, Sudan has continued to face political, economic, and socio-cultural instability and conflict. Repression and tensions have continually destabilized the ‘new South’ of the country¹³, as well as other regions. Intercommunal violence in the West of the country¹⁴ is ongoing.¹⁵

1.2 Transition to Democracy

The 2018-19 protests saw the removal of President Omar al-Bashir and the takeover by a Transitional Military Council (“TMC”). There was initially violent repression of demonstrators who insisted on a transfer to civilian rule in June 2019¹⁶ leading to injuries and deaths.¹⁷ Dozens of people were killed, and some had their bodies thrown into the River Nile.¹⁸ The military faced backlash for the incident, and the TMC expressed “sorrow for the way events escalated”, saying that the operation had targeted “troublemakers and petty criminals”.¹⁹

In July and August 2019, Political Agreements and a Draft Constitutional Declaration were signed, detailing a 39-month transition period with “a legal reform program, and rebuilding and developing the justice and rights' system to ensure the independence of judiciary and the rule of law.”²⁰

¹⁰ Camillo Casola, ‘Sudan: The Roots of the Conflict, and Those of the Peace Process’, *Italian Institute for International Political Studies* (2020), <https://www.ispionline.it/en/pubblicazione/sudan-roots-conflict-and-those-peace-process-26272>.

¹¹ Monica Fahmi, ‘Is Identity the Root Cause of Sudan’s Civil Wars?’, *E-International Relations* (2012), <https://www.e-ir.info/2012/04/09/is-identity-the-root-cause-of-sudans-civil-wars/>

¹² Ibid.

¹³ Casola, ‘Sudan: The Roots of the Conflict’.

¹⁴ International Crisis Group, ‘Crisis Watch’ (2021), <https://www.crisisgroup.org/crisiswatch/february-alerts-and-january-trends-2021#sudan>.

¹⁵ UN News, ‘Intercommunal clashes displace tens of thousands in the volatile Darfur region’ (2020), <https://news.un.org/en/story/2020/01/1054911>.

¹⁶ Leah Asmelash and Faith Karimi, ‘What’s going on in Sudan and what the US is doing about it – explained’, *CNN* (2019) <https://edition.cnn.com/2019/06/13/africa/sudan-crisis-overview-trnd/index.html>.

¹⁷ BBC News, ‘Sudan crisis: What you need to know’ (2019), <https://www.bbc.co.uk/news/world-africa-48511226>.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Transitional Military Council & Forces of Freedom and Change, “Political Agreement on establishing the structures and institutions of the transitional period between the Transitional Military Council and the Declaration of Freedom and

However, the Agreements were criticised by various marginalised groups such as SPLM-N (Abd Alaziz Alhilu wing) in South Kordofan and Sudan Liberation Movement (SLM - Abd Alwahid Noor) in Darfur,²¹ specifying that the Khartoum elite failed to include issues of comprehensive peace into the Constitutional Declaration, leaving unchecked violence in the regions with militia such as the Janjaweed still fully operational.

The SPLM-N and the SLMA in Darfur also did not sign the Juba Peace Agreement in October 2020, designed to address underlying grievances to the regional conflicts.

1.3 Escalating Hate-Based Violence in the Regions

Military structures existing prior to Sudan's 'transition' continue to operate today. The Rapid Support Forces, formed in 2013 by Omar Al-Bashir's regime are drawn from former Janjaweed militias who are accused of myriad atrocities and human rights abuses in Darfur and elsewhere²² and are also accused by civil society as responsible for ongoing human rights violations, including racist and sexual abuse towards protestors during the Khartoum protests in 2019.²³ These existing structures are also coupled with vacuums of power in some areas resulting in increasing volatility and violence.

Hate-based violence is ongoing in conflict areas such as West Darfur, South Kordofan and Blue Nile. However, new escalating mass violence is also being witnessed in eastern Sudan, in Port Sudan and Kassala. Genocidal language such as "we need to clean up the black plastic bags", referring to black (non-Arab) ethnic minority groups in these regions have been recorded.²⁴ The risk of a repeat of mass atrocities in these regions is palpable, with the Global Centre on R2P listing Sudan on its Atrocity Alert in January 2021, as well as several times throughout 2020.²⁵

Local actors warn that the government emphasis on truce agreements is not addressing underlying divisions and grievances. Given Sudan's history of genocide in Darfur and mass atrocities in other regions, and ongoing deadly clashes in Darfur, Gadarif, Kassala, Halfa Al-Jadeeda and Port Sudan,

Change Forces" (2019),

https://en.wikisource.org/wiki/Political_Agreement_on_establishing_the_structures_and_institutions_of_the_transition_al_period_between_the_Transitional_Military_Council_and_the_Declaration_of_Freedom_and_Change_Forces.

²¹ Abdel Wahid Nur heads the Sudan Liberation Movement (SLM), a large armed group in the Darfur region.

²² Human Rights Watch, 'Sudan's Transition Hasn't Ended Abuses in Darfur' (2019),

<https://www.hrw.org/news/2019/05/08/sudans-transition-hasnt-ended-abuses-darfur>.

²³ Nermin Ismail, 'Militiamen in Sudan raped men and women, says eyewitness', DW (2019),

<https://www.dw.com/en/militiamen-in-sudan-raped-men-and-women-says-eyewitness/a-49120693>.

²⁴ Dehumanising and genocidal language reportedly used prior to a military attack in South Kordofan, referring to ethnic 'black African' people from the Nuba Mountains, Darfur and South Sudan (as opposed to 'Arab elites' from Khartoum).

²⁵ Global Centre for the Responsibility to Protect, 'Atrocity Alert No. 236: Sudan, Ethiopia and Israel and the Occupied Palestinian Territories' (2021) <https://www.globalr2p.org/publications/atrocity-alert-no-236/>.

these concerns are real. With all eyes on Khartoum, as well as the recent withdrawal of UNMIS,²⁶ attacks, killings and sexual violence in the regions continue to worsen. Addressing root causes is critical to stemming the recurrence of widespread ethnic, religious or cultural violence in these regions. Otherwise, there is no hope of moving on from Alex de Waal's statement that: "mass atrocities in Sudan have no clear endings."²⁷

²⁶ UN News, 'UN confirms closure of Darfur peacekeeping mission' (2020), <https://news.un.org/en/story/2020/12/1081122>.

²⁷ Mass Atrocity Endings, 'Sudan: 1985 – 2005' (2015), <https://sites.tufts.edu/atrocityendings/2015/08/07/sudan-2nd-civil-war-darfur/>. An adaptation of "Sudan: Patterns of violence and imperfect endings" by Alex de Waal in *How Mass Atrocities End: Studies from Guatemala, Burundi, Indonesia, Sudan, Bosnia-Herzegovina, and Iraq*, ed Bridget Conley (Cambridge University Press, 2016).

2. Escalating Hate Speech and Conflict in Eastern Sudan

2.1 Neglect and Divisions in Eastern Sudan

Sudan's Red Sea, Kassala and Gadarif states in the East suffer historical neglect from the central government and are grossly under-developed despite their strategic location near Sudan's only seaport.

The eastern states are multi-ethnic, including the eastern Sudanese Beja community, with its Hadendawa clan and members of the Beni Amer community. Both groups live in Kassala, Gadarif and Port Sudan.²⁸ In addition, migrants to eastern Sudan include displaced persons from conflict zones, such as the Nuba community, originally from South Kordofan, and the Zaghawa from Darfur.²⁹

The clashes between the Beni Amer and the Nuba tribes are among the fiercest of the inter-communal conflicts in eastern Sudan.³⁰ With origins spanning western Eritrea and eastern Sudan, the Beni Amer are considered by some as a subgroup of the Beja people. They are mostly Muslim and constitute the largest ethnic grouping in Eritrea:

“To some [the Beni Amer] are considered foreigners from Eritrea who were granted citizenship in Sudan under the former Omar al-Bashir government”.³¹

During the last 30 years, disputes over natural resources and limited government allocations between the ethnic groups of eastern Sudan, including the Hadendawa and Beni Amer have been common. The first bloody confrontation between the Nuba and Beni Amer broke out in Port Sudan in February 1986, following disputes about implementation of Sharia Law and its enforcement on alcohol sales and consumption. The confrontation led to a large number of deaths on both sides. This incident has created long-standing adversity between the two groups.

Since April 2019 there has been an upsurge of intercommunal fighting in the three eastern states, sometimes between the Beni Amer and the Nuba, and at other times between the Hadendawa and

²⁸ Sudan in the News, 'What is happening in Port Sudan and Kassala?' (2020), <https://www.sudaninthenews.com/east-sudan-report>.

²⁹ Ibid.

³⁰ Ibid.

³¹ Interview with Rights for Peace source based in Port Sudan, November 2020.

the Beni Amer. In Port Sudan the two groups live in neighbourhoods which are geographically close but ethnically separated. Since the fall of Bashir on 11 April 2019, the unstable security situation has contributed to escalating violence between them.

According to activists from the region interviewed by Rights for Peace, a male member of the Beja Leaders Supreme Council has been allegedly arrested twice by the authorities for allegations of incitement to violence. Rights for Peace was informed that there are roughly 32 criminal cases filed against him, including disturbance of public safety, publication of false news, calling for opposition to public authority by use of violence or criminal force, and provoking hatred against or amongst sects. Although there are a number of cases filed against him, the cases have not yet proceeded, and activists from the region have expressed disbelief that he will be tried to face justice. Activists highlighted that complaints before the General Prosecutor in Port Sudan are on hold, which they allege has been done intentionally. Activists have had meetings with the General Prosecutor and the Minister of Justice in regard to these cases, which were filed almost eleven months ago, with no progress.

2.2 Clashes Between the Hadendawa and Beni Amer in Kassala (2020)

There were rising tensions between the Hadendawa and Beni Amer in Eastern Sudan following the ousting of Bashir in 2019. The Hadendawa claimed that the delegation from Eastern Sudan attending the Juba peace negotiations did not represent East Sudan and “were not Sudanese”. Clashes erupted between the Hadendawa and the Beni Amer on 18 November 2019. As a result, to this day they have rejected the Juba Peace Agreement.

In July 2020, the new Sudanese Prime Minister, Abdulla Hamdok, appointed civilian governors for the country’s 18 provinces. Salih Ammar was appointed Governor of Kassala, after being nominated by the Forces of Freedom and Change (FFC).³²

- Saleh Ammar is an ethnic Beni Amer (“associated as coming from Eritrea”)
- The Hadendawa is the dominant community in Kassala, part of the ethnic Beja group

Ammar’s appointment was rejected by members of the Hadendawa leading to protests and clashes in several eastern Sudanese cities. Rights for Peace obtained footage of Hadendawa mobilisation, including lorries and buses bringing Hadendawa reinforcements to Kassala. Leaders of the Hadendawa are reported to have publicly stated that:

³² The Forces for Freedom and Change is the body which represented protesters during the 2018–19 Sudanese protests. In July 2019, they negotiated a power-sharing plan with the Transitional Military Council (TMC). They were able to put forward names for the appointment of governors.

“The Beni Amer are a cancer that needs to be cut off”.

The protests escalated from 25 August 2020, resulting in the death of at least five people and over three dozen injured. Police forces did not intervene until it was too late. According to some local sources, a hotel was burned down in retaliation for inciting hate speech posted on WhatsApp directed against the Beni Amer community; though the allegations are contested.³³

On 13 October 2020, after months of protests, the prime minister allegedly dismissed Saleh Ammar.³⁴ The news of his dismissal triggered new protests in Kassala, with at least six people killed in Suakin in clashes between the Hadendawa and the Beni Amer, and seven protesters were killed at the Kassala State government headquarters by the Sudan Armed Forces, the Rapid Support Force and the police, as well as a member of the security forces.³⁵

According to interviews conducted by Rights for Peace,³⁶ the protesters killed by the security forces were from the Beni Amer tribe, and the security forces have not, as yet, been held accountable.³⁷

Examples of Hate Speech

Rights for Peace interviewed local actors who explained that violence between the two ethnic groups is based on deep seated prejudice and discrimination. This has been fuelled by hate speech and incitement allegedly propagated by Mohamed Al Amin Turuk (‘Turuk’), one of the influential leaders of the Hadendawa and his alliance from other Beja tribes. Turuk is known for his affiliation with the National Congress Party (NCP), the former ruling party in Sudan.

Other instances of hate speech have been disseminated by Beja tribal leaders, such as Abo Shiba and Hamed Abo Zainab (both community leaders) and Sayied Ali Abu Amna, the political secretariat of the Supreme Council of Beja leadership. These leaders have reportedly said the following:

- *“Those people they should go back to their country”*

³³ Rights for Peace interview, 6 January 2021.

³⁴ Al Jazeera, ‘Sudan’s PM sacks Kassala governor after unrest, port blockade’ (2020) <https://www.aljazeera.com/news/2020/10/13/sudans-pm-sacks-kassala-governor-after-unrest-port-blockade>.

³⁵ Human Rights Watch, ‘Sudan: Security Forces Kill Protesters in Eastern Sudan’ (2020), <https://www.hrw.org/news/2020/12/21/sudan-security-forces-kill-protesters-eastern-sudan>.

³⁶ Rights for Peace interview, 9 January 2021.

³⁷ Nabeel Biajo, ‘Report: Sudan Security Forces Who Killed Kassala Protesters Never Held Accountable’, VOA News (2020), <https://www.voanews.com/africa/south-sudan-focus/report-sudan-security-forces-who-killed-kassala-protesters-never-held>.

- *“The Beni Amer are originally from Eritrea; they were refugees who were granted Sudanese citizenship”*
- *“Those people cannot cross or pass our lands”*
- *“We will take back our lands that were seized from us and given to those people”.*
- *“The Beni Amer are a cancer that needs to be cut off”.*

Legal Analysis:

While some of these speeches are deeply offensive, not all hateful speech is unlawful, nor should it be. As far as possible, speech needs to be free and lawful as a matter of principle in an open and democratic society.

- Hate speech becomes a human rights violation if it incites discrimination, hostility or violence towards a person or a group defined by their race, religion, ethnicity or other factors. It becomes an international crime if it incites genocide: the destruction of a national, ethnical, racial or religious group - in whole or in part.³⁸

While there is no universally accepted definition of incitement, international jurisprudence and the Rabat Plan of Action (including its 6-part test) provide useful guidance.³⁹ In general terms, the speech would need to:

- Be directed against an identifiable group;
- Have a public element; and
- Cause a risk of harm for individuals in the targeted group.

The legal implications of hate speech depend on the context, such as the speaker profile, their level of influence, the target audience, if the speech was made publicly, and the socio-political context:

³⁸ OHCHR, ‘Convention on the Prevention and Punishment of the Crime of Genocide’ (1948) <https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx>.

³⁹ For the full text of the Rabat Plan of action, including the 6 part test, see UN Human Rights Council, ‘The Rabat Plan of Action on the prohibition of advocacy of national, racial, religious hatred that constitutes incitement to discrimination, hostility or violence, dated 11 January 2013, UN A/HRC/22/17/Add.4, https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

<p><i>“Those people they should go back to their country”</i></p>	<p>Offensive but lawful hate speech</p> <p>Most likely would be considered lawful hate speech. Offensive, but a tolerated opinion in an open society.</p>
<p><i>“We will take back our lands that were seized from us and given to those people” (referring to Beni Amer).</i></p>	<p>Human Rights Violation</p> <p>Depending on the circumstances, such speech could be considered as violating human rights <i>protecting against incitement to hostility, discrimination and violence</i>, which the State is obligated to protect in Sudan.</p>
<p><i>The Beni Amer are “a cancer that needs to be cut off”.</i></p>	<p>International Crime</p> <p>Depending on the circumstances, this language could be considered as <i>incitement to genocide</i>, amounting to an international crime.</p>

2.3 Extreme Divisions and Violence in Port Sudan (2019)

On 21 August 2019, clashes between the Beni Amer and Nuba tribes re-ignited as a consequence of an incident in the Dar Al-Naim neighbourhood in Port Sudan. According to interviews, the violence began when two Beni Amer young men harassed a woman from Nuba in the street, spat on her face, tore up her clothes and beat her. Following this, violence erupted between the Nuba and the Beni Amer lasting three days. Houses were set on fire, including the Beni Amer setting fire to an area largely inhabited by the Nuba community.⁴⁰

According to one source, both groups used insulting words against each other such as 'Khasa' to describe the Beni Amer, and 'Abeed' (Negro) to describe the Nuba. 'Khasa' is a term used to negatively stereotype Beni Amer; it is a demeaning word and considered as an insult. The term 'Abeed' an insulting phrase similar to "slave" or "negro", used to describe dark-skinned Sudanese.

Fighting between the two groups is now erupting regularly:

- On 23 August 2019 resulting in the death of 34 people and the wounding of 105 people^{41 42}
- 10th December 2019,⁴³ despite the groups having signed a cessation of hostilities agreement in August.
- On 3rd January 2020, skirmishes erupted between the Beni Amer and Nuba in Port Sudan, following a pickpocketing incident which resulted in a stabbing. The Beni Amer retaliated for the killing of their community member, resulting in the burning of houses, nine deaths and the injuries of at least 60 people.⁴⁴
- On 9 August 2020, violence broke out again with brutal killings, including the mutilation of corpses and burning people alive.⁴⁵

This last instance of violence occurred during the tensions between the Hadendawa and Beni Amer in Kassala, over the appointment of the Kassala State Governor (see Case Study 1). The Nuba people in Port Sudan marched towards the government building in order to submit a petition against the

⁴⁰ Rights for Peace interviews with two civil society leaders of the Nuba community, and one civil society leader from the Beni Amer community, on 20 July 2020, 18 August 2020 and February 2021 respectively.

⁴¹ Available online on the Facebook page of the Central Committee of South Sudan Doctors.

⁴² Dabanga, '34 dead in Port Sudan tribal strife' (2020), <https://www.dabangasudan.org/en/all-news/article/34-dead-in-port-sudan-tribal-strife>.

⁴³ In interviews conducted with civil society members, Rights for Peace was told that in Port Sudan's main market, men from the Nuba tribe attacked members of the Beni Amer tribe following the postponement of the trial session of the defendants of the August clashes. Roughly 29 people were injured. The authorities deployed a large number of security forces in order to contain the situation and closed the market - Rights for Peace interviews, September 2020.

⁴⁴ Ibid.

⁴⁵ Rights for Peace interview with an activist from Port Sudan.

appointment of the South Kordofan governor⁴⁶, their route going through the Beni Amer Dar Al-Naeem neighbourhood. The Beni Amer – in thinking the Nuba people were there to attack them - threw stones at the rally. Violence erupted and fighting continued for four consecutive days. The death toll climbed to 25 and at least 87 others were wounded.⁴⁷ According to reports, the majority of those killed were from the Nuba tribe.

2.4 Deadly Clashes in Al-Gadarif (2020)

On 9 May 2020, violence broke out between Beni Amer and Nuba communities in Al-Gadarif, resulting in the killing of seven people and the wounding of dozens of others. This was sparked by a dispute over water, when a Beni Amer water seller allegedly refused to sell water to a Nuba woman after she questioned the price. A quarrel broke out between the two groups, leading to the stabbing of a Nuba woman by a Beni Amer. A clash then developed, resulting in the killing of seven people and the injuries of dozens more. This escalated and extended to Kassala state, where in June 2020 roughly a further 13 people were killed from both groups.

2.5 Killings and Reprisals Involving ‘Kanabi’ (Camp) Residents (2020)

The Kanabi are camps for the seasonal agricultural workers in Sudan, set up decades ago as part of Sudan’s Jazeera irrigation scheme. Facing a shortage of manpower, the British colonial authorities brought labour from outside the region, including some groups from West Africa as well as Sudanese citizens from Darfur and the Kordofan regions.

The British authorities prevented the agricultural workers from owning land to build houses and villages. Post-independence, successive Sudanese governments have continued marginalising these agricultural workers still living in Kanabis.^{48,49} There is no adequate planning and or services provided to the residents, such as schools, health facilities, water or electricity. The residents of these Kanabis depend on the services available in the neighbouring villages, often putting a strain on relationships.

⁴⁶ Who they perceived did not represent the Nuba people.

⁴⁷ The Washington Post, ‘More tribal clashes in Sudanese port city; death toll at 25’ (2020), https://www.washingtonpost.com/world/africa/more-tribal-clashes-in-sudanese-port-city-death-toll-at-25/2020/08/12/305a3754-dc8f-11ea-b4f1-25b762cdbbf4_story.html.

⁴⁸ Sudan Democracy First Group, ‘Kanabi: the villages of Agricultural workers in Jazeera Scheme Marginalization, Neglect and Discrimination’ (2018), available in Arabic at <http://arabic.democracyfirstgroup.org/2018/10/02/38103/>.

⁴⁹ In similar agricultural projects to the Jazeera scheme, such as Halfa Al-Jadeeda, Al-Rahad, Kenana, Khashm El-Girba, Al-Gadarif and others, the majority of agricultural workers are from the Darfur region.

Sources from the Nubian and Zaghawa communities interviewed⁵⁰ highlighted that there have been tensions between the two groups in the past.

- The Nubian (Halfaween) community from Halafa Al-Jadeeda were originally from upper North Sudan and were evicted from their lands during the construction of the High Dam.⁵¹
- The Zaghawa people are agricultural workers originally from Darfur, living in Kanabi.

The relationships between villagers and Kanabi residents are varied – in some areas there is peaceful coexistence, whereas in other areas clashes have arisen due to tensions over land. In some cases, villagers have set fire to Kanabis, accused them of “not being Sudanese”, and demanded their eviction from the area. Government authorities have consistently failed to provide adequate commitment, resources and support to resolve these tensions.

- On 18 July 2020 clashes erupted between these two communities, ignited by several quarrels between young people. A young person from the Nuba community was beaten, and a group of Zaghawa young people attacked Al-Morshid village No. 10.⁵²
- Violence escalated further when Zaghawa were told not to enter the village.
- The Zaghawa people entered Al-Morshid village 10 in large numbers armed with knives, swords and sticks, and attacked people in the village, resulting in the death of two men and the injuries of 16 Nubians.
- The Zaghawa set fire to houses, shops and cars.

In August 2020, the government formed a committee to solve the problem between the two groups.

⁵⁰ Rights for Peace interviews with an activist and a member of the Nubian community on 3 August 2020, and with a member of Freedom of Change Forces in Halfa and a member of the Zaghawa community on 6 August 2020.

⁵¹ The government then compensated them with new land called the new Halfa or Halfa Al-Jadeeda in east Sudan near the Khashm el-Girba agricultural project.

⁵² Where the majority residents are from Halfaween or are northern Nubian.

3. Hate Speech and Conflict in Darfur

Darfur ('home of the Fur people') is located in the west of Sudan. It is made up of five states: North West, South, East and Central Darfur. Darfur has a complex mix of more than 36 ethnic groups.⁵³

The ongoing conflict in Darfur began in early 2003, when two armed groups in Darfur, the Sudan Liberation Army ("SLA") and the Justice and Equality Movement ("JEM") accused the government of oppressing the non-Arab population of Darfur and began attacking government targets. Several hundred policemen were murdered, and more than eighty police stations were destroyed.⁵⁴ Hundreds of civilians were killed, and hundreds of thousands were displaced in clashes that ensued.

In response, the government equipped and organised Arab militias, known as the Janjaweed, to fight alongside the Sudan Armed Forces and other formal forces against the Darfur rebels. The militias terrorized civilians in the region and prevented international aid organizations from delivering food and medical supplies.⁵⁵ A scorched earth policy was deployed by the Janjaweed to burn villages of suspected rebels and subjugate the population. Widespread sexual violence was reported. By 2007, the conflict had left hundreds of thousands of people dead and more than two million internally displaced,⁵⁶ in what has come to be known as the Darfur genocide.⁵⁷

In response, the Security Council referred the situation in Darfur to the ICC Prosecutor, who issued arrest warrants against:

- Ahmad Muhammad Harun (at large), for alleged war crimes and crimes against humanity allegedly committed in Darfur;
- Abd-Al-Rahman (also known as Ali Kushayb) on 27 April 2007, as well as a second arrest Warrant for Abd-Al-Rahman in June 2020 when he voluntarily surrendered to the ICC;
- President Omar al-Bashir (in custody in Khartoum) for five counts of crimes against humanity; two counts of war crimes; and three counts of genocide: (killing, causing serious bodily or mental harm, and deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction) allegedly committed at least between 2003 and 2008 in Darfur;

⁵³ Cultural Survival, 'Peoples of Darfur', <https://www.culturalsurvival.org/news/peoples-darfur>.

⁵⁴ Relief Web, 'Understanding the Darfur Conflict' (2005) <https://reliefweb.int/report/sudan/understanding-darfur-conflict#:~:text=In%20early%202003%2C%20two%20armed,ilities%20and%20civilians%20in%20Darfur>.

⁵⁵ Britannica, 'Conflict in Darfur', <https://www.britannica.com/place/Sudan/Conflict-in-Darfur>.

⁵⁶ Human Rights Watch, 'Darfur 2007: Chaos by Design' (2007), <https://www.hrw.org/reports/2007/sudan0907/sudan0907webwcover.pdf>, p. 43.

⁵⁷ Holocaust Museum Houston, 'Genocide in Darfur', <https://hnh.org/library/research/genocide-in-darfur-guide/>.

- Abdel Elraheem Mohamed Hussein, former Minister of the Interior and former Sudanese President's Special Representative in Darfur (currently Defence Minister) for seven counts of crimes against humanity and six counts of war crimes, allegedly committed in Darfur between 2003-4.⁵⁸
- Abdallah Banda Abakaer Nourain, Commander-in-Chief of Justice and Equality Movement (JEM), a rebel armed group in Darfur, for three counts of war crimes (violence to life, intentionally directing attacks against personnel, installations or material in a peacekeeping mission, and pillaging.
- Saleh Mohammed Jerbo, whose case was connected to Abdallah Banda, but proceedings were terminated in 2013 following his reported death.

The number of counts of war crimes and crimes against humanity - and in the case of Bashir counts of genocide - are a testimony to the scale and scope of the violence committed. Nevertheless, Mr. Omar al-Bashir was re-elected as President in April 2010 and continued his policies of 'Arabisation' and subjugation of the Darfur regions.

Other leaders in Darfur, too, have continued to incite atrocities in Darfur. The governor of East Darfur, Governor Anas Omar Fadl El Moula, has a track record of inciting atrocities, such as in 2017 when he said to the security forces in Darfur in relation to armed opposition movements:

*"don't waste a bullet on one of them (the rebels)... bring him alive and we will... kill him and do not bury his body...let his body be eaten by the vultures and the wild animals."*⁵⁹

Despite the toppling of President al-Bashir by the 'revolution' in 2019, the same government structures - the Sudanese Army, Police and Rapid Support Forces - remain in place. Their presence is characterised by blockages to humanitarian aid to the large, displaced populations living in camps, widespread sexual violence, human rights abuses such as well as chronic insecurity due to lack of intervention.⁶⁰

To this day, threats to civilians persist across Darfur. As recently as 24 and 25 January 2021, more than 3,000 people were forced to flee their villages east of Jebel Marra and seek refuge in valleys and caves

⁵⁸ For further information on the charges in the ICC's Arrest Warrants relating to Darfur, see: www.icc-cpi.int/darfur.

⁵⁹ YouTube, 'The governor of East Darfur, the criminal Anas Omar, orders the killing and liquidation of prisoners and detainees' (2019), <https://www.youtube.com/watch?v=ctEFS22k9WM>; Dabanga, 'Darfur centre condemns rhetoric after fighting' (2017), <https://www.dabangasudan.org/en/all-news/article/darfur-centre-condemns-rhetoric-after-fighting>.

⁶⁰ Human Rights Watch, 'Conflict and Abuses in Darfur, Southern Kordofan and Blue Nile', in *World Report 2019, Sudan Chapter*: <https://www.hrw.org/world-report/2019/country-chapters/sudan#>

higher in the mountains, due to groups of gunmen attacking villages on the North and South Darfur border.⁶¹

NGOs have raised the alarm regarding the withdrawal of the United Nations–African Union Mission in Darfur (UNAMID), whose mandate was terminated on 31 December 2020 (precipitated by the transition). While the new UN Integrated Transitional Mission in Sudan (UNITAMS) has an ambitious mandate to support the political transition to democracy,⁶² civil society in Darfur are demanding peacekeeping and protection of IDP camps to continue so as not exacerbate the existing crisis.

3.1 Incitement to Genocide in Darfur (2005 to 2020):

On 13-14 January 2005, a Janjaweed militia from the al-Mahamid tribe from Nitega and Malam,⁶³ attacked Hamada village near Nyala, in coordination with Government Forces. The militia detained the villagers and prevented them from fleeing. Over 100 people were slaughtered, houses were burned and looted, and at least 35 women and girls were raped.⁶⁴

According to Rights for Peace interviews the militia allegedly said:

“We want to ‘clean’ the whole area” - referring to al-Bergid, one of the African ethnic groups in Darfur and the majority of residents in Hamada village.

The attack allegedly occurred after a meeting between the allied militia groups and the governor of South Darfur.⁶⁵ Alhaj Atta Almanan, the governor of South Darfur had mobilized the allied militia and allegedly said at a meeting in Ardur that he wanted them to:

⁶¹ Dabanga, ‘Thousands flee attacks in Darfur’s Jebel Marra’ (2021), <https://www.dabangasudan.org/en/all-news/article/thousands-flee-attacks-in-darfur-s-jebel-marra>.

⁶² Human Rights Watch, ‘Sudan: UN/AU Plan for Darfur Falls Short’ (2020), <https://www.hrw.org/news/2020/03/16/sudan-un/au-plan-darfur-falls-short>.

⁶³ This militia was allegedly under the control of Mussa Hilal, a notorious *Janjaweed* leader, belongs to the Arab Mahameed clan in North Darfur. In 2003, when the armed conflict in Darfur broke out, he was serving a jail sentence for stirring up ethnic conflicts resulting in the massacre of innocent civilians. However, Vice-President Ali Osman Taha released Hilal to head the mobilisation of *Janjaweed*, and fight the Darfuri rebels. With the full backing of the government, Hilal’s militias targeted unarmed civilians in the region, attacking African Darfuri villages, but they rarely came near forces of the armed rebel movements. See <https://www.dabangasudan.org/en/all-news/article/musa-hilal-s-council-forms-jebel-amer-administration-calls-for-intifada-in-sudan>.

⁶⁴ BBC News, ‘Hundred deaths feared in Darfur’ (2005), <http://news.bbc.co.uk/1/hi/world/africa/4209471.stm>.

⁶⁵ The then governor of South Darfur was Alhaj Atta Almanan.

“liberate the area from the al-Abeed and Tora Bora” (referring to people allied with armed groups)

Al-Abeed is an insulting phrase similar to “slave” or “negro”. It is alleged that he also told the militia that:

“all their land, money and property are yours”

Prejudice, discrimination and hate speech continue in Darfur today, and have been normalised by years of mistrust stemming from conflict and the stoking of tensions. Ibrahim Alhaj, a community practitioner in Darfur with experience in hate speech mitigation, says that:

“after the war, hate speech became the norm, as people found it challenging to trust or build a relationship with the other tribes and ethnicities. Unfortunately, this mentality has been transmitted to their children who in turn, practice social and tribal divide in school without being aware of it.”⁶⁶

The genocidal language used against Darfuris by the former governor Alhaj Atta Almanan continues to be echoed word for word. The term ‘Abeed’ is regularly used against Darfuris today.”⁶⁷

Since being toppled by the 2019 revolution, former President al-Bashir has been in custody in Sudan on corruption charges. He has not been held accountable for the 2003-4 genocide allegations in Darfur or subsequent ethnic cleansing allegations. There have been no charges for incitement to genocide by either the ICC or Sudanese jurisdictions.

3.2 Ongoing Violence in West Darfur (2020-21)

Recent intercommunal clashes have taken place between the Masalit and Arab communities, representing a worrying escalation of tensions and violence between different communities in West Darfur. Elites are widely accused of stoking community tensions to undermine the transition.⁶⁸

⁶⁶ Hend Salih, ‘Hate Speech in Darfur’, *Andariya* (2020), <https://www.andariya.com/post/Hate-Speech-in-Darfur>.

⁶⁷ Peace Lab, ‘Social Media & Conflict in Sudan’, p. 9.

⁶⁸ Philip Kleinfeld and Mohammed Amin, ‘What’s behind the rising violence in Sudan’s Darfur?’, *New Humanitarian* (2021), <https://www.thenewhumanitarian.org/news-feature/2021/4/8/whats-behind-the-rising-violence-in-sudans-darfur>.

Civilians in El-Geneina, capital of West Darfur, witnessed revenge attacks by Arab militia at the end of December 2019.⁶⁹

A similar sequence of escalating revenge attacks took place in July 2020, following the killing of four Arab people by a Masalit man, were related by a local source:⁷⁰

*“During the first attack last year on 25 July 2020, a large number of heavily armed Arab militia attacked Mistiri, a town near the Beida locality in West Darfur. Shooting at people from all directions, and burning the houses, they were on 4x4 vehicles, motorcycles and horses. This was a revenge attack for the killing of members of an Arab tribe in Mima on 18 July 2020. This was the second incident that occurred in 2020 against the Masalit in Mistiri. As a result of the attack, a significant number of people were killed, injured, properties were looted of belongings and many people were displaced.”*⁷¹

The attack continued for almost eight hours without intervention from Sudan Army Forces (SAF), Popular Defence Forces (PDF) or the Sudan-Chad joint force. Masalit men also were armed and engaged in shooting but had very limited weapons to protect the community.”

The interviewee stressed that the security forces were very slow in responding to the attack.

3.3 A Wider Pattern of Escalating Violence in Darfur

Another attack against the Masalit occurred on 16 January 2021 in the Krinding Internally Displaced Persons (IDP) camp in El-Geneina and is highlighted by an attack on the Governor’s residence (who is from the Masalit tribe).

It was triggered in response to an Arab man being stabbed, allegedly by a person from the Masalit community. While the accused person was arrested by the police, his burial the next day became a congregation for a major revenge attack against the perpetrator’s community.

⁶⁹ Peace Lab, ‘Social Media & Conflict in Sudan’, p. 9. Amnesty International, Horrific attacks on displacement camps, 2021. <https://www.amnesty.org/en/latest/campaigns/2021/03/sudan-horrific-attacks-on-displacement-camps-show-in-darfur/>

⁷⁰ Interviewed on 27 January 2021.

⁷¹ According to the UN Office for the Coordination of Humanitarian Affairs (OCHA) in Sudan, approximately 60 people were killed, 90 people were injured and more than 2000 families were affected by the attack: <https://www.unocha.org/story/daily-noon-briefing-highlights-sudan>.

“It seems as if they called all the Arabs tribes in El-Geneina city and surrounding areas. They came from all directions and started shooting with heavy arms. They were on motorcycles, horses, and Land Cruisers with heavy guns.”

The violence spread to more than 20 villages in South and South-West Geneina, resulting in 160 deaths. More than 200 people were injured, among them women and children, and houses were set on fire resulting in some 90,000 displaced⁷² – most of them ethnic Masalit.⁷³ It is alleged that forces only stood by, despite the Governor’s request that they intervene.⁷⁴ An interviewee added that prior to the attack, videos and recorded messages were made by a certain *Musa Ismail Hasab Alkareem*, allegedly an Arab male, who stated that:

“I send this message to Al Masalit. What happened from 2003 to 2020 is over. Now we are in 2021, from today if any Masalit even breaks a car window, they should consider themselves no longer existing. We are not talking in social media or in groups. We talk directly and our deed will prove our words. They said we are newcomers, we are not! We are the owners of this land.”

The interviewee indicated that a second recorded message was also circulated on WhatsApp and Facebook. In this message, obtained and seen by Rights for Peace, an Arab community leader named *Abd Alrahman Abd Alkhair* complained about the killings from his community. While there were also a number of Arabs killed in the clashes, the actual numbers are not known. Arab community members staged a sit-in, demanding for the government to remove the IDP camps.

In the circulated message, translated by Rights for Peace, *Abd Alrahman Abd Al Khayer* said:

“I call all the Arabs. We are fed up with such attitudes, I swear to God the Great. From today if a chicken belonging to an Arab tribe is killed, this state will be set on fire. Even if the authorities deploy an army, we will burn this state. We don’t acknowledge any chaos like this, this is nonsense, our cars have been destroyed. Our kids have been

⁷² AP News, ‘Armed men try to storm governor’s house in Sudan’s Darfur’ (2020), <https://apnews.com/article/sudan-middle-east-united-nations-e171c305da1c9d06f6c7764526079619>. 25,000 continued to be displaced one month later, according to OCHA’s Flash Update, 16 February 2021.

⁷³ Amnesty International, ‘Sudan: Horrific attacks on displacement camps show UN peacekeepers still needed in Darfur’ (2021), <https://www.amnesty.org/en/latest/campaigns/2021/03/sudan-horrific-attacks-on-displacement-camps-show-in-darfur/>

⁷⁴ Interview conducted by Rights for Peace, March 2021.

beaten. All types of attacks have been practiced against us, we are living with gangs, then we all should become gangs, are we afraid of Masalit?

“In one day we can finish them but we are afraid of God. The government is silent, the police and the army are watching, the Rapid Support forces are criticized. Who is going to protect us? I call all Arabs to protect ourselves, we demand that the police forces in this state be removed. We don’t want police from one ethnic group. The army is also all from Masalit. We can’t be victims for all these transformations in the army. We can’t accept this. We need to know who killed the Arab man? I affirm to you my brothers in Arab tribes, that from today everyone should carry a ‘spear with three edges’ everywhere we go. We can’t accept insults anymore.”

3.4 Recent Efforts to Restore Security in West Darfur

The Krinding attack is part of a wider pattern of escalating violence in Darfur. In 2020, the United Nations recorded an alarming increase in “inter-communal clashes” in Darfur, with 28 incidents between July and December 2020, an 87 percent increase compared to 2019.⁷⁵

In an attempt to stem spiralling insecurity, a delegation from the General Prosecutor’s Office went to El-Geneina on 15 March 2021 to investigate the attacks that occurred in Krinding camp, and to issue arrest warrants against those against whom there was sufficient evidence. The Investigation Committee issued arrest warrants against sixty-nine accused persons and arrested 32 individuals on suspicion of their involvement in the violence. They also filed 37 criminal cases on charges including murder, attempted murder, criminal destruction, and looting.

The Investigator's final report, which is to be submitted to the Sovereign Council, has requested that the Attorney General lift immunities protecting law enforcement and security personnel who were allegedly involved and that the rule of law be restored in West Darfur.⁷⁶

⁷⁵ Amnesty International, ‘Sudan: Horrific attacks on displacement camps show UN peacekeepers still needed in Darfur’.

⁷⁶ The final report of the Investigation Committee was submitted to the General Prosecutor on 26 March 2020.

4. Hate Speech and Conflict in South Kordofan

Although the conflict in South Kordofan has largely subsided since the ousting of President Omar al-Bashir in 2019, there has been no accountability for past mass atrocities and reported campaigns of ethnic ‘cleansing’ in South Kordofan.⁷⁷ Renewed incidents of violence are now being reported in the region. Attacks are reportedly being committed by militias and the Sudan Army Intelligence, arresting people along ethnic lines.

For instance, in May 2020 Rapid Support Force (RSF) soldiers invaded Albardab village in Kadogli, using land-cruiser vehicles and motorbikes. They asked about the ethnicity of the residents and were targeting the Nuba who were assaulted, beaten or killed. Their houses were looted and burnt down.⁷⁸

The perpetrators are reportedly from the Arab Hawazma tribe who were allegedly involved in the fighting during the conflict. They continue to be armed because they were part of Popular Defence Forces and retained their weapons. The majority of people affected by the attacks and looting are Nubian but other African ethnic groups are also targeted. As expressed at a Rights for Peace workshop, people in South Kordofan are calling for justice:

“we demand that the government prosecute those responsible for the attacks, although we believe the justice system is weak.”

Hundreds of residents organised a demonstration in January 2021 to protest against discrimination, racist criminality and the deteriorating security.⁷⁹

4.1 The 2005 Peace Agreement Fails to Resolve the ‘Two Areas’

Geographically, the oil-rich state of South Kordofan is part of Sudan, but many who are from there identify with South Sudan. This is particularly so for the Nuba people, made up of various indigenous ethnic groups long marginalized by the Arab government in Khartoum.⁸⁰ Having faced years of discrimination by successive Sudanese governments, many fought alongside the SPLA during the civil war.

⁷⁷ Channel 4 News, ‘Sudan accused of ‘ethnic cleansing’ in border region’ (2011), <https://www.channel4.com/news/sudans-president-vows-to-continue-bombing-rebels>

⁷⁸ HUDO Centre, Report on the Human Rights Situation in South Kordofan and Blue Nile States (Jan-December 2020), <https://hudocentre.org/wp-content/uploads/2021/01/HUDO-HR-Annual-Report-2020.pdf>.

⁷⁹ Dabanga, ‘Protests against insecurity and violence in South Kordofan’ (2021) <https://www.dabangasudan.org/en/all-news/article/protests-against-insecurity-and-violence-in-south-kordofan>.

⁸⁰ Centre for Strategic and International Studies, ‘The Forgotten Conflict in Southern Kordofan’ (2011), <https://www.csis.org/analysis/forgotten-conflict-southern-kordofan>.

When the Comprehensive Peace Agreement (CPA) was signed in 2005 after the second Sudanese civil war, the fates of South Kordofan and Blue Nile were unresolved.⁸¹ They became known as the “Two Areas”.

A ‘popular consultation’ was offered – cited as an “ill-defined process [which] merely gave them the chance to voice their opinions on the CPA arrangements with a view to negotiating better terms from Khartoum, short of independence”.⁸² However, this process was never completed, causing huge resentment among the Nubian peoples.

4.2 Al-Bashir and Ahmad Haroun’s Incitement to Genocide (2011):

Election campaigns began throughout South Kordofan in April 2011, at a time of tension that was already seeing some killings by mid-April 2011.⁸³ Most of the South Kordofan population are from :

- Nomadic Misseriya and Hawazma ‘Arab’ tribes, or
- Agriculturalist ‘African’ Nuba communities.⁸⁴

On 27 April 2011, President Omar al-Bashir visited South Kordofan and delivered electoral speeches in support of Ahmad Haroun (the NCP candidate and governor of South Kordofan, and also an accused indicted by the ICC for war crimes in Darfur).⁸⁵ In his speech, President Omar al-Bashir called on the Missiriya (an ‘Arab’ tribe) to:

“chase the Nubians from “from village to village” and not to recognize the culture of Khajur (the tradition of Nuba people) and alcohol.”

Before the campaign ended, the army and riot police (known as Abu Tira and the Central Reserve Forces), moved through South Kordofan with heavy and light weapons. Further army vehicles loaded

⁸¹ Sam Mednick, ‘Blue Nile: ‘Prepare for peace and prepare for war’’, *The New Humanitarian* (2019), <https://www.thenewhumanitarian.org/news/2019/06/11/Sudan-Khartoum-blue-nile-prepare-peace-and-prepare-war>.

⁸² Centre for Strategic and International Studies, ‘The Forgotten Conflict in Southern Kordofan’.

⁸³ OHCHR, ‘Thirteenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in Sudan, Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011’, p. 3.

⁸⁴ Amnesty International, ‘Sudan: People’s Lives In South Kordofan Do Matter’, <https://www.amnesty.org/en/latest/campaigns/2015/09/south-kordofan-matters/>.

⁸⁵ United Nations Mission in Sudan/Public Information Office, ‘Media Monitoring Report’ (2011), <https://unmis.unmissions.org/sites/default/files/MMR%2028%20April%2011.pdf>.

with weapons arrived, alongside 1,500-2,000 heavily armed soldiers. The provocative staging had the effect of sowing terror amongst the local population.

After delays in announcing the result, both sides were inciting violence against each other.⁸⁶ Reports were circulating that the SPLM-N's candidate had won the election. However, on 19 May 2011, the Election Commission officially announced that Ahmad Haroun had won after a recount. Violence erupted in Omdurman and Kadugli City. The Sudanese Army forces intervened, and violence escalated.

Mass Atrocities in South Kordofan Ignited by Hate Speech

Violence was reportedly directly and publicly incited by Ahmad Haroun. As the winning Governor, he gave a speech at Al Hurriya (Freedom) Square. There are mixed reports as to whether the following words were attributed to Ahmed Haroun or former President Bashir at this time, stating that:

*we need to “clean the state from any black bags”.*⁸⁷

This is a reference to the removal of black or dark skinned people, dehumanising and reducing them to “black plastic bags” (i.e. rubbish bags), a racist term used to refer to people from the Nuba Mountains, Darfur and South Sudan.⁸⁸ The use of the word ‘clean’ is an overt threat of ethnic ‘cleansing’.

As found by Rights for Peace through workshops and interviews:

“this speech directly resulted in people from Arab tribes targeting Nubian or other dark-skinned people. The Sudan Army Forces (SAF), Abo Tera and allied paramilitary forces also targeted members and supporters of the Sudan People's

⁸⁶ SPLM-N supporters chanted “the star or the attack” (a rough translation of “ya alnajma ya alhajmah”), meaning that if the SPLM did not win the election they would attack the NCP and its supporters; NCP supporters chanted “Ahmad Haroun or the final day” (A rough translation of “ya Ahmad Haroun wala Algyamah tagoum”) meaning that Ahmad Haroun should win the election or it will be the “final day” for the SPLM and its supporters.

⁸⁷ Nuba Times, ‘An Important Statement Alessandra massacre in Al-Abbasiya Tagali in South Kordofan’ (2016), available in Arabic at <https://nubatimes.com/news-3114.html>.

⁸⁸ Dr Lucy Hovil, ‘The Disappearance of Sudan? Life in Khartoum for citizens without rights’, *Citizenship and Displacement in the Great Lakes Region: Working Paper 9* (2013), <https://www.refworld.org/pdfid/53b3d8994.pdf>, p. 6; Eric Reeves, ‘An interview with Dr. Tom Catena concerning the Nuba Mountains, and a humanitarian update on the region’ (2013), <https://sudanreeves.org/2013/03/09/an-interview-with-dr-tom-catena-concerning-the-nuba-mountains-and-a-humanitarian-update-on-the-region/>; Professor Mukesh Kapila, ‘What will it take for us to act?’, *Diplomat Magazine* (2013), <https://diplomatmagazine.com/what-will-it-take-for-us-to-act/>.

Liberation Movement/Sudan People's Liberation Army (SPLM/A), most of whom are Nubians, as well as other dark-skinned people.”⁸⁹

According to witnesses, on 5 June 2011, large military reinforcement forces arrived, and shots were fired in Kadugli City.⁹⁰ The shooting continued through the night, consistently targeting neighbourhoods populated by Nubians.

“Those who fled Kadugli City were forced to go through checkpoints, where the Popular Defence Forces (people from the Baggara tribe) searched them and engaged in executions, mutilation, beatings and arrests of suspected SPLM affiliates.”

Ahmad Haroun made a subsequent speech rewarding his followers, the army and other forces, stating that:

“all the jobs and houses of those who fled the state are yours”

According to local actors, this directly encouraged the looting of Nubian properties and the destruction of houses. Later in 2011, some civilians returned after hearing of Ahmad Haroun’s threat of taking their properties. In response, Ahmad Haroun is alleged to have made another speech in when visiting the army, stating:

“Aklo Hai ma tajibo Nai” - in the military context, this means ‘capture and torture people’.⁹¹

In 2012, Ahmad Haroun was broadcasted by Al-Jazeera delivering a speech to soldiers of the Sudan Armed Forces before pursuing the rebels in territory held by the SPLA-North, in which he said:

“You must hand over the place clean. Swept, rubbed, crushed. Don’t bring them back alive. We have no space for them.”⁹²

⁸⁹ Workshop and interviews conducted in South Kordofan, January 2021.

⁹⁰ A city in South Kordofan housing many important government officials, including Ahmad Haroun.

⁹¹ Available in Arabic on YouTube at: <https://www.youtube.com/watch?v=G-6vnqq0aVM&lc=Ugz8Jpje2mwzke5BEbZ4AaABAg>.

⁹² The Enough Project, ‘Video Captures Wanted Sudanese War Criminal Inciting Soldiers to Commit Abuses’ (2012), <https://enoughproject.org/blog/video-captures-wanted-sudanese-war-criminal-inciting-soldiers-commit-abuses>.

The inflammatory statements were condemned by the UN High Commissioner for Human Rights Navi Pillay.⁹³

Ahmad Haroun and President al-Bashir were indicted by the International Criminal Court for war crimes and crimes against humanity, and in the case of al-Bashir, genocide in Darfur in 2003-4. However, the ICC has no mandate to investigate violence in South Kordofan as it is not subject to the Security Council's referral to the Court. Impunity for past violations creates a culture of violence and emboldens racist attacks that we continue to see in South Kordofan today.

⁹³ Reliefweb, 'Pillay condemns inflammatory statements by official, warns against dangerous escalation of Southern Kordofan conflict' (2012), <https://reliefweb.int/report/sudan/pillay-condemns-inflammatory-statements-official-warns-against-dangerous-escalation-0>.

5. Conflict and Continued Ethnic Divisions in Blue Nile

Blue Nile state is located on the borders of South Sudan and Ethiopia to the East. It is inhabited by an array of communities and is deeply divided between “indigenous” Arabs and non-Arab so-called “newcomers”.⁹⁴ The area has long been marginalized, with Khartoum elites appropriating its natural wealth.⁹⁵

It was the theatre of intensive fighting between the government and the SPLM during the conflict with the South (1983-2005). Like South Kordofan, Blue Nile citizens had hoped that the Comprehensive Peace Agreement would solve the issue of marginalization and self-governance through its popular consultation process, which was never completed.⁹⁶

Following the secession of South Sudan, the Khartoum government wanted to disarm the SPLM-N. Malik Agar, the governor of Blue Nile state and SPLM-N Chairman, was sacked. Along with the failure to address grievances, this triggered renewed conflict in Blue Nile in September 2011.

An activist from Blue Nile recounted to Rights for Peace the speech by President Omar Bashir on 6 November 2011, following the defeat of SPLM-N under the command of Malik Agar:⁹⁷

“Today we cleaned Al-Kurmuk. We don’t want alcohol any more here anymore, no star will rise here, only God’s flag will rise here. Where are you Malik today? Where are you hiding? Wherever you are hiding we will reach you, bring him alive, captured in chains and bring him to Demazin, so people there can take their rights from him before you.”⁹⁸ You pleased us with this victory today we celebrate two Eids. Al-Kurmuk is not the end, we want all the forces there at the borders, when do you want the liberation of Yabos?⁹⁹

Local activists explained the persecution that ensued:

⁹⁴ International Crisis Group, ‘Sudan’s Spreading Conflict (II): War in Blue Nile’.

⁹⁵ International Crisis Group, ‘Sudan’s Spreading Conflict (II): War in Blue Nile’.

⁹⁶ Ibid.

⁹⁷ Speech on 6 November 2011 in Al-Kurmuk. In which President Omar al-Bashir also stated that “we will raise God’s flag in this area, we don’t need the fifth column and enemy.”

⁹⁸ Meaning that people will take part in punishing Malik Agar before the army.

⁹⁹ YouTube, ‘Al-Bashir fulfils his promise and prays Eid in Al-Karmuk’, available in Arabic (2011), <https://www.youtube.com/watch?v=O1t4obtcHIY>.

After the SPLM-N was pushed out, the government's security forces specifically targeted dark-skinned people, accusing them of being members of the SPLM-N.¹⁰⁰

For instance, the army targeted people belonging to the Ingassana ethnic group, an indigenous group that has historically protected itself from outsiders, living in the hills in Blue Nile. The Ingassana ethnic group had been loyal to SPLM-N; the majority of them joined the SPLM and took part in the war between the North and the South.

In 2019, ethnic divisions were re-ignited. People questioned whether the new political parties, represented by the Forces of Freedom and Change (FFC) also represented people from Blue Nile. They considered them to be representing so-called “newcomers”. Prior to the revolution, there were two dominant parties, the ruling National Congress Party and the SPLM.

The “indigenous” and “original” populations saw themselves represented in SPLM-N, that they had joined and fought for locally. However, during the revolution the FFC emerged as the movement representing northern Sudanese (so-called “Jalaba”), according to people in Blue Nile and South Kordofan. They did not see the FFC as representing them, because in the past conflicts it was people from the North who committed atrocities in their regions and fought with the National Congress Party. Northerners were silent about the violations and violence that happened in the southern regions.

In Blue Nile, divisions, hate speech and prejudice against “outsiders” are running high. According to local interviews, this was evidenced during the COVID-19 pandemic with violence breaking out at a quarantine centre. Local people believed the FFC wanted to destroy them, and the pandemic was a hoax designed to instigate genocide.¹⁰¹ Other incidents are also reported in Blue Nile, such as systematic and repeated burning of churches, with civil society concerned at the lack of intervention or follow up of police and state officials.¹⁰²

¹⁰⁰ Rights for Peace interviews with an activist from Al-Damazin and a member of the Rights for Peace civil society network, 12 July 2020.

¹⁰¹ Interviews conducted in February 2021.

¹⁰² HUDO Centre, ‘Report on the Human Rights Situation in South Kordofan and Blue Nile States’ (Jan-December 2020), <https://hudocentre.org/wp-content/uploads/2021/01/HUDO-HR-Annual-Report-2020.pdf>.

PART II - RECOMMENDATIONS

6. Transition to Democracy and Social Cohesion

With respect to engendering social cohesion and unity, Sudan's constitutional development since 1956 reflects the country's turbulent recent history: in the 58 years since independence, the country has had eight different constitutions.¹⁰³ The Interim Constitution of 2005 was signed in the immediate aftermath of the Comprehensive Peace Agreement between the Sudanese government and the Sudan People's Liberation Movement, and thereby aimed to meet the demands to achieve peace after the long conflict.

The 2005 Constitution's Bill of Rights was at the time welcomed by commentators as going further than any previous constitution in attempting to ensure comprehensive protection of human rights and basic freedoms in line with Sudan's international legal obligations.¹⁰⁴ It sets out wide-ranging rights, amongst others, in relation to the right to life and human dignity, personal liberty, equality before the law, the rights of women, freedom from torture, religious rights and rights of ethnic and cultural minorities.

There were some concerns about certain shortcomings, but the main issue was lack of implementation and amendment of existing national laws.

The 'Draft Constitutional Charter for the Transition Period', signed on 4 August 2019 also includes a Rights and Freedoms Charter (Chapter 14),¹⁰⁵ and technically replaces the Interim Constitution of 2005.

¹⁰³ Equal Rights Trust, 'In Search of Confluence: Addressing Discrimination and Inequality in Sudan' (2014), <https://www.equalrightstrust.org/ertdocumentbank/Sudan%20-%20In%20Search%20of%20Confluence%20-%20Full%20Report.pdf>, p. 176.

¹⁰⁴ Ibid.; see also Sulieman Fadallah, A., 'The Citizen and The Constitution: Series 2, Al-Ayam Centre', p. 22; and Sanhoury Elrayh, E., 'Women's Rights in the Constitutional Bill of Rights: Issues of Status, Equality and Non-Discrimination'; and REDRESS, Faculty of Law, University of Khartoum and the Sudan Human Rights Monitor, 'The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives, (2014), p. 54.

¹⁰⁵ 'Draft Constitutional Charter for the 2019 Transitional Period', <https://constitutionnet.org/sites/default/files/2019-08/Sudan%20Constitutional%20Declaration%20%28English%29.pdf>.

6.1 Implementing an Improved Transitional Constitution?

Before considering the positive legal reforms made in 2019-2020 in the direction of international human rights standards, the new 2019 Constitutional Charter is considered in the table below, with respect to concerns¹⁰⁶ and improvements on the 2005 Constitution.

2005 Bill of Rights	2019 Rights and Freedoms Charter
<p>Article 27: Nature of the Bill of Rights</p> <p>There was concern that too much emphasis was placed on the ‘monist’ legal tradition, and as per Article 27(3), international standards were directly part of national law, not necessarily requiring implementing legislation.</p> <p>Nonetheless, Article 27(4) provided that “Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate from any of these Rights.”</p>	<p>Article 41: The Essence of the Rights Document</p> <p>Largely replicates the previous concerns, though the same basis for arguing for necessary domestic legislation remains:</p> <p>Article 41(3) “Legislation shall organize the rights and freedoms contained in this document but shall not confiscate them or reduce them, and it shall only restrict such freedoms as needed by democratic society.”</p>
<p>Article 31: Equality before the Law</p> <p>“All persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law.”</p> <p>There were concerns that some minority groups were excluded, state obligations to take positive steps to ensure equality was not emphasised enough. Equal treatment before the law can reinforce inequalities if positive steps are needed to enable equality. In order to ensure equal access to justice for instance, women, children, people with disabilities, linguistic minorities for instance will need additional measures to ensure equal access.</p>	<p>Article 42: State’s obligations (new):</p> <p>“The state undertakes to protect and strengthen the rights contained in this document and guarantee them for all without discrimination on the basis of race, color, gender, language, religion, political opinion, social status, or other reason.”</p> <p>This is a significant improvement, as it establishes obligations on the State in guaranteeing to achieve the rights contained in the Charter. It also widens the groups protected from discrimination, similar to “any reason” in ICCPR Article 26.</p>

¹⁰⁶ Mohamed Abdelsalam Babiker, ‘Why Constitutional Bills of Rights fail to protect Civil and Political Rights in Sudan: Substantive Gaps, Conflicting Rights, and ‘Arrested’ Reception of International Human Rights Law’, in *The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives* (2014), REDRESS et al.

	<p>7. Mandate of the Transitional Period</p> <p>(2) Repeal laws and provisions that restrict freedoms or that discriminate between citizens on the basis of gender.</p> <p>(3) Hold accountable members of the former regime by law for all crimes committed against the Sudanese people since 30 June 1989.</p> <p>(5) Carry out legal reform, rebuild and develop the human rights and justice system, and ensure the independence of the judiciary and the rule of law.</p> <p>(7) Guarantee and promote women's rights in Sudan in all social, political, and economic fields, and combat all forms of discrimination against women, taking into account provisional preferential measures in both war and peace.</p>
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In addition, Chapter 2 of the 2019 Constitutional Charter sets out a number of specific objectives for the 39 month transitional period, which directly relate to discrimination, including the drafting of a permanent, new Constitution and the establishment of a Constitutional Commission, yet to be established.¹⁰⁷ The Commission is to oversee a major Constitutional Conference to discuss key issues - such as whether the State of Sudan should be secular or not - as well as issues of governance.

The importance of inclusive *processes* cannot be over emphasized. The Commission and the Constitutional Conference are critically important to enable much needed dialogue. There has not been a Truth and Reconciliation in Sudan, as there has been, for instance in Tunisia, with its Truth and Dignity Commission, that addressed the history of oppressive practices of the dictatorship.

Deep processes of dialogue - of similar scale and scope to Tunisia's Commission - are clearly needed. A Commission should ensure adequate participation and recognition of minority groups and differences and should be mandated to address the deep-rooted inequality, including gender equality.

¹⁰⁷ Draft Constitutional Charter for the 2019 Transitional Period, Chapter 2, Transitional Period, Article 7, Mandate of the Transitional Period. Subsection 10, "Establish mechanisms to prepare to draft a permanent constitution for the Republic of Sudan."

6.2 Peace Building and Security Sector Reform

Alongside the constitutional reform and process of inclusive resolution of the conflicts, there is an urgent call to review the security sector. Police and other forces such as the Rapid Support Forces (made up of former Janjaweed militias) and military intelligence are continuing to commit human rights violations including arbitrary arrests, arbitrary and lengthy detention without trial, and torture.

The government should start the reform program as provided for in Chapter 2 (Transitional Period) of the Transitional Constitution of 2019 as a matter of urgency. Section 8(12) mandates that the transitional government to:

Establish programs to reform state agencies during the transitional period in a manner that reflects their independence, national nature, and the fair distribution of opportunities therein, without altering conditions of aptitude and competence. The task of reforming military bodies should be entrusted to military institutions in accordance with the law.¹⁰⁸

In addition to institutional and security sector reform, critical attention is needed to ensure that settlement of disputes are inclusive. The October 2020 Juba Peace Agreement did not see all groups commit themselves to the peace process. For instance, the following two groups did not sign:

- in Darfur, the Sudan Liberation Army Movement led by Abd Alwahid Noor, and
- in South Kordofan and Blue Nile SPLM-N also did not sign.

In the same light, resolutions between community leaders must also be inclusive, addressing grievances and injustices of different communities, rather than just benefitting leaders who may come to agreements benefiting themselves.

7. Civil Society Calls for Comprehensive Anti-Discrimination Law

Sudan is at a crossroads - encouraging steps have been made towards inclusive democracy and implementation of human rights standards by the transitional government, but a holistic approach is needed that embraces the views of marginalised groups, such as women. The intersection of ethnic,

¹⁰⁸ Transitional Constitution, 2019, Chapter 2, Transitional Period, Article 8(2).

religious and racial discrimination with women's rights cannot be overstated, as the laws and policies of Arabisation under Sharia Law inversely affect women.¹⁰⁹

Recent progress towards amending previously discriminatory laws is welcomed. For example, improvements have been made in repealing several discriminatory Public Order Laws.¹¹⁰ In July 2020, Sudan also repealed its Apostasy Law, thereby abolishing the death penalty for apostasy.¹¹¹ It also approved wide-ranging amendments to its Penal Code¹¹² including:

- no longer requiring women to obtain permission from a male relative to travel with their children,
- allowing non-Muslims to consume alcohol in private,
- ending public flogging, and
- criminalising female genital mutilation (FGM).¹¹³

Though Sudan is party to the following Conventions, all of which include provisions relating to non-discrimination, Sudan has not implemented any of the relevant international standards.

- the International Covenant on Civil and Political Rights (ICCPR)¹¹⁴,
- the Convention on the Elimination of all forms of Racial Discrimination (CERD),¹¹⁵
- the Convention on the Rights of Persons with Disabilities (CRPD)¹¹⁶, and
- the Convention on the Rights of the Child (CRC).¹¹⁷

¹⁰⁹ For a more detailed discussion of gender inequality, see Lutz Oette, 'Power, Conflict and Human Rights in Sudan' pp.15-40, in Lutz Oette & Mohamed A.Babiker (eds.) *Constitution Making in the Sudans*, Routledge (2018), pp25-27.

¹¹⁰ Dabanga, 'Sudan dissolves National Congress Party, repeals Public Order Bill' (2019), <https://www.dabangasudan.org/en/all-news/article/sudan-dissolves-national-congress-party-repeals-public-order-bill>.

¹¹¹ Previously, the Apostasy law entailed the death penalty for a renunciation of religious beliefs.

¹¹² Library of Congress, 'Sudan: New Law Amending Penal Code Takes Effect' (2020), <https://www.loc.gov/law/foreign-news/article/sudan-new-law-amending-penal-code-takes-effect/>. For further details of Sudan's legal amendments, see Redress, 'SUDAN LEGAL AMENDMENTS: Explanatory Table' (2020), <https://redress.org/wp-content/uploads/2020/07/3-REDRESS-Sudan-Legal-Amendments-July-2020-Explanatory-Table.pdf>.

¹¹³ BBC News, 'Sudan scraps apostasy law and alcohol ban for non-Muslims' (2020), <https://www.bbc.co.uk/news/world-africa-53379733>.

¹¹⁴ Sudan ratified the International Covenant on Civil and Political Rights in 1986. However, Sudan has not ratified the ICCPR's Optional Protocol (CCPR-OP1). We urge Sudan to consider ratifying Optional Protocols in order to advance justice and to send a strong signal about its commitment to protect human rights and the rule of law.

¹¹⁵ Sudan ratified the CERD in 1977. Under Article 2(d), Sudan is required to: "*prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization*".

¹¹⁶ Sudan ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2009. Under Article 4, Sudan is obligated to: "*ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability*" and under 4(1a) to: "*adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention*".

¹¹⁷ UN Convention on the Rights of the Child, 1989.

In its 2018 review on compliance under ICCPR, the Human Rights Committee expressed concern at Sudan's "absence of a comprehensive anti-discrimination law."¹¹⁸

The Committee on the Elimination of Racial Discrimination's concluding remarks during its consideration of Sudan's report in 2015, also were "concerned about the lack of a definition of racial discrimination in the State party's legislation" and noted that whilst some constitutional provisions on equality and non-discrimination exist, they were concerned that "the State party has still not adopted an overarching anti-discrimination law."¹¹⁹

In response, Muaz Ahmed Mohamed Tungo, the Sudanese Rapporteur of the Advisory Council for Human Rights of Sudan, stated that a committee had been established to draft an anti-discrimination law, which would be presented to the Parliament in its June 2015 session."¹²⁰ Despite there being a paper from the National Human Rights Commission, dated 14 September 2015, which highlighted the draft of a new anti-discrimination law, this was never presented to the Sudanese Parliament.¹²¹ In 2016, during Sudan's second cycle Universal Periodic Review, the Committee on the Elimination of Racial Discrimination again recommended that Sudan introduce a comprehensive definition of racial discrimination.¹²²

As regards the Convention on the Rights of Persons with Disabilities (CRPD), the Committee on the Rights of Persons with Disabilities, in its 2018 review expressed concerned that the Interim Constitution of 2005 and the Persons with Disabilities Act of 2017 did not explicitly prohibit discrimination on the basis of disability.¹²³

Nonetheless, progressive steps such as the recent announcement in February 2021, that the Cabinet and Sovereign Council had authorized the ratification of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the International

¹¹⁸ UN Human Rights Committee, 'Concluding observations on the fifth periodic report of the Sudan - CCPR/C/SDN/CO/5' (2018), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SDN/CO/5&Lang=En, p. 3.

¹¹⁹ UN Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations on the combined twelfth to sixteenth periodic reports of Sudan, CERD/C/SDN/CO' (2015), <https://www.refworld.org/type,CONCLOSURES,CERD,SDN,55c87f7a4,0.html>, p. 4.

¹²⁰ OHCHR, 'Committee on the Elimination of Racial Discrimination considers the report of Sudan' (2015), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15925&LangID=E>.

¹²¹ National Commission for Human Rights, 'The criminalization of hate in Sudanese law' (2015), available in Arabic at: [https://nhrc-qa.org/wp-content/uploads/2015/09/%D8%AA%D8%AC%D8%B1%D9%8A%D9%85-%D8\[%88%D9%86-%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86%D9%8A.docx](https://nhrc-qa.org/wp-content/uploads/2015/09/%D8%AA%D8%AC%D8%B1%D9%8A%D9%85-%D8[%88%D9%86-%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86%D9%8A.docx).

¹²² OHCHR, 'Universal Periodic Review - Sudan, Compilation of UN Information: A/HRC/WG.6/25/SDN/2', <https://www.ohchr.org/en/hrbodies/upr/pages/sdindex.aspx>, p. 7.

¹²³ OHCHR, 'Concluding observations (2018) CRPD/C/SDN/CO/1' (2018), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SDN/CO/1&Lang=En.

Convention for the Protection of All Persons from Enforced Disappearance (the ICED) are promising signs of transition to democracy.¹²⁴

A New Anti-Discrimination Law and Commission

In response to the previous failures of the Sudanese government to protect citizens from discrimination, civil society in Sudan has been calling for the transitional government to adopt a comprehensive anti-discrimination law since the revolution in 2019.¹²⁵ The Ministry of Justice has recently produced and circulated a Draft Law on the Elimination of All Forms of Racial Discrimination, seen by Rights for Peace.

However, civil society in Sudan have expressed to Rights for Peace that the consultation process has been inadequate and has not included minority groups in the so-called ‘conflict regions’. It is essential that any anti-discrimination laws be developed via an inclusive process with minority groups and those who have suffered long-term discrimination.

The version of the draft law seen by Rights for Peace specifically aims at non-discrimination with regard to race. However, a comprehensive anti-discrimination law is needed to address wider discrimination, such as discrimination against women, religious groups, people with disabilities and other groups that may need protection. Nonetheless, this is a welcome first step.

There has been a reasonable attempt to define “racial discrimination”. The draft provides that:

“Racial discrimination” means any distinction, abuse, restriction, or preference on the basis of race, colour, ancestry, national or ethnic origin or other complaints of racial discrimination that would not impede, disrupt, or deprive a person enjoying the basic rights and freedoms guaranteed to him by the Constitution and law...”

However, the singular focus on ‘race’ is very limiting. It is critical that the protected groups align with international standards to explicitly provide a non-exhaustive though broad list of distinctions. New provisions should protect against:

“any distinction, exclusion, restriction or preference based on race, colour, descent, national, social or ethnic origin, religion or belief, gender, marital status, disability, age, sexual orientation, language political or other opinion, nationality, property, birth or any other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and

¹²⁴ Sudan Tribune, ‘Sudan to ratify anti-torture treaty, Hamdok says’ (2021), https://sudantribune.com/spip.php?iframe&page=imprimable&id_article=70285.

¹²⁵ The Sudanese Congress Party is a key member of the civilian arm of the government.

fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹²⁶

These should include on the basis of race, colour, national, religious groups and gender-based discrimination, as well as the full list of many important intersectionalities between gender, race and religion.

Another important consideration for the Draft Law is the need to address positive obligations towards ensuring Equal Treatment. In fact, framing a law positively as seeking to achieve Equal Treatment, rather than to avoid discrimination would be more progressive and in line with best practice. Positive steps need to be required in order to respect diversity and ensure that people, who are not all the same, are nonetheless treated equally. For instance, in order to ensure equal access to justice, reasonable adjustments must be made in relation to linguistic minorities, religious groups, people with disabilities, or women, who may need female police officers, or in camera hearings.

Rights for Peace welcomes the idea of an Equality or Anti-Discrimination Commission, to which complaints can be brought.

Law Reform Recommendations for the Government of Sudan:

- Enact separate Hate Speech and Anti-Discrimination or Equality laws, which should complement each other.
- Ensure a comprehensive, meaningful and inclusive consultation process, not just with civil society in Khartoum but with minority groups across the conflict regions. Ensuring that affected citizens and communities are able to engage in a genuine consultation process will send important messages regarding anti-discrimination values. New laws will only be as effective as the system that implements them, and much work is needed to address systemic prejudices.
- Ensure ethnic and linguistic sensitivity and inclusive practice during the law formation process.
- Establish a commission against discrimination and exclusion and form a committee to work with grassroots groups in areas that suffer from discrimination, exclusion and hate speech.
- Review all laws and regulations in governmental institutions that conflict with the new Anti-Discrimination or Equality law.

¹²⁶ Combining definitions from Article 2 of ICCPR, Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Article 1 of the Convention on the Elimination of Discrimination against Women (CEDAW), which respectively define discrimination.

8. Laws to Counter Hate Speech Amounting to Incitement

In July 2020, the Sudanese Congress Party stated that a law has been proposed to criminalise hate speech; Sudanese Congress Party spokesman Mohamed Hassan Arabi indicated that under the proposal, the punishment for using racial slurs would be five years in jail.¹²⁷

While this may be excessive and severely impede free speech, which must be a key objective in the transition to democracy, establishing a law against incitement to discrimination, hostility and violence, in accordance with ICCPR Article 20(2), would be an important step towards combating identity-based discrimination and prejudice, as well as ensuring provision for incitement to genocide.

However, it is critical that such a law is in line with international human rights standards and does not impinge on freedom of expression. A new law should include the following provisions:

- An explicit recognition of the relationship between the rights to freedom of expression, non-discrimination and equality as positive and mutually reinforcing rather than contentious.¹²⁸ This is to avoid broadly framed “hate speech” laws which can be easily misapplied to target minority and dissenting expression.¹²⁹
- Prohibition of the advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination or violence, prohibited in line with Articles 19(3) and 20(2) of the ICCPR and establishing a high threshold for limitations on free expression, as set out in the Rabat Plan of Action.¹³⁰
- Prohibition of incitement to genocide (the Sudanese amendment law of 2009 does not), as well as different modes of liability for genocide, including aiding and abetting (including for incitement), as well as any incitement to crimes against humanity.
- The protective scope of any measures to address ‘hate speech’ should encompass all those protected characteristics recognised under international human rights law. It should not be narrowly limited to the protected characteristics of race, ethnic origin, nationality and religion or belief. In particular, the list of protected characteristics should be revised in line with the right to non-discrimination as provided under Article 2(1) and Article 26 of the ICCPR.¹³¹

¹²⁷ BBC News, ‘Viewpoint from Sudan - where black people are called slaves’ (2020), <https://www.bbc.co.uk/news/world-africa-53147864>.

¹²⁸ Article 19, ‘UN Forum on Minority Issues: Free expression vital in tackling hate speech’ (2020), <https://www.article19.org/resources/un-forum-on-minority-issues-free-expression-vital-in-tackling-hate-speech/>.

¹²⁹ Ibid.

¹³⁰ OHCHR, ‘Freedom of expression vs incitement to hatred: OHCHR and the Rabat Plan of Action’, <https://www.ohchr.org/en/issues/freedomofexpression/articles19-20/pages/index.aspx>.

¹³¹ Article 19, ‘Responding to ‘hate speech’: Comparative overview of six EU countries’ (2018), https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf, p. 41.

- A victim-centred approach to remedies, including compensation and the right of correction and reply (as per international standards) if incitement occurred through the mass media.¹³²

9. National Mechanisms for the Prevention of Genocide and Atrocity Crimes

National Mechanisms for the Prevention of Genocide and Atrocity Crimes are structures designed to prevent atrocities and promoting the responsibility of States.¹³³ They include representatives from across government, civil society, academia, National Human Rights Institutions and other sectors relevant to atrocity prevention, and their creation involves the appointment of Focal Points by to promote the implementation of the Responsibility to Protect (R2P).¹³⁴

Several National Prevention Mechanisms have already been established, including in Uganda, Kenya, Tanzania, Mexico and the United States, with others emerging in the Central African Republic, the Democratic Republic of Congo, Argentina and Paraguay.¹³⁵

In 2019, the Global Action for Mass Atrocity Prevention (GAAMAC) II Africa Working Group, in collaboration with the Uganda National Committee for Genocide and Mass Atrocity Prevention, produced a Manual on Best Practices for the Establishment and Management of National Mechanisms for Genocide and Mass Atrocities Prevention.¹³⁶

It is recommended that the transitional government of Sudan engage with GAMAAC's Africa Working Group, with a view to establishing their own National Mechanism and creating Atrocity Prevention focal points within ministries to develop early warnings. Employing a whole of government approach to the prevention of atrocity crimes, along with non-State actors such as civil society, would provide a much-needed impetus to Sudan's approach to tackling mass atrocities.

¹³² Ibid., p. 42.

¹³³ GAMAAC, 'Manual on Best Practices for the Establishment and Management of National Mechanisms for Genocide and Mass Atrocity Prevention' (2019), https://www.gaamac.org/media-uploads/awg-manual/AWG_MANUAL_POST_GAAMAC_III_EN_06.08.2019.pdf, p. 1.

¹³⁴ Ibid.

¹³⁵ Auschwitz Institute, 'National Mechanisms for the Prevention of Genocide and other Atrocity Crimes: Effective and Sustainable Prevention Begins at Home' (2015), http://www.auschwitzinstitute.org/wp-content/uploads/2015/06/AIPR_National_Mech_Booklet_2015.pdf, p. 4.

¹³⁶ GAMAAC, 'Manual on Best Practices for the Establishment and Management of National Mechanisms for Genocide and Mass Atrocity Prevention' (2019), https://www.gaamac.org/media-uploads/awg-manual/AWG_MANUAL_POST_GAAMAC_III_EN_06.08.2019.pdf, p. 1.

10. Ratification of the Rome Statute and ICC Cooperation

It is welcome that the Sudanese authorities have committed to fully cooperating with the ICC for their investigation into alleged atrocities in the Darfur region, including receiving ICC investigators and agreeing to hand over ousted President Omar al-Bashir.¹³⁷ This was codified in the repeal of criminal law provisions that prevented cooperation with the International Criminal Court.¹³⁸

Sudan signed the Rome Statute in 2000, but in 2008 informed the Secretary-General that it did not intend to become a party, and that accordingly, “Sudan has no legal obligation arising from its signature on 8 September 2000.”¹³⁹

For Sudan to ratify the Rome Statute would send a strong message about Sudan’s commitment to ending impunity for mass atrocity crimes, and its willingness to cooperate with and strengthen the international community and international standards.

¹³⁷ Human Rights Watch, ‘Sudan Opens Door for ICC Prosecutions’ (2020), <https://www.hrw.org/news/2020/02/12/sudan-opens-door-icc-prosecutions>.

¹³⁸ Human Rights Watch, ‘Sudan’s Law Reforms a Positive First Step’ (2020), <https://www.hrw.org/news/2020/07/16/sudans-law-reforms-positive-first-step>.

¹³⁹ United Nations Treaty Collection, ‘Rome Statute of the International Criminal Court’, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en#10.

List of Acronyms

AU - African Union

CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CERD - International Convention on the Elimination of All Forms of Racial Discrimination

CPA - Comprehensive Peace Agreement

CRC - Convention on the Rights of the Child

FGM - Female Genital Mutilation

FFC - Forces of Freedom and Change

GAMAAC - Global Action Against Mass Atrocity Crimes

ICC - International Criminal Court

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

ICED - International Convention for the Protection of All Persons from Enforced Disappearance

JEM - Justice and Equality Movement

NCP - National Congress Party

NSS - National Security Services (National Intelligence)

OHCHR - Office of the High Commissioner for Human Rights

OPCAT - Optional Protocol to the Convention against Torture

PDF – Popular Defence Forces

R2P - The Responsibility to Protect

RSF - Rapid Security Forces

SLA - Sudan Liberation Army

SPLM - Sudan People's Liberation Movement

SPLM/A - Sudan People's Liberation Movement/Sudan People's Liberation Army

SPLM-N - Sudan People's Liberation Movement-North

SAF - Sudanese Armed Forces

TMC - Transitional Military Council

UNAMID - United Nations–African Union Mission in Darfur

UNITAMS - UN Integrated Transitional Mission in Sudan

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